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# MATERNAL BENEFITS OF THE WORKING WOMEN UNDER EU LAW AND COMPARISON WITH LEGAL ARRANGEMENTS AND PRACTICES IN TURKEY

**YÜKSEK LİSANS TEZİ**

**Rana TEZCAN AÇIKGÖZ**

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**ONAY SAYFASI**

Enstitümüz AB Hukuku Anabilim Dalı Yüksek Lisans öğrencisi Rana Tezcan AÇIKGÖZ'ün "***MATERNAL BENEFITS OF THE WORKING WOMEN UNDER EU LAW AND COMPARISON WITH LEGAL ARRAGEMENTS AND PRACTICES IN TURKEY***" konulu tez çalışması **06 Nisan 2010** tarihinde yapılan tez savunma sınavında aşağıda isimleri yazılı jüri üyeleri tarafından oybirliği/oyçokluğu ile başarılı bulunmuştur.

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# ABSTRACT

Active participation of women in labor life has been ensured along with the Industrial revolution. This participation has brought about the requirement of identifying the rights and duties of working women and men. Although women have begun labor life, there has been no change in their responsibilities concerning family and children and even have become obliged to assume heavy duties in connection with their jobs. Women whose biological characteristics have been disregarded were urged to work under heavy work conditions and unfair circumstances. Women whose awareness has risen over time began to express their demands and communicate their voices to international organizations. Despite the studies initiated with the aim of improving the conditions in labor life; it has not been possible to eliminate such implementations as excluding women because of their biological characteristics, dismissal from their jobs, restricting their employment areas due to pregnancy and/or family responsibilities, urging them to work under unhealthy circumstances during pregnancy, though having shown rapid improvement.

The European Community, in this process prepared the necessary legal arrangements, and ensured that they are performed by the Member States. In the Community that was assembled initially to ensure the economical development, social policy and along with this, protection of maternity rights of working women have been conducted as a separate policy. The European Union Law has prepared the necessary legal legislation for protection of maternity rights of working women and established the legal audit mechanisms to ensure their implementation. Turkish Law largely matches up with the European Union Law in this respect. In our country, the studies associated with the Labor Law and Social Security Law within the scope of EU Adaptation studies are delicately followed up and it is ensured that the developments are reflected to the Labor Law .Therefore harmonization exists in respect to the rights provided.

# ÖZET

Sanayi Devrimi ile birlikte kadınların çalışma hayatına aktif katılımı sağlanmıştır. Bu katılım beraberinde çalışan kadınların ve erkeklerin haklarının, görevlerinin belirlenmesi gereğini ortaya çıkarmıştır. Zira kadın, çalışma hayatına başlamış olmakla birlikte aile ve çocuk ile ilgili yükümlülüklerinde her hangi bir değişiklik olmamış ve hatta işiyle ilgili ağır görevler üstlenmek zorunda kalmıştır. Biyolojik özellikleri göz ardı edilen kadınlar ağır iş koşullarında ve adil olmayan şartlarda çalışmak zorunda bırakılmıştır. Zamanla farkındalığı artan kadınlar taleplerini dile getirmeye ve uluslararası örgütlere seslerini duyurmaya başlamışlardır. İş yaşamındaki koşulların düzeltilmesi amacıyla başlatılan çalışmalara rağmen, hızla ilerleme gösterse de kadınların biyolojik özellikleri nedeniyle dışlanmaları, işlerine son verilmeleri, hamilelik ve / veya ailevi sorumluluklar nedeniyle istihdam alanlarının kısıtlanması, hamilelik halinde sağlık koşullarına uygun olmayan şartlarda çalışmak zorunda bırakılmaları gibi uygulamaların ortadan kaldırılması mümkün olmamıştır.

Avrupa Topluluğu, yaşanan süreçte uluslararası örgütlerinin yaptığı çalışmalara kayıtsız kalmayarak ve gerekli yasal düzenlemeleri hazırlamış ve Üye Devletler nezdinde de yapılmasını sağlamıştır. İlk başlarda ekonomik kalkınmanın sağlanması amacıyla bir araya gelen Toplulukta sosyal politika ve bununla beraber çalışan kadının analık haklarının korunması ayrı bir politika olarak yürütülmüştür. Avrupa Birliği Hukuku, çalışan kadınların analık haklarının korunması ile ilgili olarak gerekli yasal mevzuatı hazırlamış ve uygulanmasını da sağlamak için yasal denetim mekanizmalarını kurmuştur. Türk Hukuku, bu anlamada Avrupa Birliği Hukuku ile büyük ölçüde örtüşmektedir. Ülkemizde, AB Uyum çalışmaları kapsamında İş Hukuku ve Sosyal Güvenlik Hukuku ile ilgili çalışmalar devam etmekte olup, mevzuatın AB mevzuatı ile uyumlaştırılması süreci titizlikle takip edilmekte ve gelişmelerin İş Hukuku’na yansıtılması sağlanmaktadır. Sağlanan haklar bakımından uyumun var olduğu söylenebilir.

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# ABBREVATIONS

| | |
|---|---|
| ***ACQUIS COMMUNAUTAIRE*** | Used in European Union law to refer to the total body of EU law accumulated thus far. |
| ***CEDAW*** | Convention on the Elimination of All Forms of Discrimination Against Women |
| ***CEEP*** | European Center of Employers and Enterprises providing Public Services. |
| ***CJEC*** | Court of Justice of the European Communities |
| ***ECHR*** | European Court of Human Rights |
| ***ECSR*** | European Committee of Social Rights |
| ***ETUC*** | European Trade Union Confederation |
| ***EU*** | European Union |
| ***IGC*** | Inter-governmental Conference |
| ***INSTRAW*** | United Nations International Research and Training Institute for the Advancement of Women |
| ***IOE*** | International Organisation of Employers |
| ***KSSGM*** | The Turkish abbrevations for the Turkish Republic Prime Ministry Directorate General on the Status of Women (DGSW) |
| ***UN*** | The United Nations |
| ***UNICE (Business Europe)*** | Abbreviation of the former name of BusinessEurope; Union of Industrial and Employers' Confederations of Europe. |
| ***UNIFEM*** | UN Development Fund for Women |

*“Failure of our community arises from our disinterest and negligence against women. Living means action. Hence, if an organ of the social community does not work while the other works, that community has become disabled. In order for a community to work and achieve in the life, the reasons and conditions required for working and achievement has to be adopted. Therefore, if knowledge and technique are required for our society, they should be gained equally by both women and men”.*

*“Bizim toplumumuzun başarısızlığının sebebi, kadınlarımıza karşı gösterdiğimiz ilgisizlik ve kusurdan doğmaktadır. Yaşamak demek faaliyet demektir. Bundan dolayı bir sosyal toplumun bir organı faaliyette bulunurken diğer bir organı işlemezse, o toplum felç olmuştur. Bir toplumun hayatta çalışması ve muvaffak olması için, çalışmanın ve muvaffak olabilmenin gerektirdiği nedenleri ve koşulları benimsemesi gerekir Bundan ötürü bizim toplumumuz için ilim ve teknik gerekliyse bunları aynı derecede hem erkek hem kadınlarımızın edinmeleri lazımdır.”*

*Mustafa Kemal Atatürk*

# 1. INTRODUCTION

## 1.1. Participation of Working Women in Labor Life

### 1.1.1. Industrial Revolution and Formation of Policies Oriented in the Rights of Working Women

Labor, in broad sense, is the production of goods and services having use and exchange value by women and men of all ages in a society, for the continuance of both their and others' lives, whether inside or outside of work sites, within every sort of production relation. However, labor, within the framework of capitalist production relations, has lost this broad sense, and any job which is performed by women to survive themselves and their families, which has no exchange value though having value of usage and consequently, having no monetary consideration has not been considered as labor [1].

Along with the Industrial Revolution, workforce supply and gender relation has entered into the economical and social life by the female workers' stepping in labor life as paid workforce[2]. As the industrial revolution has emerged and developed within the liberal environment, the relations between the two classes generated until that period, the employer and employee, has remained under the influence of liberal principles[3]. The employee – employer relations have remained within the liberty of contract principle due to this understanding. Preparation of this relation within the framework of liberty of contract has led to failure in protection of women and children against deprivation of rights due to their employment with low wages under difficult conditions. In this period, labor relation was evaluated under private law, within the framework of "freedom of contract" and "freedom of labor". It was thought that individual forces and activities will reach the higher level with the principle "let them do, let them pass", and that this

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[1] Ecevit, Yıldız; "**Çalışma Yaşamında Kadın Emeğinin Kullanımı ve Kadın-Erkek Eşitliği**", **Kadın- Erkek Eşitliğine Doğru Yürüyüş: Eğitim, Çalışma Yaşamı ve Siyaset**, TÜSİAD Yayınları No: TÜSİAD-T/2000-12/290, Aralık 2000, 119.

[2] Pakin, Ebru; **Türk Hukuku'nda Kadın İşçilerin Sosyal Güvenliği**, 1.Baskı, Temmuz 2005, 2

[3] Tunçomağ, Kenan; Centel,Tankut; **İş Hukukunun Esasları**, 4.bs., Beta Yayım Dağıtım, İstanbul Eylül 2005, 14.

will create adaptation spontaneously in economical life[4]. Hence, the state has not been involved, has not intervened in the relation between the employee and employer. The duty of the liberal state is not to arrange the relation between the parties, but to secure freedom in the labor life. It was agreed that there's not an exact legal equality between the employee and employer and the parties were demanded to set labor conditions within the liberty of contract. However, this practice has completely turned into inequality; though there has been legal liberty between the parties, equality in economical nature has never existed[5]. Labor conditions, as viewed from outside, were based on a contract arising from free will; but in fact, labor conditions were reflected by the employer who was economically strong unilaterally on the employee who was economically weak[6]. The employers, regardless of them being women, men or children, were employed for long work times without employee health and security measures in consideration for so low wages that did not suffice to their subsistence (poverty wage). Labor of the employee was being exploited by the employer with long work times, poverty wages, the system of giving commodity in lieu of wage (Truck-system) and working conditions lacking protection measures[7].

The problem was intervened on the level of both states and international organizations in consequence of the activities performed whether for economical reasons or human rights and employee rights. This intervention was triggered over time, by awakening and gathering of women before international organizations to communicate their voices, thereby, the below detailed contracts and legal arrangements were made. Such legal arrangements concerning protection of female employees in labor life became real as a result of human campaigns rather than own attempts of women organizations. These campaigns, as well as arrangement of working conditions of female employees, concern protection of the family of employee class [8].

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4 Çelik, Nuri; **İş Hukuku Dersleri**, Beta Basım Yayım Dağıtım, İstanbul, Eylül 2009,Yenilenmiş 22. Bası;4.

5 Pur, Necla; **Sosyal Ekonomi**, İstanbul, 1981, 55.

6 Süzek, Sarper; **İş Hukuku**, Beta Yayım Dağıtım, İstanbul 2008, 4. Bası, 7.

7 Çelik, 4.

8 Mitchell, Juliet;Oakley, Ann; **Kadın ve Eşitlik**, Çeviren Fatmagül Berktay, Pencere Yayınları, İstanbul 1998, 47.

### 1.1.2. Improvements in the Rights of Working Women after the First World War

The ideas suggesting that women's rights cannot be thought separate than human rights and that, women must be on an equal position with men in legal terms, are based on the recent past. In the years of war, the states took several social measures in order to assist working women, opened crèches and nurseries for the care of children of working women. The World Wars I and II, which led to changes in economical, social and political structures of the societies, have also led to changes in women's status, strengthened the movements towards equality between women and men and formed a booster element of oppression for the innovations in this direction[9]. In the years when the World War I and II were being suffered, female workforce has filled the work sites discharged by men, so, an important increase has emerged in the number of female employees participating in the production process[10]. As a matter of fact, legal status of women beginning to participate in labor life based on industrialization and division of labor that emerged as a result of the economical and technological developments experienced since the second half of the 19th century has begun to be approached to the status of men in line with such developments, but in a slow manner. By the effect of the struggles made, the understanding that women's rights cannot be thought separate than human rights has been established over time, consequently, international organizations have needed to address the subject and legal arrangements have been made towards this aim. It is impossible to deny the role played by the international instruments, given in the relevant section of the study in evaluation and adoption of regulations regarding equality between men and women as a fundamental principle.

There's no arrangement where a single and clear definition in the European Union legislation regarding what the maternity rights of female workers comprise. However, in many arrangements enacted since the establishment of the European Union

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[9] Kadıoğlu, Süheyla; **20. Yüzyıl ve Kadın: Batı Ülkelerinde Kadın Hareketleri**, Gri Yayınevi, İstanbul 2005, 17.

[10] Vural Dinçkol,Bihterin; "**Kadının Hukuksal Statüsünün Tarihsel Gelişimi**", **20. Yüzyılın Sonunda Kadınlar ve Gelecek Konferansı**, Ed. Oya Çitci, Türkiye ve Ortadoğu Amme İdaresi Enstitüsü Yayın No: 285, 47.

include detailed arrangements oriented in protection of working women, thus, maternity rights of working women.

Arrangement of maternity rights of female employees appears as an extension of ban of discrimination and obligation of equal treatment which take place virtually in all arrangements within the scope of the social policies of the European Union. The obligation of equal treatment and non-discrimination has turned into a social policy over time for the society gathering around an economical target, and as a result of this, has become a fundamental rule of labor law. Hence, protection of female employees during their pregnancy and maternity terms is a matter required to be analyzed in the context of employer's equal treatment obligation[11]. Maternity rights of women gradually affect family life. Due to rapidly changing and advancing technological and economical structures this matter is handled not only as human rights of women, but also as a social phenomenon and a fundamental problem that has to be solved radically. Therefore societies must guarantee for both men's and women's right to paid employment[12].

### 1.2. Importance of the Subject

The importance of maternity rights of working women and ensuring equality between men and women in this context arises from the fact that such rights are each a human right. The missions such as motherhood, being responsible for housework, which have been assumed by women within the historical process or charged on women in accordance with the life conditions of the society lived in, have continued after women have stepped in labor life as well. Therefore, working women have begun to live with more burden and responsibility on their shoulders along with starting the labor life, moreover, have been subject to unfair and unjust treatment in labor life.

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[11] İştar, Cengiz; **Kadın İşçilerin Hamilelik ve Analık Durumlarının İş Sözleşmelerine Etkisi**, Kamu-İş İş Hukuku ve İktisat Dergisi, C.10, S.4, 2009

[12] Work And Famıly, **New Call For Publıc Polıcıes Of Reconcılıatıon Wıth Socıal Co-Responsıbılıty**; Santiago, International Labor Organization And United Nations Development Programme, 2009(Source : http://www.undp.org/publications/pdf/undp_ilo.pdf)

### 1.2.1. Importance of the Subject in terms of Physiological Characteristics of Women

In respect of working women, pregnancy, maternity and family responsibilities because of their biological characteristics leads to problems even today. In order to ensure participation of women in labor life and increase their participation rate in labor life, it is required to eliminate any and all economical, social, cultural factors hindering their participation in labor life and all problems they encounter due to their genders and they should be specially protected[13]. The necessity of protection of female employees is based on the idea of protecting the innate weak structure and maternity status of woman[14]. The maternity status covering pregnancy, childbirth and nursing periods of working women imposes several obligations on the employers. Employers who become obliged to make additional expenditures as a result of such obligations refrain from employing female employees. Female employees' leaving their jobs using their legal rights for childbirth becomes a disadvantage for women[15]. Even if all protection means are provided in legal sense, it is an undeniable fact that women are implicitly under a moral pressure in regard to childbirth and birth leave in practical terms. Studies intended to encourage women to work for their contribution to labor life brings about the requirement of eliminating such implementations making labor life such difficult for women.

### 1.2.2. Importance of the Subject in terms of the Equal Treatment Principle

In the periods during which economical policies were planned and scheduled in the finest details for development of economical life, thereby, for welfare and advancement of the states, those treatments faced by women were left in the background. Gradually development of economical life has required bringing arrangements and rules in that field as well as requiring arrangement of the rights of

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[13] Tulukçu, N.Binnur; **İş ve Sosyal Güvenlik Hukukunda Gebe ve Anne İşçilerin Korunması**, T.Haber-İş Sendikası Yayınları No:21, Ankara 2000, 20.

[14] Ibid 13.

[15] Ekin, Nusret; "**Dünyada ve Türkiye'de Çalışan Kadınların Sorunları", Şükrü Baban'a Armağan**, İstanbul Üniversitesi İktisat Fakültesi Mecmuası, C.40, S. 1-4, 85.

working women, who were a part of the economical life. Distress of unjust conditions the women have been exposed to until the mentioned arrangements were made, have been imposed on female employees as well.

Protection of maternity rights of working women is closely associated with the employer's "equal treatment principle" for both female and male employees. Arrangements intended to prevent discrimination based on gender discrimination in labor life target to prevent discrimination made between men and women because of gender in possessing rights and exercising such rights. The principle on which the mentioned arrangements based on is the equal treatment principle[16]. The equality principle is not based on an absolute equality understanding, but on legal equality; it refers to the equality between the equals, requires differential treatment to the different to the extent of its difference[17]. Accordingly, the equal treatment principle requires not subjecting the employees in equal status to differential treatment, not to treat the employees differentially without a reasonable and justifiable cause[18]. Hence, when female and male employees have equal qualifications, it should not be possible to make any gender-based discrimination between them without a reasonable and justifiable reason; however, many national and international arrangements which are the subject matter of this study have been made; studies oriented in this target which "must be made" are carried on.

### 1.3. Presentation of the Subject

The aim of this thesis is to introduce the maternal benefits of working women in regards to EU Law and Turkish Law. Knowing that the subject "maternal benefits of working women" contains many details in it and that every subtitle can be an individual thesis subject, this thesis is conducted so as to introduce the main picture which lays down the differences and the similarities between the two laws systems.

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[16] There's no difference in essence between the principle of having equal rights and equal treatment principle. Equal treatment principle refers to an obligation, and the principle of having equal treatment refers to a right. **See** Tuncay, A. Can; **İş Hukukunda Eşit Davranma İlkesi**, İstanbul, 1982, 9-10.

[17] Kantarcıoğlu, Fulya; "Anayasa Mahkemesi Kararlarına göre Farklı Cinslerin Eşitliği", **Farklı Cinslerin Eşitliği Sempozyumu: Bildiriler**, Dokuz Eylül Üniversitesi Hukuk Fakültesi Döner Sermaye İşletmesi Yayınları No: 86, 54

[18] Tuncay; 5.

The subject matter of our thesis study is revealing what the maternity rights are as per the European Union Legislation, and how they are protected. For this study, it was required in the first place to examine the arrangements of international organizations concerning maternity rights of working women, which also constitute the basis of the legal arrangements in the European Union. For this purpose, the process up to the stage of identifying the maternity rights granted to working women under the European Union Law was defined. In that regard, the maternity rights of working women were addressed within the scope of international instruments and arrangements. The arrangements and statements concerning protection of maternity rights of working women included arrangements and developments relating to the ban of discrimination and equality principles because these constituted a part of the ban of discrimination against women. The prohibition of discrimination, besides being a subject incorporating much different sub-refraction within itself, was examined only by its aspect affecting the maternity rights of female employees.

Under Chapter 2, following the study of the international law, arrangements brought in the European Union Law in regards to maternity rights of the legal arrangements of the European Union are explained.

Under Chapter 3, the European Union arrangements are compared with the arrangements brought in Turkish Law system in regards to maternity rights of female employees, and the differences between the two law systems are handled.

# 2. MATERNAL BENEFITS OF WORKING WOMEN UNDER INTERNATIONAL LAW

Economical and social policies have been developed in order to protect women rights, for the purpose of improving labor life, to ensure that women are not aggrieved because of gender, thereby, to enable economical development. In that regard, prevention of all discriminative approaches and acts against women in order for the economical life not to be interrupted has become the fundamental policy of international arrangements.

The main objective of international regulations is to protect human rights, to ensure individual rights[19]. International rules involved in women's rights include the rules and standards that will enable improvement in women's statuses in line with the prevention of discriminative treatments against women in social, political and labor life. The subject of right and opportunity of equality between women and men with the objective of exact fulfillment of human rights takes place among the primary studies of international law agencies. Protection of maternity rights of working women constitutes an important sub-refraction in terms of enabling this right and opportunity equality. Because, in view of women's childbearing by their gender and nature, and having a physically weaker structure compared to men[20] [21] , it is a necessity to make arrangements maintaining this status and also prescribing continuance of the rights they have in labor life. In this regard, arrangements securing maternity rights of working women under the studies of international organizations and the present studies are as follows:

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[19] Onaran Yüksel, Melek; **Karşılaştırmalı Hukuk Işığında Türk İş Hukuku'nda Kadın – Erkek Eşitliği**; Birinci Bası; Ekim 2000;41.

[20] According to medical data, physical power of women is less than of men in average. The muscle power of women is less than of men by 30 – 40 %. Differences in heart volume and weight, blood structure, lung power and respiratory mechanics are the indication of the fact that men are physically stronger than women. Both women's muscles are weaker than of men and they are shorter than men. Maximum physical capacity of an average woman is about one third of an average man. Women are physically weaker than men, and their capacity of doing a heavy work continuously is significantly low. (http://www.isguvenligi.net/co/calisma_ortami1.pdf)

[21] For the table showing the physical power capacity difference between women and men: See Annex III.

### 2.1. United Nations' Regulations

The United Nations is an international organization founded in 1945 after the Second World War by 51 countries committed to maintaining international peace and security, developing friendly relations among nations and promoting social progress, better living standards and human rights. The Organization works on a broad range of fundamental issues, from sustainable development, environment and refugees protection, disaster relief, counter terrorism, disarmament and non-proliferation, promoting democracy, human rights, governance, economic and social development and international health, clearing landmines, expanding food production, and more; in order to achieve its goals and coordinate efforts for a safer world for this and future generations[22]. The United Nations one of the first functions is to provide the equality rights of women.

It is one of the long-term objectives of UN to improve living conditions of women and strengthening their status in order to provide them to have more voice in their own lives. The United Nations held the first World Conference on women in 1975 in Mexico. Along with this conference, improvement of women's rights and encouragement of gender equality were taken into the agenda in two World Conferences, during Beijing World Conference (1995) and the 10$^{th}$ Year of World Women (1976-1985). The UN Convention on the Elimination of All Forms of Discrimination against Women, approved by 185 countries in 1979, helps to improve women's rights worldwide[23]. It is necessary to review the Universal Declaration of Human Rights, which must be reviewed prior the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and which is an important gate on the way to CEDAW.

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[22] United Nations official web site, http://www.un.org/en/aboutun/index.shtml; 03.12.2009, online.

[23] Official website of United Nations Information Center; http://www.unicankara.org.tr; 06.12.2009; online

### 2.1.1. Universal Declaration of Human Rights[24]

The Universal Declaration of Human Rights includes specific arrangements concerning maternity rights of women. Also, the equity principle takes a material place in the content of the Declaration[25]. The first article of the Declaration has a determinative nature in regards to contents of the subsequent articles. All human beings are born free and equal in dignity and rights. Human rights constitute the essence of women's rights[26] and so, human right conventions are important for women's rights. The Human Rights Declaration is far beyond being a reference instrument with an advisory nature. Due to the fact that the Declaration is taken as the basis for all international arrangements worldwide and internal law arrangements regarding human rights are regulated in this respect, it shall not be wrong to say that the Declaration has a binding effect. The Declaration, which is expressed to have a great role on human rights' becoming an actual law discipline, includes the rights and freedoms which are obliged to be ensured by the party states, and *"judicial bodies"* and *"a common assurance system"* which protect such rights have been established[27]. The rights in the Declaration have the nature of being the list of ideal rights identifying the objectives required to be achieved. The Declaration has a great intangible value as it has been adopted at the UN General Assembly [28]. Furthermore, many states have made references to that instrument in their constitutions, and it has constituted the origin of many regional and international human rights instruments[29]. This Declaration, as well as in international domain, has been effective in preparation of the constitutional and other laws in our country[30].As it will be detailed in subsequent chapters, women's having maternity rights, or lacking several rights because of maternity, is directly associated with human rights of women. In Article 2 of the Declaration, it is stated that "*Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race,*

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[24] The Declaration which was adopted on 10.12.1948 was approved on 06.0.1979 by the Republic of Turkey.

[25] Onaran Yüksel; 57.

[26] Çelikel, Aysel;**Uluslararası Sözleşmelerde Kadın, Türkiye'de Kadın Olgusu**;İstanbul 1992; 186.

[27] Batum Süheyl, **Avrupa İnsan Hakları Sözleşmesi ve Türk Anayasal Sistemine Etkileri**, İstanbul 1993, 25.

[28] Tuncay,13; Gören, Ataysoy 134.

[29] Gemalmaz, Mehmet Semih **Ulusalüstü İnsan Hakları Hukukunun Genel Teorisine Giriş**, 5.Baskı. Legal Yayıncılık, Ekim 2005, 356.

[30] Talas, Cahit **Toplumsal Politikaya Giriş**, S Yayınları, Ankara 1981, 37.

*color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. ...”* Furthermore according to article 16 of the Declaration, women and men shall have equal rights as to marriage, during marriage and in its dissolution, without any limitation due to race, nationality or religion. It is stated in article 23 / 2 that *“everyone, without any discrimination, has the right to equal pay for equal work.”* Especially article 25 / 2 is important as is clearly states that, *“Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection”*

#### 2.1.2. International Convention on Civil and Political Rights [31]

The article 3 of the International Convention On Civil and Political Rights prescribes that women and men shall be equal in enjoying the rights in this convention. In the article 26 of the mentioned convention, the principle of equality before the law has been regulated, and it is stated that everybody is entitled to benefit from the protection by the law in an equal and non-discriminative manner.

#### 2.1.3. International Convention on Economical, Social and Cultural Rights [32]

All forms of discrimination is banned by virtue of the article 2 of the International Convention on Economical, Social and Cultural Rights. In the article 3, having prescribed a special ban of discrimination for women, it was stipulated that women and men enjoy the rights in that convention equally; in the article 7, equal pay for equal work, healthy working conditions, equal opportunity of professional advancement have been described without making any discrimination between men and women workers.

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[31] The International Convention on Civil and Political Rights as unanimously adopted by UN General Assembly on 16.12.1966 was signed by the Republic of Turkey on 15.8.2000, and approved by virtue of the Law dated 24.6.2003 and number 4868.

[32] The Convention was approved by the Republic of Turkey by virtue of the Law dated 4.6.2003.

### 2.1.4. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[33] [34]

The Convention is deemed as a kind of constitution for women's rights. It covers mainly three dimensions of the situation of women: civil rights and the legal status of women, human reproduction and fundamental human rights. Consisting of a preamble and 30 articles, it defines the conditions / forms of discrimination against women and sets up an agenda for national action to end such discrimination[35]. It may be regarded as the most important convention to specify the approaches constituting discrimination against women in employment in the most detailed manner. Some of the provisions included therein take place in the human rights declarations and some in the international labor contracts prepared by the International Labor Organization.

When considered the international human rights treaties, the CEDAW constitutes one of the most important regulations focusing on women's rights. It covers the reproductive rights of women. This is a social matter and therefore this responsibility cannot be abandoned only to the shoulders of women. Reproductive rights of women cannot be a reason for discrimination.

The Convention - developed by the UN Commission on the Status of Women- addresses the advancement of women, describes the meaning of equality and sets forth guidelines on how to achieve it. According to the UN Division for the Advancement of Women; *The Convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's rights to acquire, change or retain their nationality and the nationality of their children. States parties also agree to take*

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[33] The Convention was approved by the Republic of Turkey on 24.07.1985, and published on the Official Gazette dated 14.10.1985. For the paragraphs on which Turkey has put reservation in 1985, and later, released the said reservations in 1999, see Annex IV.

[34] The Convention is also referred to as the Treaty for the Rights of Women and the International Bill of Rights for Women.

[35] United Nations official web site, http://www.un.org/womenwatch/daw/cedaw/cedaw.htm; 22.11.2009.

*appropriate measures against all forms of trafficking women and exploitation of women*[36].

Article 11 of the United Nations Convention on Elimination of All Forms of Discrimination against Women brings arrangements in line with the rights secured by the European Union legislation. Accordingly, the member states, in order to eliminate discrimination against women because of marriage and maternity and to enable efficient labor, will take applicable measures. These measures can be summarized as following:

States have to prohibit the termination of the labor contracts of the women worker due to pregnancy and maternity leave or marriage and punish those making such discrimination. Furthermore paid maternity leave or similar social indemnities have to be given meanwhile the continuance of the job and social rights. In addition to this workers have to be encouraged and promoted in provision of supportive social services by motivating foundation and development of child care facilities in order to harmonize the family obligations of parents with business responsibilities and participation in social life. Another measure that can be taken in this way is providing special protection for women in jobs proved to be hazardous during pregnancy.

When reviewed the arrangements in article 11 of the Convention, it is observed that all matters constituting discrimination against women are comprised and that solutions and recommendations are suggested on how such approaches and behaviors constituting discrimination against women shall be eliminated[37].

Related articles regarding maternity rights of working women under the CEDAW[38] are articles 4/2; 5; 11;12 [39].

The arrangements brought in the Convention for the purpose of protection of maternity are of vital importance due to its effect on social and economical life. By this way, the status of working women in labor life and their participation in social life has

[36] Lowen, Linda; Women's Issues Guide; http://womensissues.about.com/od/feminismequalrights/f/CEDAW.htm
[37] Onaran Yüksel; 44.
[38] For full text please see Annex I
[39] For the Articles please see Annex I.

been secured. The Convention also includes arrangements on equality of opportunity that is required to be granted to women in the educational, political and public fields besides the working life. The Convention brings concrete solutions capable to eliminate the problems encountered by women in the legal and social areas. It describes the methods regarding to be done and shows their obligations in the legal and social areas. [40].

Furthermore, according to article 17 of the Convention, the Committee for Elimination of All Forms of Discrimination Against Women has been established so as to audit whether the Member States fulfill their obligations arising from this convention. As per article 18 (b.1/a,b), the Member States are under the obligation of presenting a report within one year after they become party to the convention, at least once every four years and whenever demanded by the Committee. Accordingly, there are three types of report being initial, periodic and on demand (exceptional) [41].

#### 2.1.4.1. Optional Protocol for Convention on Elimination of All Forms of Discrimination against Women

Although favorable steps have been taken for the purpose of preventing unfair treatments against women following the conferences held by UN and CEDAW as adopted in 1979, it was observed that women face in family, social and labor life, it was deemed necessary making new arrangements to eliminate these problems. Starting from this objective, the Optional Protocol for the Convention on Elimination of All Forms of Discrimination Against Women was adopted as an additional regulation to the Convention on Elimination of All Forms of Discrimination Against Women by the UN General Assembly in 1999 and was submitted for the approval of the member states. The Optional Protocol brought the individual complaint application and inquiry procedure, but did not include inter-state complaint procedure. Thereby, the Optional Protocol grants working women whose rights are trespassed, who cannot accomplish although they try all means within the law system of their country in order to remedy

[40] Çelikel, 193.
[41] Gemalmaz, 493.

the damages they suffer, the right of applying to the Committee for Elimination of Discrimination Against Women[42].

### 2.1.5. UN Conferences held about Women's Problems

#### 2.1.5.1. Before Beijing Declaration

The International Women's Movement was initiated before the United Nations with the aim of protection of women's rights. Within the scope of the mentioned movement, activities were conducted so as to draw the attention on the problems suffered by women. With the initiatives of this movement which was supported by the Commission on the Status of Women before UN, the year 1975 was declared as "International Women's Year". The objective is to intensify the activities intended to improve the equality between women and men, and to increase the contribution of women to national and international development. The mentioned decision was adopted by the UN General Assembly adding peace and equality among the objectives. The "First World Conference on Women" was held in 1975 in Mexico for the purpose of realizing this objective. With adoption of CEDAW [43] in 1979, the women's movement has gained an effective struggle instrument.

The World Action Plan was adopted in the First World Conference on Women. Accordingly, the objective of women's movement was established as "equal rights, development and peace". The UN, so as to realize this objective, has declared the years 1976-1985 as the "Decade of Women for Equal Rights, Development and Peace". Additionally, nine main activity fields have been identified in the Action Plan. Therefore, all member states of the UN were called for the first time to establish national and international mechanisms to produce solutions for women's problems in

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[42] Like with many other human rights conventions, the United Nations Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) is followed by an Optional Protocol. The Optional Protocol grants to the individuals and women groups the right of submitting petition of raising complaint in writing to the Committee for Elimination of Discrimination Against Women in the event of violation of the Convention, and this procedure is known as the "communication protocol". Additionally, the Optional Protocol includes an "inquiry protocol". The inquiry protocol allows the Committee to conduct inquiries relating to severe and systematic violation of human rights of women in the countries party to the Optional Protocol. Turkey has signed the said protocol in 2000, and the Protocol has took effect by 29 January 2003. http://www.ksgm.gov.tr/Pdf/TCEUlusaley lemplani.pdf

[43] See Annex I.

the fields of international cooperation and peace, political participation, education, employment, health and nutrition, family, population, housing and other social problems (immigrant and old women, prostitute and women slave trade, etc.)[44] [45].

Following the Conferences on Women held in 1980 in Copenhagen, in 1985 in Nairobi after the First Conference, 4th Conference on Women was held in 1995 in Beijing. The mentioned Conference, has a distinct place among the conferences held for the decisions made about women's rights and will be discussed under a separate title as it constitutes a reference for other conferences held after it.[46].

#### 2.1.5.2. Beijing Declaration and Thereafter

The Beijing Declaration has been taken as a subtitle in the review of the UN's regulations on women's rights for the facts that important decisions have been taken for women's rights, the mentioned declaration has been comprehensively effective, and created great reaction worldwide.

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[44] Producing statistics and creating databanks differential by gender in order to reveal the status of women in the society, and scale of equality/inequality tangibly is one of the important decisions. Turkey has complied with the decision made in the conference in 1975 on establishing national mechanisms as late as 1991, and established the Directorate General on Status and Problems of Women (KSSGM). The law on establishment and functioning of the said Directorate was enacted in 2004.

[45] The United Nations, in line with the said objectives, established two agencies, the "UN Development Fund for Women (UNIFEM)" and the "United Nations International Research and Training Institute for the Advancement of Women (INSTRAW)" within its body. The priority interest of UNIFEM, one of such agencies targeting to produce solutions intended to promote women and eliminate the inequality between women and men in the society, is to ensure women's participation in the planning and implementation activities at all levels aimed at development; and INSTRAWS's is conducting research and education studies aimed at women's getting beyond being an inferior and subordinate member of the society, and reaching to a more advanced status. **Beijing + 5: Human Rights of Women in the United Nations and Turkey's Commitments**, New Ways Liaison Office, Women for Women's Human Rights, December 2001.

[46] In addition to Conferences on Woman, the Women's Movement held a series of conferences in parallel with the Conferences on Women in the 1990s, furthermore, carried on the policies and lobby activities intended to protect better women's rights in the international summit conferences held. This movement has been the main determiner of the decisions made in the forums concerning women's rights in respect of the Decade of Women's Rights as declared by the UN. The World Conference on Human Rights which was held in June 1993 in Wien was a milestone for the international women's movement. The World Conference on Human Rights adopted that "human rights of women and girls are an integrated, inseparable and indispensable part of the universal human rights". Following this conference, the UN General Assembly adopted the "Declaration on Violence against Women" in December 1993. This is the first human rights declaration to specifically address the violence against women. In 1994, it was decided to assign a special reporter to the UN Commission on Human Rights for violence against women, and to incorporate women's rights into the human rights mechanisms of the UN.

#### 2.1.5.2.1. The United Nations Fourth World Conference on Women, Beijing 1995 – Beijing Declaration [47] and Action Platform

The UN 4th Conference on Women that was held in 1995 in Beijing, was the greatest of the conferences ever held until then[48]. At the end of the Conference, the Beijing Declaration, which was adopted by 189 countries, underlined that women rights were human rights, and invited the governments to eliminate the violence and discrimination against women; it emphasized that the intensive violence imposed on women in armed conflict environments was a crime against humanity; and obliged the governments to ensure strengthening the rights of women and advancing their social status, improve the equality between men and women and incorporate the social gender perspective into fundamental policies and programs. The Beijing Conference, having determined that most of the objectives established in the Nairobi Strategies to be realized until 2000 have not been achieved, made a situation assessment and set 12 fields of priority and urgency in the Action Platform. It invited the governments, non-governmental organizations and private sector to focus on the resources and operations on those listed fields and to take action in tangible manner[49]. The mentioned priorities are as follows:

The persistent and increasing burden of poverty on women; Inequalities and inadequacies in and unequal access to education and training; Inequalities and inadequacies in and unequal access to health care and related services; Violence against

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[47] The Report of the Fourth World Conference on Women, UN document A/CONF.177/20, is available from the http://www.un.org/esa/gopher-data/conf/fwcw/off/a--20.en

[48] 17,000 delegates participated in the official conference on behalf of 189 countries. While the international women's movement participated actively in the preparation process of the conference, on the other hand, held a Forum on Women in parallel with the inter-governmental sessions so as to influence the Action Platform to be formed at the end of the conference, and to emphasize how women view the 21th century's world. The number of participants in this forum which women associations and non-governmental organizations from all over the world participated in was over 30,000.

[49] The Action Platform, differently from the pervious United Nations instruments, after making a brief assessment of situation in each fields determined, set out in detail what must be done. It also established whose tasks they were (e.g. governments, international organizations, women's organizations, other social organizations, private sector, labor unions, etc.), and determined final dates in several fields for achievement of such tasks. Here, the governments, made binding commitments in respect of the changes they will make in their national policies, the steps they will take for the first time; they prepared national plans showing how they will implement the Platform decisions in their countries.

women; The effects of armed or other kinds of conflict on women, including those living under foreign occupation; Inequality in economic structures and policies, in all forms of productive activities and in access to resources; Inequality between men and women in the sharing of power and decision-making at all levels; Insufficient mechanisms at all levels to promote the advancement of women; Lack of respect for and inadequate promotion and protection of the human rights of women; Stereotyping of women and inequality in women's access to and participation in all communication systems, especially in the media; gender inequalities in the management of natural resources and in the safeguarding of the environment; Persistent discrimination against and violation of the rights of the girl children.

The arrangements in the Beijing Declaration aimed at protection of maternity rights of working women are briefly mentioned below :

According to Article 165 (a), it is stated that legislation guaranteeing the rights of women and men to equal pay for equal work or work of equal value shall be enacted and enforced.

Following this provision under sub-article c of the same article it is clearly stated that discriminatory practices by employers shall be eliminated and that appropriate measures in consideration of women's reproductive role and functions, such as the denial of employment and dismissal due to pregnancy or breast-feeding, or requiring proof of contraceptive use shall be taken. Furthermore it is stated that effective measures shall be taken to ensure that pregnant women, women on maternity leave or women re-entering the labor market after childbearing are not discriminated against.

Another important article is article 178/d stating that discriminatory practices by employers on the basis of women's reproductive roles and functions, including refusal of employment and dismissal of women due to pregnancy and breast-feeding responsibilities shall be eliminated. Following this article, under 179/c it is stated that incentives and/or encouragement, opportunities for women and men to take job-protected parental leave and to have parental benefits; promoting equal sharing of

responsibilities for the family by men and women and also promoting facilitation of breast-feeding for working mothers shall be ensured by legislative arrangements.

## THE BEIJING PLATFORM FOR ACTION ON HOW TO RECONCILE WORK AND FAMILY RESPONSIBILITIES[50]

Strategic objective in the Beijing Platform for Action calls on governments to promote harmonization of work and family responsibilities for women and men. For this purpose, governments should:

**a) Adopt policies to ensure the appropriate protection of labor laws and social security benefits for part-time, temporary, seasonal and home-based workers; promote career development based on work conditions that harmonize work and family responsibilities;**

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

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

d) Develop policies, inter alia, in education to change attitudes that reinforce the division of labor based on gender in order to promote the concept of shared family responsibility for work in the home, particularly in relation to children and elder care;

**e) Improve the development of, and access to, technologies that facilitate occupational as well as domestic work, encourage self-support, generate income, transform gender-prescribed roles within the productive process and enable women to move out of low-paying jobs;**

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[50] http://www.un.org/womenwatch/daw/beijing/platform/economy.htm#object6

f) Examine a range of policies and programs, including social security legislation and taxation systems, in accordance with national priorities and policies, to determine how to promote gender equality and flexibility in the way people divide their time between and derive benefits from education and training, paid employment, family responsibilities, volunteer and other activities and to promote the benefits from these activities.

Likewise, the action platform calls for the private sector, non-governmental organizations and unions to apply measures regarding temporary leave, changes in hours of work, educational and informational campaigns and the provision of services such as child care at the workplace and flexible working hours.

In addition to the conferences on women held by the United Nations, the private session "Cairo+5" assembled in 1999 has a distinct place among the panels held within the scope of women's movement. In the above mentioned session, new acquisitions were attained while assessing the new developments regarding women's rights. Accordingly, the women's "reproductive health, sexual and fertility rights" have increased their importance in the economical and social policies associated with women's rights.

#### 2.1.5.2.2. Turkey and Beijing Conference

Turkey has determined eight of the twelve immediate action fields of Beijing Action Platform as priority fields and communicated its commitments in these fields and the program for realization of such commitments in the National Action Plan on Implementation and Monitoring of Conference Results prepared in 1996. Turkey also adopted the Beijing Declaration and Action Plan with no reservation. In the conference, Turkey committed to bring solutions to matters under the titles of education, health and human rights of women, which require immediate actions, until 2000[51].

[51] See footnote 49

#### 2.1.5.2.3. Beijing + 5: "Women 2000: Social Gender Equality, Development and Peace for the 21st Century"

In June 2000, this meeting was held at the United Nation (UN) headquarters in New York, which hosted committees of 180 government and more than two thousand independent women organizations. The objective of the meeting was to determine to what extent the governments have fulfilled their commitments they have made in the 4th World Conference on Women held in 1995 in Beijing and to develop strategies that will enable more effective and rapid realization of the Action Platform adopted in Beijing. The conclusion declaration which was issued at the end of session called "Beijing+5" and which bears the signatures of the official committees, comprise decisions that will enable important improvements in daily lives of women worldwide and the states have repeated in this declaration that they support the commitments they have made in Beijing.

#### 2.1.5.2.4. 53rd Review Meeting

Following the above mentioned conference, the UN Commission on Status of Women continued to hold meetings. The following decision and views concerning maternity rights of working women as included in the report for the 53rd Period meeting of the UN Commission on Status of Women which was held most recently between the dates 2 – 13 March 2009 in New York have importance[52]:

*Ensuring for working women to return their previous positions or an equivalent position after using their maternity leaves, and preventing them from loosing their jobs;*

*As the priority matters and matters to be reviewed in the sessions of the Commission on Status of Women to be held through the years 2010-2014, the priority theme for 2011 has been determined as "access and participation women and girls in education, training, science and technology, including promoting full employment and equal access to good jobs".*

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[52] Detailed information on the report is available at http://www.ksgm.gov.tr/uluslararasi_toplantisonuc.php.

Below are the important articles of the agenda handled in connection with maternity rights of working women in the Panel[53] held on 3 March 2009 within the scope of the mentioned session:

Here, it is stated that gender equality is an important value for European countries. In this regard, it was expressed that the studies for balancing / reconciling family and labor life have been on the political agenda since the article 'Parental Leave as adopted in the Road Map[54] covering the period 2006-2010, which was accepted on 1 March 2006 by the European Commission, took effect and it was indicated that parent's permission was one of the priority fields.

In addition to these, the participation rates of women in employment in the European Union have been indicated. According to the objectives of Lisbon Strategy[55], it was stated that it is targeted to increase women's employment rate to 60% by 2010. Within the framework of the mentioned target, it was emphasized how important it is to reconcile family and labor life. At this point, the part-time labor form was focused on and it was stated that the labor form from the aspect of reconciling family and labor life, but brought no benefit in terms of career. It was further stated that part-time jobs brought low income and low pension. It was told that family friendly entrepreneurs have been developing in recent periods in several countries such as Lithuania, and that certain criteria and indicators have been developed for the mentioned enterprises. ***It was emphasized how important the care services are for the labor lives of women and men and it was explained how the implementations of childbearing leave, parental leave and etc. work in various European countries. It was emphasized again and again that gender inequality will not be eliminated by implementation of the mentioned legal provisions and usage of leaves by women, and how important the participation of men is.***

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[53] Interactive Expert Panel on Improvement of the Capacity for Incorporating Social Gender Equality into National Policies and Programs to ensure Equal Distribution of Responsibilities between Women and Men; 03.03.2009

[54] The Roadmap is described under 2.2.3.2.3, below.

[55] The Lisbon Strategy is described under 2.2.3.2.2, below

#### 2.1.5.2.5. The United Nations European Economical Council (EEC) Beijing+15 Regional Review Meeting

At the Regional Review Meeting held in Switzerland on 2 – 3 November 2009, the state's studies in respect with Beijing declaration and the decisions made at the conferences and panels held thereafter, were discussed, and the 5-year action plans were determined[56]. In the mentioned action plan; it was stated that it would be appropriate to create a social security network comprising reconciliation of labor responsibilities and family responsibilities by such legal implementations as parental leave for both parents so as to promote the position of women in labor life, measures for encouraging men to take family responsibilities, offering coverable and optimum quality care facilities for children and dependent adults, applicable training that will facilitate reintegration to labor market and elimination of the economical crisis, giving qualified child care, parental leave reform and elimination of wage difference based on social gender and to design warning packages sensitive to social gender.

## 2.2. Regulations of the International Labor Organization

### 2.2.1. A glance to ILO Regulations Regarding Maternal Benefits

The International Labor Organization (ILO), founded in 1919, a United Nations specialty organization working for improvement of social justice and international human and labor rights, has become the first organization[57] of the United Nations, which had been newly organized in 1946.

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[56] Following the Panel, Turkey has made suggestions to insert such matters as participation of men in the struggle with violence against women, development of income generating programs, involving the media as stakeholder, including the disabled in the child and elderly care services which are comprised in the care services demanded to be advanced, increasing appropriate credit facilities for women in order to improve women's entrepreneurship, into the text. These suggestions took place in the adopted result declaration. (http://www.ksgm.gov.tr/Pdf/pekin+15_baskanlik_sonuclari.pdf )

[57] ILO prepares international labor standards on all matters regarding fundamental rights in connection with labor life, freedom of association, collective bargaining, prevention of forced labor, equality of opportunity and treatment, by way of convention and advisory decisions. It provides technical assistance in vocational training and rehabilitation, employment policy, labor law, industrial relations, labor conditions, improvement of management, cooperatives, social security, labor statistics, labor health and safety. It supports establishment of independent labor and employer organizations, and gives training and consultancy services to the same. Within the System of the United Nations, the International Labor Organization has a specific triple structure in the management board of which the

ILO is the most important international organization directing the labor life by the studies it has been conducting, advisory decisions and conventions. The most comprehensive regarding the maternity rights of working women are included within the conventions and advisory decisions of ILO[58]. These decisions and conventions have influenced the European Union arrangements and national legislation as well[59].

It is observed that participation of women in labor life increases day by day both in our country and worldwide. However, labor lives of women cannot be continuous like men's, due to their family responsibilities, pregnancy and childbearing and maternity situations. This often constitutes an unfavorable case from the view of the employers, and it leads to unfair and discriminative implementations against female employees from the viewpoint that it charges additional monetary burden on the employers. In order for both prevention of such implementations in breach of human rights and ensuring the rules and justice of labor life by protecting the status of women in economical life, the advisory decisions made by ILO and ILO agreements have taken legal measures. Despite all measures taken and studies conducted, participation of women in labor life is not at the desired level[60].

For the purpose of our study, the ILO conventions and relevant arrangements serving protection of maternity rights of working women or directly protecting such rights are presented below.

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employees, employer and the government participate in equal ratios. Official website of ILO Turkey Office;
http://www.ilo.org/public/turkish/region/eurpro/ankara/about/ilo_amac.htm

58 Conventions are subject to ratification and create binding obligations on the ratifying member States to apply their provisions. However Recommendations do not require ratification and serve only as guidelines for national policy. Together, the Conventions and the Recommendations comprise a code of international labor standards. Declarations and resolutions are also not binding and are adopted as guiding policy statements by the International Labor Conference or other ILO meetings (Conditions of Work Digest 1994).

59 For the IILO's contract and advisory decisions indirectly affecting the employment of women: see Annex V

60 ILO Director-General Juan Somavia's following statements are crucial :There is no doubt that women continue to transform the workplaces of the world – a critical arena for the advancement of women in society. Over the past decade, the number of working women has increased by 200 million. Today, women represent more than 40 per cent of working people worldwide.Women are also continuing to make inroads in the world of professional sports. "Despite the advances", Mr. Somavia continued, "glaring inequalities persist in workplaces throughout the world. The pay gap is still a reality. The 'jobs gap' between men and women – especially in terms of quality – remains wide.We estimate that women represent 60 per cent of the world's working poor." World Of Work; The Magazine of the ILO; No:56, April 2006; Geneva.

### 2.2.2. Conventions on Maternity Protection

The conventions on maternity protection mainly cover maternity leave, employment protection, cash and medical benefit and health protection of the mother and the child.

The protection of pregnant workers and mothers are the central to efforts to advance the rights, health and employment of women. Maternity protection measures advance gender equality, not only by ensuring that women can take time-off to have children and return to their jobs without discrimination, but also by requiring the development of gender-sensitive social security schemes. These measures also contribute to efforts to promote the better conciliation of work and family life, a policy objective that has become more prominent in recent decades. For these and other reasons, maternity protection was among the earliest elements of national labor laws and was included among the first set of standards adopted by the International Labor Organization in 1919[61].

Protecting maternity has been among the first concerns of the ILO. It was during the first Conference in 1919 that the first Convention on maternity protection (Convention No. 3) was elaborated. Convention No 3 was followed by two others: Convention No. 103 in 1952 and Convention No.183 in 2000. Two main provisions characterize these ILO instruments. The first one is the length of maternity leave, which increased from 12 weeks provided by the first two Conventions to 14 weeks in 2000 (but recommending 18 weeks at least, Recommendation No 191). The second is related to non-discrimination; prohibiting dismissal on grounds related to pregnancy but also trying to avoid discrimination in employment[62].

Three Conventions on maternity protection have been adopted by the ILO: the Maternity Protection Convention, 1919 (No. 3), the Maternity Protection Convention (Revised), 1952 (No. 103), and the Maternity Protection Convention, 2000 (No. 183).The first Maternity Protection Convention (No. 3), the scope of coverage has been

[61] Working Conditions Laws 2006-2007 A global review; International Labor Office, Geneva, 2008
[62] Maternity at work: A review of national legislation; Findings from the ILO's Conditions of Work and Employment Database; http://www.ilo.org/public/english/protection/condtrav/pdf/wf-iogpt-05.pdf

broadened to cover all employed women. Convention No. 3 covered women working in any public or private industrial or commercial undertaking. Its revised version (No. 103), extended the scope of protection to a larger number of categories of women workers, to include women employed in non-industrial and agricultural occupations, including women wage earners working at home. Convention No. 183 broadens the scope of coverage to all employed women, no matter what occupation or type of undertaking, including those women employed in atypical forms of dependent work who have often received no protection. Expanding the scope of maternity protection as foreseen in Convention No. 183 is of critical importance in ensuring the health and well-being of greater numbers of women workers and their children worldwide[63].

#### 2.2.2.1. Maternity Protection Convention, (No.3)[64]

This Convention lays down the principles of maternity protection. The Convention is revised two times, in which the women were granted more beneficiary rights. The Convention (No:3) was among the first international labor standards adopted which laid out the basic principles of maternity protection : the right to leave, the right to paid leave and medical benefits, the right to job security and the right to nursing breaks during work hours[65].

Article 3 and 4 of the Convention are accepted as the milestones of maternal right of working women[66].

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[63] Protective measures for pregnant women and women who have recently given birth include prevention of exposure to health and safety hazards during and after pregnancy; entitlement to paid maternity leave; entitlement to breastfeeding breaks; protection against discrimination and dismissal, and a guaranteed right to return to the job after maternity leave. Maternity protection for women workers contributes to the health and wellbeing of mothers and their babies and thus to the achievement of the Millennium Development Goals adopted by the United Nations, which include the improvement of the health of mothers and the reduction of child mortality. The extent to which countries are providing for maternity protection can accordingly be seen as a factor in progress to meeting the goals. http://www.ilo.org/public/english/protection/condtrav/publ/wf-iogpt-05.htm

[64] For full text can be obtained from http://www.ilo.org/ilolex/cgi-lex/convde.pl?C003

[65] Conditions of Work Digest, 1994.

[66] It is stated in article 3 that a woman shall not be permitted to work during the six weeks following her confinement and shall have the right to leave her work if she produces a medical certificate stating that her confinement will probably take place within six weeks. Furthermore it is stated that while she is absent from her work in pursuance of paragraphs (a) and (b) of the article, she shall be paid benefits sufficient for the full and healthy maintenance of herself and her child, provided either out of public funds or by means of a system of insurance, the exact amount of which shall be determined by the competent authority in each country. As an additional benefit she shall be entitled to free attendance

The Convention is revised two times. In the revised versions the basic principles were kept the same but women were granted more explicit rights:

#### 2.2.2.2. Maternity Protection Convention (Revised), (No.103)[67] [68]

In the Convention (No.103) it is seen that the maternal benefits are regulated in details. It *"applies to women employed in industrial undertakings and in non-industrial and agricultural occupations, including women wage earners working at home. (article 1)".* The Convention consists of 17 articles and the maternal benefits are set down as the following:

According to article 3 of the Convention, working women who are pregnant shall be entitled to a period of maternity leave and the period of the maternity leave shall be at least twelve weeks and shall include a period of compulsory leave after confinement. It is stated that the period of the compulsory leave after confinement shall be regulated by national laws; however the period of the leave shall be in no case less than 6 weeks. The leave before the presumed date of confinement shall be extended by any period elapsing between the presumed date of confinement and the actual date of confinement and the period of compulsory leave to be taken after confinement shall not be reduced on that account (article 3/4). In case it is medically certified that an illness has occurred due to pregnancy the women worker shall be provided an extension of maternity leave period. In addition to the regulations regarding maternity leave in article 3, in article 4 of the Convention it is stated the rights women are granted during this period. According to article 4, while absent from work on maternity leave in accordance

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by a doctor or certified midwife; no mistake of the medical adviser in estimating the date of confinement shall preclude a woman from receiving these benefits from the date of the medical certificate up to the date on which the confinement actually takes place. In addition to these she shall in any case, if she is nursing her child, be allowed half an hour twice a day during her working hours for this purpose. In article 4, it is stated that where a woman is absent from her work in accordance with article 3 of this Convention or remains absent from her work for a longer period as a result of illness medically certified to arise out of pregnancy or confinement and rendering her unfit for work, it shall not be lawful, until her absence shall have exceeded a maximum period to be fixed by the competent authority in each country, for her employer to give her notice of dismissal during such absence, nor to give her notice of dismissal at such a time that the notice would expire during such absence.

[67] In 2000, 15 March, 38 ILO member States had ratified the Maternity Protection Convention (Revised) 1952 (N0.103).

[68] For full text of the Convention No.103, please see http://www.ilo.org/ilolex/english/convdisp1.htm

with the provisions of Article 3, the woman shall be entitled to receive cash and medical benefits (4/1). In order to provide the woman and her child efficient protection, the rates of the cash benefit shall be determined by the national laws. In addition to this it is stated that medical benefits shall include pre-natal, confinement and post-natal care by qualified midwives or medical practitioners as well as hospitalization care where necessary; freedom of choice of doctor and freedom of choice between a public and private hospital shall be respected. The cash benefit to be given shall be at a rate of not less than two-thirds of the woman's previous earnings taken into account for the purpose of computing benefits.

*Furthermore it is stated that i*f a woman is nursing her child she shall be entitled to interrupt her work for this purpose at a time or times to be prescribed by national laws or regulations. In the following section of the article 5 it is clearly stated that interruptions of work for the purpose of nursing are to be counted as working hours and remunerated accordingly in cases in which the matter is governed by or in accordance with laws and regulations. The most important among the articles is Article 6 which states that while a woman is absent from work on maternity leave in accordance with the provisions of Article 3 of this Convention, it shall not be lawful for her employer to give her notice of dismissal during such absence, or to give her notice of dismissal at such a time that the notice would expire during such absence.

#### 2.2.2.3. Maternity Protection Convention (No.183)

Economical improvements, new labor fields generated by technology, like with virtually all arrangements regulating labor conditions, has made it necessity to review the arrangements concerning maternity rights of working women involved in that process. Accordingly, additional arrangements were brought in respect to protection of health. Also, the birth leave was increased to 14 months. The security provision on continuing the same or equivalent job at the return of leave was explicitly arranged. An arrangement was brought to effect that it is banned to demand pregnancy test from women in the course of job applications other than exceptional cases, which is a very important step to eliminate the discriminative attitudes in the course of recruitment of

female employees. This Convention was arranged on the basis of ILO's Maternity Protection Recommendation 2000.

Convention No. 183 also mentions that the costs of maternity leave must be covered by the State and not by employers, unless otherwise stated by law, which is different from Convention No. 103, which stipulated that the State had to bear all costs. This is to prevent discrimination against women in the labor market. Although social security covers maternity leave in most countries, often the employer must shoulder some costs of the subsidy, or all of it when workers' contributions to social security fall behind.[69]

According to article 3 of the Convention it is stated that each member state shall adopt appropriate measures to ensure that pregnant and breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child. Furthermore according to article 4 of the Convention it is stated that a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks which the length of the period of leave referred to above shall be specified by each Member in a declaration accompanying its ratification of this Convention.

It is stated that due to the necessity of the protection of the health of the mother and the child, maternity leave shall include a period of six weeks' compulsory leave after childbirth, unless otherwise agreed at the national level by the government and the representative organizations of employers and workers. It is also stated according to article 4, that the prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without reduction in any compulsory portion of postnatal leave.

In the Convention also the benefits to be granted are regulated. According to article 6, cash benefits shall be provided, in accordance with national laws and regulations (or in any other manner consistent with national practice, to women who are

[69] Work And Family: New Call For Public Policies Of Reconciliation With Social Co-Responsibility; Santiago, International Labor Organization And United Nations Development Programme, 2009

absent from work on maternity leave). Furthermore it shall be at a level ensuring women to maintain in proper conditions both herself and her child. It is also regulated that if the cash benefits are based upon the previous earnings in that case the amount of such benefits shall not be less than two thirds of the woman’s previous earnings. Another important article of the Convention is article 4/6 which states that if a woman does not meet the conditions to qualify for cash benefits under national laws and regulations or in any other manner consistent with national practice, she shall be entitled to adequate benefits out of social assistance funds, subject to the means test required for such assistance.

It is clearly stated that medical benefits shall include prenatal, childbirth and postnatal care, as well as hospitalization care when necessary.

The Convention also brings the rule that the economic burden of maternity leave cannot be left on the employer only. Therefore it is stated that an employer shall not be individually liable for the direct cost of any such monetary benefit to a woman employed by him or her without that employer's specific agreement except where: (a) such is provided for in national law or practice in a member State prior to the date of adoption of this Convention by the International Labor Conference; or (b) it is subsequently agreed at the national level by the government and the representative organizations of employers and workers.

According to the Conventions the termination of the woman worker’s labor contract is unlawful during pregnancy or absence on maternity leave (article 8/1).Furthermore a woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave (article 8/2). Following the above mentioned articles, under article 9 and 10, the obligation of the member states to take necessary measures to prevent discrimination against women workers and the rights to be provided to breastfeeding mother are regulated.

According to the above mentioned articles, in order to be in conformity with Convention No. 183, the cash benefit paid should be at least two-thirds of the woman’s previous earnings, or a comparable amount if other methods are used to determine cash

benefits, for a minimum of 14 weeks. Among the countries that provide for paid maternity leave, calculating the number of countries in conformity with the Convention is not straightforward, given the variety and complexity of the methods used to determine the amount paid.

With the adoption of Convention No. 183, some flexibility was introduced concerning the provision of compulsory leave. This instrument opens up the possibility for agreements to be made at the national level on the arrangement of compulsory leave.

#### 2.2.2.4. Maternity Protection Recommendation (No.191)

This Recommendation complements the Convention, often by suggesting higher protection, such as a longer duration of leave and higher benefits. It is more precise about certain aspects of maternity protection treated in the Convention, especially on how to ensure health protection and adds some additional aspects related to types of leave and financing of benefits.

According to the Recommendation, members should endeavor to extend the period of maternity leave referred to in Article 4 of the Convention to at least 18 weeks and to the extent possible, measures should be taken to ensure that the woman is entitled to choose freely the time at which she takes any non-compulsory portion of her maternity leave, before or after childbirth. Furthermore it is stated that provision should be made for an extension of the maternity leave in the event of multiple births.

### 2.2.3. Other Related Conventions of the ILO

#### 2.2.3.1. Underground Work (Women) Convention (No.45)

The Convention contains articles to protect women from working underground in unhealthy conditions. According to this Convention, female’s working in underground work in any mine is prohibited (article 2). In article 3 the exceptions to article 2 are explained and it is stated that national laws or regulations may exempt from the mentione prohibition females holding positions of management who do not perform manual work; females employed in health and welfare services; females who, in the course of their studies, spend a period of training in the underground parts of a mine;

and any other females who may occasionally have to enter the underground parts of a mine for the purpose of a non-manual occupation.

By the above mentioned articles, it is aimed to protect women from working under unhealthy conditions for them which may affect their reproductive and family care role. But it also brings an acceptation saying that women in managerial position may work underground.

#### 2.2.3.2. Migration for Employment Convention (Revised) (No.97)

Convention on Migration for Employment provides protection for immigrant working women in terms of social security and employment rights and contains articles providing equal treatment towards working women workers without discrimination under the national laws. Accordingly some significant articles are as follows:

Under Article 6 of the Convention it is stated that every member state shall apply without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favorable than that which it applies to its own nationals in respect of remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons; membership of trade unions and enjoyment of the benefits of collective bargaining; accommodation; social security (that is to say, legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme).

#### 2.2.3.3. Social Security (Minimum Standards) Convention (No.102)

The Convention includes maternity benefits. Under Part VIII of the Convention working women are granted certain maternal benefits under the condition that they have completed a certain period or work.

According to the Convention,(article 46), the persons protected shall comprise all women in prescribed classes of employees, which classes constitute not less than 50 per cent of all employees and, for maternity medical benefit, also the wives of men in these classes; or all women in prescribed classes of the economically active population, which classes constitute not less than 20 per cent. of all residents, and, for maternity medical benefit, also the wives of men in these classes; or where a declaration made in virtue of Article 3 of the Convention is in force, all women in prescribed classes of employees, which classes constitute not less than 50 per cent. of all employees in industrial workplaces employing 20 persons or more, and, for maternity medical benefit, also the wives of men in these classes. Following this article, it is also stated under article 49 that in respect of pregnancy and confinement and their consequences, the maternity medical benefit shall be medical care and the medical care shall include at least (a) pre-natal, confinement and post-natal care either by medical practitioners or by qualified midwives; and (b) hospitalization where necessary. The medical care specified in paragraph 2 of this Article shall be afforded with a view to maintaining, restoring or improving the health of the woman protected and her ability to work and to attend to her personal needs. Under articles 50, 51 and 52 cash benefit during maternity leave.

According to the above mentioned articles of the Convention (No.102) the medical care is included for prenatal, confinement and postnatal periods and it covers the payment benefit resulting from pregnancy which will be a periodical payment and may be limited to 12 weeks.

It is clearly regulated that periodical payment will be more than 12 weeks but not shorter. This Convention constitutes a guide for the Maternity Protection Convention (no.103).

#### 2.2.3.3.1. Recommendations supporting The Convention (No.102)

*The Convention (No.102) is supported by the following Recommendations of the ILO;*

According to the Income Security Recommendation (No.1967), income loss of women should be provided during the maternity leave and if she is not able to work and

if she has a medical certificate, she has the right to leave six weeks before birth. Furthermore, women should not be permitted to work six weeks after birth, accordingly.

The Medical Care Recommendation (No.69) guarantees the medical care and the health of mother and child.

Employment rights of women employed in industrial and commercial undertakings are protected with the Social Policy in Dependent Territories Recommendation (No.70) and Social Policy in Dependent Territories (Supplementary provisions) Recommendation (No.74). The absence before and after birth, benefits during absence, medical assistance and compulsory insurance are recommended to be a policy. Finally, the maternity leave period should not be included in the annual holiday according to the Holidays with Pay Recommendation (No.98)[70].

#### 2.2.3.4. Equal Remuneration Convention (No.100)

Under this Convention, the States are obliged to ensure the application to all workers the principle of equal remuneration for men and women workers for work of equal value. Equal remuneration shall be established without discrimination based on sex.

Under article 1 of the Convention, first of all the definition of "remuneration" is given and it is stated that for the purpose of the Convention the term remuneration includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment; and the term equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex.

Following the above mentioned article, in article 2, it is stated that each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women

[70] Conditions of Work Digest, 1994.

workers for work of equal value and that measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed. It is clearly stated that differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

#### 2.2.3.5. Plantations Convention (No.110)

In the Convention, *"the term plantation includes any agricultural undertaking regularly employing hired workers which is situated in the tropical or subtropical regions and which is mainly concerned with the cultivation or production for commercial purposes of coffee, tea, sugarcane, rubber, bananas, cocoa, coconuts, groundnuts, cotton, tobacco, fibers (sisal, jute and hemp), citrus, palm oil, cinchona or pineapple; it does not include family or small-scale holdings producing for local consumption and not regularly employing hired workers (Article 1)."* According to this article and the articles following, the aim is to protect the maternity of women working in plantation, as defined above. The women working in plantation are granted maternal benefits under certain conditions like, right to maternity leave as maximum 150 days, at least 12 weeks, with a compulsory leave not less than six weeks after birth. It is also stated that the employer has to work with the same employer during the 12 months period preceding the confinement to gain the leave. Furthermore, in case of illness during pregnancy, an additional leave can be provided and pregnant workers shall not be required to undertake harmful work just before the maternity leave. Under article 47 of the Convention, maternity protection is explained and it is stated that a woman to whom this Convention applies shall, on the production of appropriate evidence of the presumed date of her confinement, be entitled to a period of maternity leave. It is also stated that the period of compulsory leave after confinement shall be prescribed by national laws or regulations, but shall in no case be less than six weeks; the remainder of the total period of maternity leave may be provided before the presumed date of confinement or following expiration of the compulsory leave period or partly before the presumed date of confinement and partly following the expiration of the compulsory

leave period as may be prescribed by national laws or regulations and in the following sub-articles the details of the maternity leave right is explained. Furthermore, it is stated in the Convention that while absent from work on maternity leave in accordance with the provisions of Article 47, the woman shall be entitled to receive cash and medical benefits and its details are explicitly explained. Under article 49 the rights of the breastfeeding women are regulated and it is stated that if a woman is nursing her child she shall be entitled to interrupt her work for this purpose, under conditions to be prescribed by national laws or regulations. Finally under article 50 the dismissals of the woman worker due to absence during maternity leave.

#### 2.2.3.6. Discrimination (Employment and Occupation) Convention (No.111)

The Convention aims to ensure economical security and equality of opportunity of all human beings regardless of their race, belief or gender[71]. In the advisory decision dated 1958 and number 111 on the same matter, it is indicated that I will eliminate making discrimination between men and women, favoritism, exclusion, aggrieving in job recruitment, job training, work conditions on gender basis[72].

The main purpose of the Convention is to provide full equality in employment of workers and gender and family responsibilities cannot be reasons of discrimination for access to vocational training, access to employment and to particular occupations. Therefore, according to article 5 of the Convention **s**pecial measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labor Conference shall not be deemed to be discrimination. Any Member may, after consultation with representative employers' and workers' organizations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognized to require special protection or assistance, shall not be deemed to be discrimination(article 5).

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[71] Onaran Yüksel; 46.

[72] For full text of the Recommendation No.111, please see ILO official website; http://www.ilo.org/ilolex/english/recdisp1.htm

#### 2.2.3.7. Holidays with Pay Convention (Revised) (No.132)

The Convention supported with the Holidays with Pay Recommendation (No.98) grants every worker the right of paid annual holidays. The Recommendation (No.98) recommends that maternity leave period should not be included in the annual holiday. Accordingly, the Convention provides the maternity leave to be considered as working period.

According to article 5 of the Convention, absence beyond the control of workers can not reduce the paid annual holiday. The Convention aims to encourage women in participating to work life by guaranteeing payment rights.

#### 2.2.3.8. Benzene Convention (No.136)

As the involvement of women into work life increased, the working areas also started to differ. This brought together the risk of working women to work in risky jobs. Taking into account the developing risk and the developing involvement of women into such works, in the light of the Recommendation of Radiation Protection (No.114), the Convention clearly undersigned that, "*women medically certified as pregnant and nursing mothers, shall not be employed in work processes involving exposure to benzene or products containing benzene.(article 11.1.)"*

#### 2.2.3.9. Nursing Personnel Convention (No.149)

In connection with the Nursing Personnel Recommendation (No.157), the Convention sets down the rights of nursing working women. According to the mentioned Recommendation, *"nursing personnel, without distinction between married or unmarried persons, should be assured the benefits and protection provided for in the Maternity Protection Convention (Revised), 1952 and in the Maternity Protection Recommendation, 1952 (article 42)".* In article 50 of the Recommendation (N.157),it is stated that*, " Pregnant women and parents of young children whose normal assignment could be prejudicial to their health or that of their child should be transferred without loss of entitlements, to work appropriate to their situation."*

*Article 6 of the Convention (No.149)* states that *"Nursing personnel shall enjoy conditions at least equivalent to those of other workers in the country concerned in the following fields:(a) hours of work, including regulation and compensation of overtime, inconvenient hours and shift work; (b) weekly rest; (c) paid annual holidays; (d) educational leave; (e) maternity leave; (f) sick leave; (g) social security."*

#### 2.2.3.10.Workers with Family Responsibilities Convention (No.156)

The convention brings arrangements for employees whose participation in economical life and possibilities of economical improvement are limited or blocked due to family responsibilities, and dependent children dependent to them or other family members in need of care. There's also an advisory decision on the same matter. Accordingly, it is fundamental to employ women who have family responsibilities and work outside without being subject to any discrimination, and pursuant to the provisions of the Convention no. 111[73].

The article 5 of the Convention stipulates that "gender, marital status, family responsibilities, pregnancy (paragraph d) and not coming to work (paragraph e) shall not be a valid reason for terminating labor contract". The same article states "making race, color, gender, marital status, family responsibilities, pregnancy, religion, political view, ethnic or social origin discrimination" as one of the reasons not deemed a valid reason for termination. When considered in this respect, it is understood that the articles 3, 4, 5, 7 and 8 grant extended rights to working women having family responsibilities.

The Convention is prepared taking into account that family responsibility is a social matter. Therefore it is important that it gives responsibility and rights to the fathers also.

#### 2.2.3.11.Termination of Employment Convention (No.158)

It provides protection against termination of employment relation by the employer without a valid reason. For the purpose of this thesis study, the prominent provisions are associated with providing protection against women's being aggrieved by

[73] Onaran Yüksel; 56.

termination of their employment relationship due to their gender and biological functions peculiar to their gender. Since it will be hard for a woman facing such case to prove such claim since she is in a weaker position than the employer, the burden of proving the contrary in case of such claim has been imposed on the employer. Due to the provisions included in the Convention, women have been secured against being aggrieved by employers due to pregnancy, childbearing and maternity situations. According to article 5 of the Convention, termination of labor contract due to race, color, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin and absence from work during maternity leave is prohibited and the burden of proving the existence of a valid reason for the termination shall pertain to the employer (9; 10).

#### 2.2.3.12.Employment Promotion and Protection against Unemployment Convention (No.168)

Under Article 24 of the Convention (No.168), it is clearly determined that member States have to provide and guarantee to persons in receipt of unemployment benefit, under certain conditions. Medical care and sickness, maternity and family benefit after the unemployment are also covered. According to article 24, each Member shall endeavor to guarantee to persons in receipt of unemployment benefit, under prescribed conditions, that the periods during which benefits are paid will be taken into consideration for acquisition of the right to medical care and sickness, maternity and family benefit after the end of unemployment, when the legislation of the Member concerned provides for such benefits and makes them directly or indirectly conditional upon occupational activity. Therefore, women shall be paid unemployment benefit during maternity leave.

#### 2.2.3.13.Night Work Convention (No.171)

The Convention (No.171) brings measures protecting health of working mothers so as to provide them to meet family and social responsibilities. According to the Convention measures shall be taken to ensure that an alternative to night work is available to women workers who would otherwise be called upon to perform such work

before and after childbirth, for a period of at least sixteen weeks of which at least eight weeks shall be before the expected date of childbirth; for additional periods in respect of which a medical certificate is produced stating that it is necessary for the health of the mother or child: during pregnancy; during a specified time beyond the period after childbirth fixed pursuant to subparagraph (a) above, the length of which shall be determined by the competent authority after consulting the most representative organizations of employers and workers. It is also stated that during the periods referred to in the Convention (pregnancy and after birth) a woman worker shall not be dismissed or given notice of dismissal, except for justifiable reasons not connected with pregnancy or childbirth; the income of the woman worker shall be maintained at a level sufficient for the upkeep of herself and her child in accordance with a suitable standard of living. Another significant guarantee is that a woman worker shall not lose the benefits regarding status, seniority and access to promotion which may attach to her regular night work position.

#### 2.2.3.14.Part-Time Work Convention (No.175)

The purpose of the Convention is equalizing labor conditions of part-time employees with those of full-time employees. Considering particularly that women having family responsibilities tend to part-time jobs, it can be said that the Convention serves to protect family and maternity rights of working women by bringing important obligations. Therefore, it is obliged under the Convention to take measures to ensure that part-time workers receive the same protection as that accorded to comparable full-time workers in respect of discrimination in employment and occupation and that mMeasures shall be taken to ensure that part-time workers receive conditions equivalent to those of comparable full-time workers in the fields of maternity protection; termination of employment; paid annual leave and paid public holidays; and sick leave.

Participation of women in labor market increases year by year. The increasing rate of women in labor draws the attention within the world labor market. When considered participation in labor on gender basis, in all countries worldwide –

regardless of development level – rates of participation of women in labor remain behind participation of men[74].

[74] ILO, Global Employment Trends for Women, 2004, Employment Strategy Papers, Geneva, 2004,

# 3. MATERNAL RIGHTS OF WORKING WOMEN UNDER EU LAW

Participation of women in economical, social and political fields and equality of women and men in these fields is one of the fundamental objectives of the European Union[75]. The fundamental resources of the European Union do not comprise provisions directly and explicitly arranging maternity rights of working women[76]. Nevertheless, the bylaws, directives, decisions and instruction as regarded secondary law include detailed arrangements to that effect. Before reviewing the details of arrangements, the process until the mentioned regulations regarding maternity rights of working women shall be briefly explained.

Several arrangements brought in regards to pregnancy and maternity situations actually have effects which deepen the difference between men and women. Firstly, these provisions have been arranged so that they cover women employed in accordance with the standards. Hence, while discrimination is created between women employed or

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75 Arısoy, Alper; Demir, Nesrin; "Avrupa Birliği Sosyal Hukukunda Ayrımcılıkla Mücadele Kapsamında
Kadın Erkek Esitligi", Ege Akademik Bakıs Dergisi, Cilt. 7, Sayı. 2, 2007, 716.

76 The treaties founding the European Union constitute the principal resources of the EU law. The 1951 Treaty of Paris founding the European Coal and Steel Community, and the 1957 Treaty of Rome founding the European Economical Community and the European Atomic Energy Community are the principal texts of the community law. The principal resources include also the covenants made in addition to these, the protocol on privileges, and exemptions as signed on 17 April 1957 in Brussels, and the status of the Court of Justice of the European Community. However, the arrangements which included the Single European Act and the Maastricht Treaty and which amend the founding treaties constitute the principal resources of the community law. The secondary resources of the EU law consists of bylaws, guidelines, decisions and recommendations. Within the EU law order, the Counsel make the bylaw functioning as statute in the internal law. The European Union declares its opinion at this stage within the framework of consultancy and cooperation. The bylaws are published on the community's official journal, and take effect on the specified date, if no date is specified, after 20 days. The guidelines bind all member states as per the article 189 of EEC Treaty. The member states have been set free in choosing the means and instruments for guideline to achieve its objective. Guidelines' being put into effect is supervised by the Commission. The decisions are made in respect of individuals, companies or states in order to ensure the treaty provisions are applied in special cases. It is resolved that if CJEC decisions are general, mandatory, unconditional, sufficiently explicit and final, they shall take effect directly between the member states and private persons. The article 189 of the EEC treaty arranges the instructions and opinions. Accordingly, the instructions and opinions do not have a binding nature. The introversions particularly arrange the fields such as competition, and guide for elimination of unconformities. It is agreed that, if they are oriented to create a legal effect and incur an obligation, they could be subject for an action for annulment; Ülker, İrfan Kaya; Avrupa Birliği Hukuku'nu Ne Derece Tanıyoruz?; 01.11.2007; www.uiportal.net

not employed in accordance with the standards; categories such as male employees, female employees working in accordance with men's model, and mother female employees are imposed for employed women. In other words, discrimination could not have been eliminated by these arrangements, only the social gender roles, and accordingly social division of labor, have been redefined[77].

### 3.1. Arrangement of Women's Rights Before The Paris Summit

The first foundation objective of the European Community was to ensure the economical integrity of the fundamental target[78]. No social policy was set as a target in social terms in the society. The period during which the economical policies were in the forefront and no priority studies oriented in making social policy were present, ended by the Community's Paris Summit held in 1972. Until the period in which the mentioned summit was held, social policies have been regarded as the internal issues of member states. The EU has restrictedly focused on the needs of the employees; the appropriateness principle involved the issue of care in the interest area of the member states. The EU project is essentially a neoliberal project, so financial conservatism is embedded in the EU agencies. This financial conservatism limits even the capacity of member states to allow realization of welfare policies necessary for mothers[79]. While the reason underlying the arrangements included in the Treaty of Rome founding the European Economical Community in connection with the equality of women and men;

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77 Guerrina, Roberta; **Equality, Difference and Motherhood: The Case For a Feminist Analysis of Equal Rights and Maternity Legislation,** Journal of Gender Studies, Vol 10. No. 1, 2001, s. 39.

78 The European Union is composed of 27 Member States assembled for the purpose of protecting peace, promoting economical and social development. It was founded by virtue of the European Union Treaty signed in 1992 in Maastricht to proceed towards economical and monetary unity, and realize inter-governmental cooperation in certain areas. The most important feature of the European Union which distinct it from similar economical unions or the agencies it cooperates with is its organizational structure. The agencies managing the union are as follows: The Parliament elected by democratic means / the European Union Council representing Member States and consisting of Ministers / the Summit of European State and Government Presidents / the Commission preserving of the Treaties / the Court of Justice ensuring compliance with the Community law / the Court of Accounts supervising the financial management of the Union. There are also various advisory committees representing economical, social and regional interest groups. There's a European Investment Bank established so as to facilitate the financing of the projects contributing to the balanced development of the Union. Besides these, the European Monetary Institute, European Central Bank, and the Ombudsman which is a supervisory agency and a complaint authority. Source: http://www.ksgm.gov.tr/uluslararasi_kuruluslarAB.php

79 Walby, Sylvia,( 2004), "**The European Union and Gender Equality: Emergent Varieties of Gender Regime", Social Politics**, Vol. 11, No. 1, p: 6

it also aims to adapt to the International Labor Organization's "Convention no. 100 for Study on Equal Pay for Equal Job between Male and Female Employees[80]" [81]. The arrangements in the Treaty of Rome (articles 117, 118, 119), do not bring radical innovations or regulations for female employees and do not go beyond being an arrangement oriented in ensuring equality of wages. On the other hand, the mentioned arrangements are the first and fundamental arrangements towards preventing the unfair practices which women may be exposed to due to being employed in equal conditions with men and being woman[82]. Increase of women's participation in labor life is associated with the industrial society in line with the social and economical developments, women's gaining the control over their own bodies in connection with the reproductive rights, the opportunities provided to women in education and employment and particularly with the female labor demand of the services sector in employment[83]. In respect of that process, it was necessary to mention about the legal arrangements up to the period until the Paris Summit and provisions brought in regard to protection of maternal rights:

#### 3.1.1. The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) [84]

The Convention arranges usual rights and freedoms, but does not refer to social and economical rights. The social and economical rights lacked by this Convention have been adopted in the European Convention on Social Rights (European Social Charter) as an extensive list[85]. The Convention provided -only- a legal system, protecting the

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[80] 2.II.3.iv. above; Equal Remuneration Convention (No.100).

[81] Ibid. 75

[82] Parts related with the subject of this thesis study of Articles117, 118 and 119 are as follows : **Article 117/1** "Member States hereby agree upon the necessity to promote improvement of the living and working conditions of labor so as to permit the equalisation of such conditions in an upward direction. … "; **Article 118/1 "** … it shall be the aim of the Commission to promote close collaboration between Member States in the social field, particularly in matters relating to … *employment, labor legislation and working conditions, occupational and continuation training, social security, protection against occupational accidents and diseases,; … " ;* **Article 119** / 1 " Each *Member State shall in the course of the first stage ensure and subsequently maintain the application of the principle of equal remuneration for equal work as between men and women workers…. ".*

[83] "**Parental Leave and Gender Equality: Lessons from the European Union**", Review of Policy Research, Volume 20, Issue 1, p: 89

[84] The Convention was approved by the Republic of Turkey in 1954, and took effect on 3 September 1953. (Official Journal. 19 March 1954-8662)

[85] Onaran Yüksel; 59.

fundemental rights covered by the Universal Declaration of Human Rights and gender equality or working women’s rights are not included in the Convention. Under Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms discrimination is prohibited in every forms. The article is as follows : *The Enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

Though the European Convention on Human Rights is regarded as a step towards protecting women's rights by bringing a general arrangement in the article 14, the fact that this article cannot be implemented independently from other provisions in the Convention, does not incorporate an innovation or progress in respect to the rights of working women or other social rights; since the article is applicable only in respect to the rights and freedoms included in the Convention[86].

### 3.1.2. European Social Charter[87]

The European Social Charter is an important milestone on the way structuring the social policies of the European Union in terms of arrangement of the social and economical rights lacked by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

*“The European Social Charter is an extension of the European Convention on Human Rights which covers civil and political rights in the economical and social domain. The first Charter as signed in 1961 took effect in 1965. The European Social Charter secures 19 social rights including syndication, collective bargaining, and right of strike and right to work. The Reviewed ESC which remedied the deficiencies of the 1961 Charter and comprehensively secured the social rights was opened for signature in 1996, and took effect in 1999. Both Social Charters are currently in effect. The*

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[86] Çelikel, Aysel; **Farklı Cinslerin Eşit Haklardan Yararlanması ve Eşitlik İlkesinin Yorumu,** Edip F. Çelik’e Armağan; 1. Bası, İstanbul 1995; 95.

[87] The Charter which took effect on 26 February 1965 was approved by the Republic of Turkey in 1989 (with reservations on the articles 2,3,6,8,15, 4/1,4/2, 4/4 ve 7/1, 7/2, 7/7, 7/10).

*Reviewed ESC is an international convention securing many economical, social and syndicate rights such as Right to Work, Right to Fair Working Conditions, Right to Syndication (Association), right to collective bargaining (including strike), Right of Protecting Children and Young People, Right of Protecting Maternity of Working Women, Right of Protecting Health, Right to Social Security, Protection Right of Children and Young People, Social Protection of Old People, Right to Job Security, and Right to Housing"*[88]

As it is known, the European Social Charter has brought arrangements in many important fields such as the right to have fair working conditions for everybody, employees' right to fair remuneration, right of protection in the maternity situation for working women and for special protection during work when necessary for other working women, right of enjoying the vocational orientation conveniences appropriate for vocational education, social and economical protection right appropriate for mothers and children regardless of marital statuses and family relations.

The European Social Chart, as reviewed in 1996 regulates 31 social rights, the arrangement manner of which revealed the demand for equality. They are arranged so as to grant fair working conditions, fair remuneration, right to freely choosing a profession, right to social security, right to education, right to protecting maternity, right to protecting family, syndicate rights, right to collective bargaining, equal demand right for everybody[89].

In respect of the Reviewed European progress Social Charter[90] that took effect in 1999, some favorable progress was made in article 8 in connection with our subject matter and the period of use of the "maternity leave" by working women was extended. According to article 27, stipulations were made on taking special precautions to ensure the returning of female or male employees who have left the job due to child nursing,

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[88] Çelik, Aziz; '**Sosyal Şart' Şartsız Onaylanmalı**; Radikal 26 May 2006, Internet Ed. (Online http://www.radikal.com.tr/haber.php?haberno=188298 )

[89] Kaya, Pir Ali, **Avrupa Birligi ve Türk İş Hukuku Bağğamında Eşitlik İlkesi**, Ankara 2007, 34.

[90] The Reviewed European Social Charter was approved by the Council of Ministers on 9.04.2007, and put into effect with reservations on the articles other than paragraphs 1, 2, 4, 5, 6 and 7 of the article 1, article 3, paragraphs 2, 3, 4 and 5 of the article 4, and paragraphs 7 and 3.

parental leave or similar reasons, which could be considered in the context of reconciliation of labor life and family life.

The Section 2 of the European Social Charter covers the arrangements oriented in protection of working women. Article 8 arranges paid leave and sufficient social security benefit to women before and after childbirth, providing at least 12 weeks leave in total, prohibiting the termination of the labor contract of working women during maternity leave, giving women right to breastfeeding leave, arrangement of working in night jobs for women working in the industry and prohibiting women working in inappropriate works for women in underground mines because of the unhealthy and heavy nature of the work.

Significant parts of the provisions in the European Social Charter (also referred to as the European Convention on Social Rights91) oriented in protecting maternity rights of working women are as follows: Under Part I, in article 8 it is stated that employed women, in case of maternity, have the right to a special protection. Under Part to, in article 8, the rights of employed women to protection of maternity are regulated. According to the article, Parties shall 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; 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. Furthermore it is stated in the same article that parties shall provide nursing mothers to be entitled to sufficient time off for this purpose; regulate the working of pregnant women, women who have recently given birth and women nursing their infants in night works; 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 or unhealthy nature and to take appropriate measures to protect the employment rights of these

[91] Some articles of the Reviewed European Social Charter (Strasbourg, 3 May 1996) was adopted in 2007 in İzmir, and published in the Official Journal dated 9 April 2007 and number 26488. Tuncay, Can – Ekmekçi, Ömer; **Yeni Mevzuat Açısından Sosyal Güvenlik Hukuku'nun Esasl**arı; 2. Baskı;İstanbul Kasım 2009 s. 41.

women. In article 27, the family responsibilities are regulated. According to article 27, in order to maintain the equality between workers with family responsibilities and others, parties shall take appropriate measures to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training; to take account of their needs in terms of conditions of employment and social security; to develop or promote services, public or private, in particular child daycare services and other childcare arrangements; to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice; to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

### 3.2. Arrangement of Working Women's Rights following the Paris Summit

#### 3.2.1. Paris Summit and Social Action Plan

It was soon understood that the studies initiated so as to ensure economical development could not bring equality and development alone in social field. Thereupon, emphasis was given on the studies oriented in social policy and important decisions were made in this regard in the Community's Paris Summit[92] held in 1972. The important conclusions of this summit were that social policy is no less important than economical policies[93]. Following this summit where the foundations of the social policy of European Union were laid, three Directives were adopted in this respect. These are Directive no. 75/117[94], Directive no. 76/207[95] and Directive no. 79/7 [96].

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[92] In the Paris Summit, new domains such as regional, environmental, social, energy and industrial policies were identified, it was resolved to realize the economical and monetary unity in 1980. http://www.ikv.org.tr/pdfs/kronoloji3.pdf

[93] Çelik, Aziz; **Avrupa Birliği Sosyal Politikası : Gelişimi, Kapsamı ve Türkiye'nin Uyum Süreci**– 1;3

[94] See 2.3.1below

[95] See 2.3.2 below

[96] See 2.3.3.below

The Social Policy of the European Union targets to strengthen the social dimension of the Union and offers a high quality life to its citizens. The Union gives special importance on the targets oriented in securing social statuses of disadvantaged people *(unemployed people, children, women, elderly and disabled who undergo discrimination due to various reasons)*, and targets in securing that they do not undergo discrimination[97]. It was agreed that a number of team works beyond the four fundamental freedoms[98] as adopted within the Community must be done, so the Social Action Plan was adopted in 1974. The directives that were enacted in that period and were obliged to be harmonized with national legislations of the member states, were the important steps towards accelerating the social policy[99].

In the mentioned Action Plan, it was agreed to grant equal rights and opportunities to men and women in respect to equal pay, job recruitment, education and working conditions[100].

#### 3.2.2. The Single European Act (1986) and the Charter of Fundamental Social Rights

The Action Plan constituted the basis of the practices and arrangements to be explained below in details, oriented in eliminating discrimination between the employees to grant equal rights to women and granting equal rights to women with men. Following the foundations of the principle of equality between female and male employees by means of the Action Plan, the studies intended to promote the social rights have continued and as a result of the economic course of the world, social changes were made in 1986 in the social policies of the community by means of the Single European Act. The most important improvement in respect to employment and employee rights were the arrangements concerning employee health and labor security. The purpose of the Act was to create a change in relations between European States and to give new perspective to social policy. Accordingly the Act provided a new

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[97] Oğuşgil, Atilla; **Avrupa birliği Sosyal Politikası Kapsamındaki Risk Gruplarına Polis Desteği**; Turkish Journal of Police Studies Vo: 11 (1), 2009.Soruce: www.pa.edu.tr

[98] Free movement of goods, services, persons and capital

[99] Gülmez, Mesut, ***Avrupa Birligi'ne Sosyal Politika***, Ankara: Türkiye AB Sendikal Koordinasyon Komisyonu Yayınları, 2003;7.

[100] Onaran Yüksel; 22.

perspective especially in the areas of health and safety at work, dialogue with social partners and economic and social cohesion[101]. The Act also gave the European Parliament a greater influence over the legislative process[102]. Following the arrangements, upon having been requested by the Commission from the Economical and Social Committee to conduct a study on preparing the Social Charter, The Charter of Fundamental Social Rights (1989), which brought important arrangements in regards to the fundamental social rights of the employees, was adopted.

The European Social Charter brought 12 fundamental principles in respect to employment. The text of the Charter was accepted in the form of a declaration of which the principles establish the base for the European labor law. In other words The Community Charter of Fundamental Social Rights for Workers establishes the major principles on which the European labor law model is based and more generally, the role of work in society. It includes the following headings[103]:

Freedom of movement; Employment and remuneration; Improvement of living and working conditions; Social protection; Freedom of association and collective bargaining; Vocational training; Equal treatment for men and women; Information, consultation and participation of workers; Health protection and safety at the workplace; Protection of children and adolescents; Elderly persons; Disabled persons.

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[101] http://www.europarl.eu.int/charter/docs/default.en.htm
[102] Medhurst, David; **A Brief and Practical Guide to EU Law**; Third Edition; UK 2001.
[103] http://europa.eu/legislation_summaries/human_rights/fundamental_rights_within_european_union/c10107_en.htm

### 3.2.3. The Treaty of Maastricht[104] [105] (1992 – The Union Treaty) and The Treaty of Amsterdam (1997) and Gender Mainstreaming

The studies oriented in social policy and consequently in employment, accelerated with the Treaty of Maastricht founding the European Union. After the Treaty of Maastricht, there have been many Directives enacted towards improving the social policies. These directives include those enacted in respect to working conditions[106].

The studies oriented in employment and increasing employment accelerated along with the Treaties of Amsterdam and Nice. The Treaty of Amsterdam[107] made amendments in the Treaty of Rome and a chapter concerning employment was added in the Treaty of Rome. The Treaty has also identified a number of new duties towards combating against discrimination. Thus, progress was made in regards to combating against discrimination based on gender, race, ethnic origin, religion and belief, disability, age and sexual preference. It was agreed by the treaty that the duties identified with the treaty and the arrangements brought and employment, were compulsory for economical strengthening, and a common social policy was therefore required. By the Treaty of Amsterdam and the Treaty of Maastricht, the article 119

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[104] Signed on 7 February 1992 to ensure the Eoropean Union.

[105] The European Community has acquired the name of European Union by the Treaty of Maastricht. The new legal structure of the EU was arranged in respect of ensuring the economical and monetary unity, making a common external affairs and security policy, and justice and cooperation. Besides the changes brought by the Treaty of Rome, the matters of educatio and youth have been added, and the section about the socşal policy has been extended. The Treaty of Masstricht has addressed realization of the policies that can measure the the employment targets, and the adaptation process oriented in supply, which is guiding for emloyment, in consistency and determination. Soruce: 194Brigitte Young, "Economic And Monetary Union, Employment And Gender Politics", **The Politikal Economy Of Europan Employment,** Edited By Henk Overbeek, Routledge Taylor&Francis Group, London And Newyork,2005,s.101

[106] Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time ; Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work; Council Directive 94/45/ EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community – Scale undertakings for the purposes of informing and consulting employees; Council Directive 96/34/EC of June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC ; Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC – Annex : Framework agreement on part-time work.

[107] By the Treaty of Amsterdam, the articles of the Treaties of Maastricht and Rome were renumbered, and new provisions were inserted in both treaties.

constituting the basis of the arrangements regarding equality between women and men in the Labor Law of the European Union was amended as article 141[108].

The article 119 (which has later become 141) is directly effective. The fact that a provision is directly effective in the Community Law implies that a norm of Community Law is directly included and implemented in the national laws of each Member State, without intervention or assistance of the national authorities authorization and that such rights may be implemented and / or claimed by the right holders' before national judicial bodies[109]. The provision "The Council, in compliance with the decision process as specified in article 251, after consulting the Economical and Social Council, takes the necessary precautions so as to implement the principle of equal treatment to women and men including the principle of equality in employment and labor, and equal pay for equal work" (141/3), and the provision "The principle of equal treatment, with a view to fully ensure putting this principle into practice doesn't constitute a barrier against the member states' granting specific advantages to the gender which is less represented by taking several precautions in order to facilitate recruitment of the gender which is less represented, or to compensate the discrimination women undergo within labor relation" (141/4). When considered the arrangements to the effect that the Council will take the necessary precautions in order to put the principle of women's and men's being treated equally and having equal opportunities; it is understood that, striving against discrimination has gone beyond being an economical policy from now on and has become a social policy, according to the arrangements of the Treaty of Amsterdam concerning gender discrimination.

The Treaty of Amsterdam comprises important provisions regarding providing equal opportunities to women. The Social Policy Protocol as adopted by eleven countries other than England was attached to the Treaty of Maastricht. The protocol comprises an additional procedure concerning adoption of the legislation on equal

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[108] The important parts of the Article 141 (ex Article 119) in regards to providing equality (and indirectly securing women's rights) are as follows : according to the article, each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied. Furthermore it is stated that . The Counci shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.

[109] Tekinalp, Ünal;Tekinalp, Gülören; **Avrupa Birliği Hukuku**, İstanbul 2000; 120.

opportunities and equal treatment for women and men at work site[110]. The article of the Protocol no. 5/14 as attached to the Treaty contains important provisions in regard to protection of the rights of working women. Accordingly, each member state shall secure payment of equal remunerations to women and men in equal jobs and the provisions brought in that respect cannot prohibit the member states from giving several incentive remunerations so as to eliminate unfair treatments suffered by women in labor life or to ensure participation of women in professional life.

The Treaty of Amsterdam was adopted upon approval of the Social Policy Protocol by England in 1997. The subject of employment was addressed under a separate title in the treaty, and the employment policy was declared as the common duty of Europe for the first time. The Treaty of Amsterdam, which was signed in 1997, and entered into effect on 1 May 1999, has identified the equality of women and men as one of the fundamental duties of the Union. In this regard, the Union has adopted provisions of equal opportunity and equal treatment to women as a necessity required to be realized by all institutions at all levels, and in all areas[111]. The duty of the community has been defined as follows in the article 2 of the Treaty: ensuring development of the economical activities within the entire community in a concordant, balanced and sustainable manner by way of establishing a common market and economical monetary unity and putting into effect the common policies or activities specified in the articles 3 and 4; a high-level employment and social protection; equality between women and men; a growth which is sustainable nor inflationist; integration of high rated competition and economic performances; high-level protection of the environment and advancement of the quality and economical and social integration as well as solidarity between member states[112]. A new employment strategy was developed by the Treaty of Amsterdam, and the targets of this strategy are increasing employment, active striving against unemployment (creating new employment opportunities), and creating equal opportunities in job recruitment and within the labor market.

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[110] Avrupa Komisyonu Türkiye Temsilciliği, **AB ve Eşitlik: İstihdamda Eşit Fırsatlar**, Ankara, 2000; 2.

[111] Aydın, Senem; İktisadi Kalkınma Vakfı, **Avrupa Birliği'nde Kadın Hakları ve Türkiye**,İKV Yayınları No:175,İstanbul, 2003, 22.

[112] Bolayır, Cenk; İktisadi Kalkınma Vakfı, (2000), **Amsterdam Antlaşması: Bütünleştirilmiş Haliyle Avrupa Birliği Kurucu Antlaşmaları**, İktisadi Kalkınma Vakfı, İKV:162, İstanbul

The understanding of incorporating the equality of women and men which began to be included in the policies of the European Union along with the Treaty of Amsterdam begins to be defined as incorporation of the equal opportunities approach into all decisions and programs in the White Paper published following the Treaty[113].

#### 3.2.3.1. The Green Paper and The White Paper

During the period where low employment and unemployment persisted, **The White Book** titled "Development, Competition and Employment" was published by European Commission in 1994 to fight against these problems; in the book there are suggestions aimed at increasing the possibilities of reconciliation women's family and occupational life. The White Paper is the result of the Green Paper which is the constitutive procedure on European social policy. The White Paper aims at improving and consolidating the measures on labor law, health and safety, freedom of movement and equal treatment for women and men. The White Paper instigated intense discussion from 1993 onwards on how the EU could ensure sustainable jobs and better opportunities for people who are regarded as disadvantaged due to the situation they are in, like jobseekers, women one of them which the consequences were determined in the Treaty of Amsterdam[114].

#### 3.2.3.2. Luxembourg Summit, Lisbon Strategy and Road Map

##### 3.2.3.2.1. Luxembourg Summit

The New Employment Strategy[115] was put into use with 1998 Summit of Luxembourg in accordance with the alterations adopted after the provisions brought about as a result of Amsterdam Treaty. The main components of Luxembourg employment policy are these; employability, potential of adjustment/ability of adaptation, entrepreneurship, providing equal opportunities for men and women. Here the necessity of improving the existence of care facilities serving to children and old people in order to facilitate women's entering working life and remaining there, for

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[113] Rees, Teresa, (1998), **Mainstreaming Equality In The European Union**: **Education, Training and Labor Market Policies**, Londra: Routledge; 40-42

[114] Policy for People (2000); 9

[115] 2.2.3

example the necessity of removing the barriers that make it difficult for men and women to return to working life after an intervention due to child care was mentioned[116].

### 3.2.3.2.2. Lisbon Strategy

The trend in social and economical policies gaining speed within the EU after The Summit of Paris, continued the summits aimed at improving employment. In a range of summits held (Luxembourg-November 1997, Cardiff-June 1999, Lisbon-March 2000-October 2000, Barcelona-March 2002) the problem of employment was dealt with separately. Among these summits Lisbon Strategy has a significant importance in terms of protecting the rights of working women. European Commission emphasized after a meeting in March 2000 that The Union's strategically aim is to be the most competitive and dynamic knowledge-based economy on the world in 2010 that can be strengthened with better and much more works and has a larger social adaptation. Lisbon Strategy formed within this framework presents a general framework about what has to be done by identifying the problems in the issues The Union is weaker. The rate of women's entering into labor force is aimed to be 60 % after Lisbon Strategy. In addition to this, Lisbon Strategy, addressing the differences in the amount of salaries arising from gender discrimination in the market, revealed the necessity of women's and men's getting the same amount of salary for the equal work[117].

European Commission Meetings, in which economical and social problems are discussed, are held every year in order to realize the aforementioned strategies and the aims accepted in the Summit. Among the criteria dealt in the assessments made in terms of the compatibility with the determined aims and aimed at employment, the wage gap between two genders is an important criterion in the Strategy.

European Union prepared policies aimed at 5 strategically goals to provide the equality between men and women in the field of Social Policy. These are ensuring that

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[116] Sayın, Aysun; **Avrupa Birliği'nde Çalışma Yaşamında Kadın Erkek Eşitliği: Türkiye Açısından Bir Inceleme,** Yayımlanmamış Yüksek Lisans Tezi, 2007, Ankara, 36.

[117] Şener, H.İbrahim;Diş Ticaret Uzman Yardımcısı – Avrupa Birliği Genel Müdürlüğü; Lizbon Stratejisi Ve Türkiye'nin Rekabet Gücü; www.dtm.gov.tr/dtmadmin/upload/EAD/.../Lizbon.doc

economical resources are shared more equally by providing equal conditions for women's access to employment, science, administration and information technology through facilitating her access to all resources; ensuring women's equal participation and representation; changing the distribution of the rights and duties of women and men (at work, in leisure times, at home and family, in the issues of housing, public services and social protection);ensuring that the behaviors change through education, media, culture and science; empowering the mechanisms that will enable the actualization of equality precautions and educating the people enforcing laws.

As a result, EU comes to a better position after the years 2000, especially with regards to employment and undertakes actualization of the goal of both passage to new economies and increase in employment. It is observed that among the main goals of European Constitutional Agreement, prepared later and accepted by Council of Ministers on June 2004, there is "full employment"[118]. Cooperation is offered for the employment strategy determined in Lisbon Strategy and according to this, ensuring a wider participation in relation with the determination of social policies, coordination between administrations at different levels, the collection of the comparative information about employment market were defined.

#### 3.2.3.2.3. Road Map for The Equality of Women and Men

European Union adopted a road map in 2006 in an effort to ensure the equality between men and women within the period of 2006-2010. According to the Roadmap on Gender Equality, 2006 – 2010, six fundamental titles are determined among which maternity protection and parental leave, paternity leave and broader issues of reconciliation in the EU- were set on the social agenda of the EU through the Lisbon Strategy. The action plan to be effective in the field of equality of women and men between the years 2006 – 2010 was accepted on 1 March 2006. The road map intends to put the measures into practice with the aim of eliminating the inequality by taking into account the studies carried by the Commission[119]. Within this scope, six main priorities are aimed to be actualized within the years 2006–2010. The roadmap defines some

[118] Koray, Meryem., **Avrupa Toplum Modeli**, İmge Kitabevi Yayınları, Ankara, 2005 230.
[119] Göçmener, Sinem; **Avrupa Birliği'nde Uyum Sürecinde Türkiye'de Kadın Erkek Eşitliği**; İstanbul, 2008; 101.

existing areas and proposes other completely new areas of action. A total of six priority areas have been selected: equal economic independence for women and men, reconciliation of private and professional life, equal representation in decision-making, eradication of all forms of gender-based violence, elimination of gender stereotypes and promotion of gender equality in external and development policies[120].

It is defined the access to nursing services in Europe as ensuring the continuation of arrangements made to balance family and occupational life, sharing of family duties between women and men equally within the scope of EU, renewal of the rights in the Directive number 79/7 by the addition of paid parental leave, rearrangement of extension and estimation of the leave appearing in the directive editing parental leave Directive, number 96/34 in the manner that it will include social security rights, shortening the working time in the labor organization and work calendar for both men and women in the manner that it will be appropriate for the family responsibilities in the social field[121].

*European Union Charter of Fundamental Rights* was declared by European Parliament, Commission and Council in Nice in 2000 as another progress towards providing men and women equal chances in employment. European Union Charter of Fundamental Rights is the combination of all the social conditions accepted until 2000 and the resolutions of Court of Justice of the European Communities and European Court of Human Rights. According to the Charter of Fundamental Rights there is a provision saying *"the equality between men and women must be ensured in all fields including the issues of employment, working and wage"*. Furthermore, in article 23 the equal rights in employment are ensured. Also the regulation in the second clause of article 33explicitly regulates that *"everybody has the right to be protected against discharge due to a reason related to maternity and to have paid maternity and parental leave after the birth or the adoption of a child for the reconciliation of family and occupational life"*.

[120] *"A Roadmap for Equality Between Women and Men: 2006–2010",*theEuropeanUnionOfficialSite, http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/c10404_en.htm

[121] Gender Equality Road Map for The European Community 2006–2010", (Nowember 2005), European Women's Lobby, www.womenlobby.org, 5–9,

The articles of the European Union Charter of Fundamental Rights mentioned above are significant regulations in terms of covering maternity rights of working women. Taking into consideration the establishment of the afore mentioned rights, after the completion of the approval process of the EU Constitution[122], shall be the highest norm in the meaning of the protection of the rights of working women. Therefore, the European Union Constitution and in this context the regulations it brought in terms of protecting working women shall be explained.

### 3.2.4. The European Union Constitution and The Lisbon Treaty

After the negotiations held towards building European Union Constitution in the Summit of Nice, European Union Constitution was signed on 29th October 2004 by presidents and prime ministers of 25 member states which became members in 1957 while the final documentary was signed by Turkey, Bulgaria and Romania which are in the status of "candidate country" alongside member states.

This constitution was projected to be approved by member states until May 2006 and come into force at the beginning of 2009. Within this context while 16 member states approved the Constitution in their national parliaments, 9 member states, including Germany, France, England, Ireland, Denmark, Spain and Portuguese, declared that they would hold a referendum on European Constitution. In the referendums held in France and Netherlands there were objections to the Constitution. EU Constitution represents the most important step taken by the member states of European Union towards forming a political union. The Constitution integrates the founding agreements being the basis of EU and all the additional agreements changing them until today in a unique way and makes EU a legal entity[123].

EU Constitution still has not come into effect because it was not approved by all of the member states *(as a result of the referendums held in France and Holland there were objections to the European Union Constitution)*. However, after the rejection of the EU Constitution by some of the member states due to some of the Constitution's

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[122] European Union Charter of Fundemental Rights is inserted into the text of European Union Constituton.

[123] Çalışır, Eyüp; **AB Anayasasının İlkeleri**;Yayınlanmamış yüksek Lisans Tezi; Adana, 2006

articles which supervises member states' sovereignty, a Treaty which is called the Lisbon Treaty, was prepared in order to establish what the constitution aimed to establish. In the Treaty it was eliminated articles regarding unique anthem or a unique flag, which bothered some member states. By the Lisbon Treaty, the EU Constitution text was accepted by some revisions but the Fundamental Charter is fully included in the Treaty.

The text is of vital importance due to combining all the resources of Community Law, especially exactly including European Union Charter of Fundamental Rights published in the summit of Nice on December 2000..By this means protecting the maternity rights of working women in the constitutional status. In other words, even if the Constitution does not have any strength by the Treaty which was later accepted, it is important from the point of our subject in the sense that it brings the Charter of Fundamental Rights a form of fundamental rights catalogue having abidingness by means of exactly embodying it and taking a further step than current founding agreements with the detailed regulations it consists of in terms of democratic and social rights[124] [125]. The prominent provisions of EU Constitution[126] (now accepted as the Lisbon Treaty) in terms of family life, working life and within this scope the protection of maternity rights are like the following:

Any discrimination based on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other

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[124] Uçkan, Banu; **Avrupa Anayasası'nın Genel Çerçevesi ve Sosyal Politikalara İliskin Temel Düzenlemeleri**, Çalışma ve Toplum Ekonomi ve Hukuk Dergisi, 2005/3, 134.

[125] Millns, Susan**, Gender Equality Citizenship and the EU's Constitutional Future**, European Law Journal, March 2007, Vol. 13 No. 2, 218-237.

[126] The Constitutional Treaty is divided into four main parts, which are all of equal rank. Following a constitution-style Preamble recalling the history and heritage of Europe and its determination to transcend its divisions,
*Part I is devoted to the principles, objectives and institutional provisions governing the new European Union.*
*Part II comprises the European Chaeter of Fundemental Rights*
*Part III comprises the provisions governing the* ***policies*** *and functioning of the Union. The internal and external policies of the Union are laid down, including provisions on the internal market, economic and monetary union, the area of freedom, security and justice, the common foreign and security policy (CFSP), and the functioning of the institutions.*
*Part IV groups together the general and final provisions of the Constitution, including entry into force, the procedure for revising the Constitution and the repeal of earlier Treaties.*
Source : http://www.delmkd.ec.europa.eu/en/europe-a-to-z/eu-constitution.htm

opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. Furthermore it is stated that equality between women and men must be ensured in all areas, including employment, work and pay. Another important article is regarding the rights of children saying that children shall have the right to such protection and care as is necessary for their well-being and that every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests. Under article 91 it is stated that every worker has the right to working conditions which respect his or her health, safety and dignity. Finally, under article 93 it is stated that reconciling family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

As explained above, anti-discrimination policies have a significant position in terms of European Union's approach to providing equality of men and women. The legal regulations related to the equality of men and women and taking place in the scope of Labor law on a large scale in EU forms an important part of the anti-discrimination policy of the Union[127].

In addition to these regulations prepared in the constitutional status and dictating that working women must have equal rights with working men, it is observed that the rights of working women are taken under protection with the directives and decisions of the court of justice that can be characterized as the secondary law of European Union.

### 3.3. Regulations on Maternity Rights of Working Women in the European Union

Until this section, under the title of Chapter 2, advancement of the social and economical policy of the European Union and the process concerning the rights of working women were explained. Under this title, directives concerning maternity and the protection of the rights of working women shall be explained.

[127] Ibid 75

### 3.3.1. Council Directive 75/117/EEC

**of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women[128]**

Regulations were brought with 75/117/EEC Equal Pay Directive in order to identify the details regarding the application of the regulations in the 119th article of Founding Agreement. Within this scope the rights of working women were dealt within the framework of the necessity of the equal pay for equal work. The necessity of member states' taking measures aimed at the realization of this regulation was ensured. According to the same criteria for men and women when making work evaluation and the prohibition of any kind of gender based discrimination in charging conditions were assigned in Equal Pay Directive. These provisions constitute a guarantee against the unfair implementations women can be subjected to due to their maternity rights and have the characteristics of being an indirect insurance of the maternity rights of women. Some significant articles are mentioned below:

According to the Directive, it is stated that 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. Member states are obliged to abolish all discrimination between men and women arising from laws, regulations or administrative provisions which is contrary to the principle of equal pay.

[128] Published in the Official Journal L 045, 19/02/1975 P.0019; Full text of the Directive can be obtained from the http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31975L0117:EN:HTML

### 3.3.2. Council Directive (76/207/EEC)[129]

**of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions [130]**

This Directive sets down the principles of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions. In the first article of the Directive it is indicated that the goal of the Directive is to ensure that men and women are treated equally at recruitment, in their careers and vocational training, working conditions and in the field of social security. According to this, the principle of the mentioned Directive is defined in article 1, as follows: *"The purpose of this Directive is to put into effect in the Member States the principle of equal treatment for men and women as regards access to employment, including promotion, and to vocational training and as regards working conditions and, on the conditions referred to in paragraph 2, social security. This principle is hereinafter referred to as "the principle of equal treatment[131]".*

Discrimination in layoff conditions, that the measures preventing the layoff of workers using legal means shall be considered as the violation of the principle of equal treatment by member states and that the scope of the exceptional occupations compatible with the principle of equal treatment is detected and identified whether it is based on a legitimate base or not and which legal means are available against the employers violating the principle of equal treatment were arranged. Articles regarding preventing discrimination between men and women are 2/1, 2/2, 3/1, 3/2, 5, 6,7 and 9[132].

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[129] Published in the Official Journal L 39, 14.2.1976; 40–42.

[130] The Directive is amended by the Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002, published in the Official Journal L 269 , 05/10/2002;15-20

[131] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31976L0207:EN:HTML, 14.10.2009; 13.00.online.

[132] Full text of the Directive can be provided from http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/c10906_en.htm

Also it is seen that the first provisions regarding the maternity rights of women appear in this Directive explicitly. The point to be emphasized here is the regulation of the prevention of the inequalities, provisions concerning the protection of pregnant women and mothers in addition to the regulations concerning the equal treatment of men and women[133].

The following provisions appear in the Directive concerning the maternity rights of working women: (Article 2/3) “This Directive shall be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity”.

“This Directive shall be without prejudice to measures to promote equal opportunity for men and women, in particular by removing existing inequalities which affect women's opportunities in the areas referred to in Article 1 (1)” (Article 2/4).

#### 3.3.2.1. Hoffman Decision

A prominent characteristic of the Directive is the regulation of the measures to be taken for the protection of pregnant woman and mother in a way that they will not constitute inequality. The Court described the aim of making such a regulation in Hoffman Resolution number 184/83[134].

In the incident subject to the Hoffman resolution the father wishing to take the responsibility of caring for his child in the absence of the mother restarting work after the birth of his child wanted permission for six months but the six months permission given to mother pursuant to the relevant regulations was not given to the father for the same purpose. On account of the fact that the regulations regarding the issue had a discriminatory characteristic and the Directive number 76/207 was violated, CJEC attached making regulations to “the biological conditions of the woman during and after pregnancy” and “the relationship between mother and child after pregnancy and birth”. It was also underlined in the resolution that the relevant regulation does not cover the issues concerning the structuring of the unity of family or the sharing of responsibility

[133] Onaran Yüksel, 75.
[134] C-184/83 Hoffmann v. Barmer Ersatzkasse [1984] ECR 3047.

between parents. The judgment rendered in Hoffman Resolution is criticized because the regulations made in Community Law have a characteristic of emphasizing the necessity of the equality between men and women only in the labor market. Although with regard to the care of children it is stated that the issues concerning the sharing of responsibilities between parents are not covered, showing the relationship developing between mother and child as a reason underlines mother's primary social role as motherhood and child care[135].

#### 3.3.2.2. Hertz Decision

Hertz Decision number 179/88 is another resolution demonstrating that the regulation in 3$^{th}$ clause of 2$^{nd}$ in the Directive number 76/207 is directly allocated to birth and motherhood[136]. In this resolution it is concluded that the privileges provided to the women who gave birth can not be used to eliminate health problems arising from birth and appearing after birth. In the incident subject to the resolution taken it is discussed whether the dismissal of a woman who does not restart working at the end of maternity leave because of health problems associated with birth will be assessed or not within the context of the regulation in 3$^{th}$ clause of 2$^{nd}$ in the Directive number 76/207. CJEC did not assess the demand of the dismissed women within the context of the relevant regulation on the grounds that it is not necessary to distinguish between the health problems a woman can have after birth and any kind of health problems a man can have.

#### 3.3.2.3. Dekker Decision

In Dekker decision number 177/88[137], CJEC, not having started to operate yet, found it illegal when a woman identified to be the most appropriate candidate for the job as a result of the evaluation made during interview was not hired just because she was pregnant as it was a sample for explicit gender discrimination. The defense of the defendant employer that the pregnant employee's staying away from work because of

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[135] Mcglynn, Claire, **Ideologies Of Motherhood in European Community Sex Equality Law**, European Law Journal, Vol. 6, No. 1, March 2000; 38.
[136] C-179/88 Hertz v. Dansk Arbejdsgiverforening [1990] ECR 3979.
[137] C-177/88 Dekker v VJV-Centrum [1990] ECR I- 3941.

pregnancy is not covered by insurance and that the substituted employee will be a heavy financial burden for him was denied on account of the fact that the behavior of direct gender discrimination based on pregnancy cannot be legalized on the basis of the financial burden it bring to the employer.

#### 3.3.2.4. Webb Decision

In the Webb Decision of CJEC number 32/93[138] it was found illegal and was regarded as direct gender discrimination when Miss Webb's labor contract was terminated two weeks after she started working once she was understood to be pregnant. In this resolution CJEC questioned whether the biological convenience for the job or more appropriately the condition of working women's not being pregnant would be a basis element of labor contract or not and stated that the pregnancy period cannot be regarded as a basic element in terms of the open end contracts on the grounds that it is a definite and relatively short period. However this evaluation period is criticized owing to the fact that it causes uncertainty in terms of certain contracts[139].

In the 2nd clause of 2nd article of the directive number 76/207 it was appointed that if the nature or the subject of the work conducted necessitates the employee to belong to a certain gender, gender based discrimination will be based on valid foundations. It is possible that an occupation to be allocated to a certain gender due to the nature of the work conducted or the conditions it is conducted in. In other words sometimes the gender of the employee is a basic element of the job relationship. But here it is not possible to draw a conclusion that an obligation like allocating some occupational groups to a certain gender is imposed by member states. The duty of Member States is just to prepare the list concerning which occupations and activities are determined as the exception of equal application principle and present it to the Commission.[140].

European Commission changed this Directive on 23th September 2002. It was stated that gender based abuse and violence are contrary to the principle of equal

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[138] C-32/93 Webb v. EMO Air Cargo (UK) Ltd [1994] ECR I-3567.
[139] Steiner, Josephine; Woods, Lorna; Text Book on EC Law, Oxford University Press 2003, 493.
[140] C-248/83 Commission v. Germany [1985] ECR 1459.

treatment between men and women and decided that the definition of these concepts is appropriate for the prohibition of such discrimination. To that end, there are definitions of direct discrimination, indirect discrimination, abuse and sexual harassment in the directive number 2002/73/EC[141]. According to the directive direct discrimination is the one made on the basis of gender. Indirect discrimination points out that inequality is in question due to reasons other than gender but ultimately a gender group comes to disadvantaged position. While abuse is described as an undesired behavior establishing an environment aiming to stain one's honor based on his/her gender, deterrent, hostile, trivializing, insulting and unkind, sexual harassment is described as any kind of verbal or nonverbal or physical, undesired sexual behavior establishing an environment aiming to stain one's honor based on his/her gender, deterrent, hostile, trivializing, insulting and unkind[142].

### 3.3.3. Council Directive (79/7/EEC)[143]

**of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of Social Security**

In the Directive it was appointed that the provisions brought due to maternity rights will not violate the principle of equality for the protection of the maternity rights of working women. It was also stated that giving rights to working women will not violate the obligation of equal treatment. Directive also expands the principle of having equal rights in the field of social security[144]. The principle of equal treatment shall be without prejudice to the provisions relating to the protection of women on the grounds of maternity (Article 4/2). Another important regulation of the Directive in terms of social security is the arrangement of the abolishment of laws, bylaws and other legal regulations in the Legislation of Member States that violate the principle of equal treatment in social security transactions.

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141 Full text is available at http://www.ei-ie.org/payequity/EN/docs/EU%20Documents/2002%2073.pdf
142 *Articles 2,3 and 4 describe discrimination and harressmen.*
143 L 6, 10.1.1979;24–25
144 Onaran Yüksel, Melek; 75.

There is a regulation in the Directive that direct or indirect discrimination cannot be exercised. As the discrimination between working men and women manifests itself as direct or indirect discrimination, this subject is underlined in the Directive: *The principle of equal treatment means that there shall be no discrimination whatsoever on ground of sex either directly, or indirectly by reference in particular to marital or family status, in particular as concerns: - the scope of the schemes and the conditions of access thereto the obligation to contribute and the calculation of contributions, the calculation of benefits including increases due in respect of a spouse and for dependants and the conditions governing the duration and retention of entitlement to benefits.*

A discriminatory act can be direct discrimination (differential treatment based on a specific characteristic) and indirect discrimination (any provision, criterion or practice which is neutral on its face but is liable to adversely affect one or more specific individuals or incite discrimination)[145].

### 3.3.4. Council Directive (86/378/EEC) [146]

**of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes and Council Directive 96/97 /EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes**

In private insurance systems equalizing between men and women is aimed and regulations in this direction are brought in the Directive.

The Directive covers the social security programs neglected in the Directive 79/7. The Directive additionally includes occupational protections sickness, invalidity, old age, industrial accidents, occupational diseases and unemployment (providing social benefits). In other words the Directive in question prescribes that not only in legal social security systems but also in private social security systems not based on law but formed

[145] (http://europa.eu/scadplus/leg/en/cha/c10823.htm - Equal treatment in employment and ccupation
[146] Published in the Official Journal L 225 , 12/08/1986;40 -42

as an attachment to legal social security systems in a certain occupational group or sector the equal treatment principle is applied. Some of the articles of the Directive were altered with the Directive number 97/96 EC[147] in the direction of the resolutions taken by European Court of Justice.

The Directive number 86/613 regarding the actualization of equality principle in terms of free-lancing men and women (including those working in the field of agriculture) within the same year with 86/378/EEC and the protection of free-lancing mother was approved. The Directive in question was examined under a different title.

### 3.3.5. Council Directive (86/613/EEC)[148]

**of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood**

This Directive is one of the basic regulations regarding antidiscrimination measures on gender grounds. The wage equality between men and women working free-lancing and in the field of agriculture, benefiting from the same insurance rights and the protection of women in the compulsory conditions arising from maternity are included in this Directive. The protection of free-lancing mother is also ensured in this Directive[149]. Within this framework it is adjudged that member states will take the necessary measures against dangers such as making less payment to women to reduce tax burden, excluding women from insurance system, women’s not benefiting from provisions related to the protection of mothers and their not receiving a recompense for their work when the marriage is over because of divorce or death.[150].

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[147] Published in the Official Journal L 46, 17.2.1997, 20–24

[148] Published in the Official Journal L 359 , 19/12/1986,56 - 58

[149] Adakale Demirhan, F.Elif – Ekonomi,Münir; **Türkiye’de Kadın İşçilerle İlgili Koruyucu yasal düzenlemeler ve 4857 sayılı yeni İş Kanunu ile getirilen Yenilikler;** İTU Dergisi/d; Cilt 4; Sayı 5; 55-67; Ekim 2005

[150] Onaran Yüksel, 77.

### 3.3.6. Council Directive 92/85/EEC

**of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding[151]**

In contemplation that pregnant, women who have recently given birth or nursing women constitute a risk group and therefore their employment and health require special protection, the Directive number 92/85 was prepared. With the Directive it was aimed to protect working women during pregnancy and following periods after birth in which they are more sensitive in terms of health. At the same time pursuant to the relevant Directive, pregnant, women who have recently given birth or nursing women will be forbidden to work at some heavy and dangerous works, they will be given enough time and ensured to be protected against dismissals because of the biological condition they are in. Even if the Directive number 92/85 forms a contradiction against the principle of equal treatment to pregnant, puerperant or nursing working women, it anticipates some protective privileges. These provisions constitute a special place in the sense that on the one hand they concern working conditions and on the other hand they are devoted to the ensuring of social development. In accordance with the provisions in the Directive, the employer is under the obligation of forbidding the relevant persons' working where these substances are used by taking the opinion of competent authorities concerning which substances have a characteristic of endangering the health of working women covered by the Directive (article 4/1), creating the working conditions appropriate for the relevant person and employing her to a job more appropriate for her biological condition (article 5/2) and giving permission for a certain period when there is no appropriate job for her (article 5/3). In EU Member States, maternity leave must include a period of compulsory leave of at least two weeks allocated before and/or after confinement (article 8/2).

And in the 9th article of the Directive it is projected that in cases when the physical examination of working women after birth must be within the working period, the working women be given the necessary permission without cutting from her wages.

[151] Published in the Official Journal L 348, 28.11.1992; 1–8

It is forbidden to dismiss working women while they are in maternity leave except cases not related to birth and in the case of termination of the labor contract with valid reasons as per national legislation (article 10). According to 11th article the working woman will be paid a certain amount of her wage during maternity leave[152]. Member states are under the obligation of arranging the right of using legal means at national level of working women in the required way in cases of contradiction with the provisions in the Directive.

The Directive in question brought important regulations aimed at the protection of the maternity rights of working women. With the directive the risks regarding to the puerperal and nursing women face are targeted to be minimized. This Directive arranged prohibiting women included in the aforementioned group from working in some heavy and dangerous works, receiving maternity leave for a certain period and protection against dismissal in cases of pregnancy and motherhood. This Directive also arranged determining which substances have a characteristic of endangering the health of working women by taking the opinion of competent authorities and forbidding puerperant and pregnant women's working where these substances are used. Also creating the working conditions appropriate for pregnant working women, employing her to a job more appropriate for her and giving permission for a certain period when there is no appropriate job for her were ensured.

Countries that are members of the European Union are subject to Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the health and safety at work of pregnant workers and workers who have recently given birth or are breastfeeding[153] [154].

According to the EEC Directive, EU Member States may set conditions of eligibility for maternity cash benefits, but these conditions may not provide for periods

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[152] In the Resolution of Gillespie v. Northern Health & Social Services number 342/93 regarding the matter a provision saying *"the working woman will be paid some amount of her wage. This amount can not be less than the amount paid in case of illness."was enacted.*

[153] EU Directives are EU-level measures required to be implemented by national laws in all EU Member States.

[154] The full text can be obtained from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0085:EN:HTML

of previous employment in excess of 12 months immediately prior to the presumed date of confinement.

*The competent institution of a Member State whose legislation makes the acquisition, retention or recovery of the right to benefits conditional upon the completion of periods of insurance, employment or residence shall, to the extent necessary, take account of periods of insurance, employment or residence completed under the legislation of any other Member State as if they were periods completed under the legislation which it administers.*

Another important issue finalized in the Directive is that pregnant working women during their pregnancy and after birth period and nursing women for a certain period will not be on night shift. Also the issues that night shift of women be transferred to by-day and if this is not possible women must be given permission for a while were ensured. Also it was determined that in case of the pregnancy of working women, the Labor contract will not be terminated until the end of at least 14 weeks long maternity leave in a way that it will cover prenatal and postnatal periods. It was also stated that women will receive paid leave for the medical checks to be needed in postnatal period. The necessity of regulation of legal means women will use in case of violation of to these regulations by member states, in this Directive was ensured.

The provisions of European Union Directive number 92/85/EEC accepted to ensure the special protection of working women during their pregnancy and maternity periods at European Union level become more of an issue as regards being used by the employer for doctor controls during pregnancy, necessary permissions and changing the job of pregnant working women, maternal leave and prohibiting abolition. According to 2nd article titled "Definitions" of the Directive number 92/85/EEC: pregnant worker shall mean a pregnant worker who informs her employer of her condition, in accordance with national legislation and/or national practice; (article.2/a); 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; (article.2/b); 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/c). In this context according to the Directive the pregnancy of working woman is the period starting from the moment pregnancy is ascertained to the moment of the birth of the child. And maternity is the period starting from the moment of the birth of the child and extending to the puerperal term and nursing periods and the period of child care and rearing.

### 3.3.7. Council Directive 96/34/EC

**of June 1996 on the framework agreement on parental leave[155] and Council Directive 97/75/EC of 15 December 1997 amending and extending, to the UK of Great Britain and Northern Ireland, Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE[156], CEEP[157] and the ETUC[158]**

UNICE, CEEP and ETUC approved the "Parental Leave Framework Agreement" on 14th December 1995 to reconcile family and occupational life and develop the equality of opportunity and treatment between men and women. European Commission prepared the directive number 96/34/EC to ensure that this agreement is put into practice in member states.

The Directive was enacted to determine minimum needs aimed at facilitating the reconciliation of family and occupational responsibilities of fathers and mothers[159]. The Directive provides for male and female workers to have at least three months leave to take care of the child without losing the position at work.

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155 Published in the Official Journal L 145 , 19/06/1996 P. 0004 – 0009; Amended by Council Directive 97/75/EC of 15 December 1997.

156 UNICE (Union of Industries of the European Community) founded in 1959 gathers together the industrialists and employers confederations of member states of EFTA and OECD UNICE in addition to the member states of EU. UNICE takes on the coordination of the attitudes and views of the aforementioned institutions regarding the matters of Europe, especially at European institutions.

157 CEEP (The European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest), represents the enterprises conducting operations having a general purpose of economical interest irrespective of the publicly participated enterprises and employer organizations and their legal ownership and status.

158 ETUC (European Trade Union Confederation); is the one social party among three known by European Commision together with UNICE and CEEP. It represents labor unions before European Union.

159 Koray,99.

The Directive prepared and put into effect with intent to fulfill the minimum needs aimed at reconciliation of family and occupational responsibilities of working parents consist of 3 sections. While the interventions and legal arrangements European Commission sets forth concerning social policy area are briefly summarized in the first section, in the second section appear the alterations and relevant obligations Member States must fulfill in its domestic law until 3.1.1998 at the latest.

In the Directive number 96/34 working parents are entitled at least a three months permission right when they become parents either by birth or adoption to balance their family and occupational responsibilities within the frame of equality principle without assigning the permission right to each other until their child is eight years old to provide a better care for her/him. In the case of using leave right, restarting work and benefiting from improvements made in the period of leave and former seniority rights are ensured. The Directive puts all working men and women taking place in any kind of contract relationship defined on the basis of law effective in Member States, collective bargaining, workplace regulations, service contract or professional relation under protection without discrimination. Even if it was projected that working men and women would benefit from the rights provided by the Directive number 96/34 equally, it is possible to say that the regulations brought with the Directive comes to mean predominantly to reconcile family and occupational life of working women in practice as not even a minimum wage is projected during leave [160].

According to the Directive, working men and women will have at least a three months leave for the care of the child in case of birth or adoption in order for the reconciliation of family and occupational life. The use this leave right until the child is eight years old will be determined by Member States. Member States may introduce an obligation of service period to be not more than one year in order to give leave right to their employees. The leave right can be postponed if the workplace reveals valid reasons. Member States are obliged to to protect their employees against dismissal during this leave and take necessary precautions to enable him/her work at an equivalent

[160] Lewis, Jane; **Work/Family Reconcilition, Equal Oppurtunities and Social Policies: The Interpretation of Policy Trajectories at the EU Level and the Meaning of Gender Equality**, Journal of European Public Policy, Vol. 13, No. 3, April 2006, 429

job. The rights the employee gained at the beginning of family leave and the rights he/she will gain as a result of the alterations that will occur in national laws, collective bargaining or applications during this leave are secured. Also member states must make the regulations regarding the covering of the employee using this leave by social security[161].

### 3.3.8. Council Directive 97/80/EC

### of 15 December 1997 on the burden of proof in cases of discrimination based on sex[162]

The Council approved the present directive concerning the obligation of justification in the cases of discrimination based on sex in an effort to activate the measures taken with intent of bringing the equal treatment principle into force by member states. The Directive envisages member states to take necessary measures to ensure that the obligation of proving the compliance with the equal treatment principle in the charges pressed for the cases covered by directives number 75/117/EEC, 76/207/EEC, 92/85/EC belongs to the defendant.

### 3.3.9. Council Directive 97/81/EC

### of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC[163]

The Directive aims at eliminating discrimination against part-time workers and to improve the quality of part – time work. In terms of employment conditions part-time workers shall not be treated in a less favorable way than full time workers. The purpose of the Directive is to implement the Framework Agreement on part-time work concluded on 6 June 1997 between the general cross-industry organizations (UNICE, CEEP and the ETUC) (article 1).

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[161] Sayın, 99-100.

[162] Published in the Official Journal L 014 20.01.98, p.6. Amended by Council Directive 98/52/EC of 13 July 1998.

[163] Published in the Official Journal L 014 , 20/01/1998 P. 0009 - 0014

The Directive prohibits discrimination against part – time workers. Due to the fact that most part-time workers are women because of family responsibilities, maternity rights provided for part-time workers are crucial.

### 3.3.10. Council Directive 2000/78/EC

### of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

The Directive has aimed to form a frame for anti-discrimination not only on the basis of gender but also on the basis of employment, work, religion, age or sexual preference. For this purpose the provisions of equal treatment for men and women in employment have become current with simplification of gender equality and in this way legal framework has been improved substantially. Member States were given time to adapt the directive to their own laws until August 2008.

### 3.3.11. Council Directive 2004/113/EC

### of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services

As stated in the introduction, the Directive was prepared in an attempt to ensure the equality of men and women other than the fields of employment and occupational life and empower the rights associated with equality. The concept of discrimination shall include the concepts of direct and indirect discrimination, abuse and sexual harassment within the scope of this Directive. The definitions of these concepts are given place in the regulation in the 2nd article of the Directive[164]. The

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

implementation of the Directive in a way that it will harm choosing freely the opposite party of the contract as long as it is not based on gender and not in the issues of the content of media and commercials and education and employment was arranged in later clauses of 3th article. In the issues of free-lancing the other regulations of the Community regarding the issue have priority. That is the issue of free-lancing will not be implemented as long as these issues partake in the other regulations of Community (article 3/4). Although any kind of direct or indirect discrimination based on gender is forbidden in 4th article, the Directive does not prevent the implementation of provisions brought forth oriented to the protection of women as regards the issues of pregnancy and motherhood. Behaviors constituting abuse and sexual abuse are absolutely forbidden and the instructions given for discrimination based gender will be regarded as discrimination. Finally, if the incident of allocation of properties and services to the members of a gender exclusively or fundamentally is legitimate for a legal or valid reason, it can be considered separate from the regulations within the scope of this Directive.

#### 3.3.12. Council Directive 2006/54/EC

**of The European Parliament And Of The Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)**

In accordance with the jurisprudences of the Court of Justice, the principles in the directives regarding equality of men and women were reviewed. This issue was shown to be one of the fundamental principles of Community Law and it was underlined that European Union has an obligation of providing this equality. In the 3th article of the Directive it was imposed that member states can take measures to actualize the equality of men and women at work in real terms and maintain these measures[165].

With the Directive number 2006/54 it is aimed that all regulations made until today for the implementation of the principle of equal treatment between men and women be brought together under the same roof and simplified by taking the alterations

[165] Dogan Yenisey,Kübra; **"Is Hukukunda Esitlik Ilkesi ve Ayrımcılık Yasagı**", Çalısma ve Toplum, Sayı. 11, Cilt. 4,;72

and CJEC jurisprudences into consideration. The Directive is the form of all regulations put forward regarding the principle of equality between men and women stated in a single text and other regulations regarding the issue were abolished on 15th August 2009 pursuant to this Directive[166]. The regulation associated with this issue was prepared openly in 34th Article of the Directive: [167] *1. With effect from 15 August 2009 Directives 75/117/EEC, 76/207/EEC, 86/378/EEC and 97/80/EC shall be repealed without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex I, Part B. 2. References made to the repealed Directives shall be construed as being made to this Directive and should be read in accordance with the correlation table in Annex II.*

The motive for the preparation of the Directive number 2006/54 is stated in introduction section of the Directive: *Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions and Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes (4) have been significantly amended (5). Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (6) and Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex (7) also contain provisions which have as their purpose the implementation of the principle of equal treatment between men and women. Now that new amendments are being made to the said Directives, it is desirable, for reasons of clarity, that the provisions in question should be recast by bringing together in a single text the main provisions existing in this field as well as certain developments arising out of the case-law of the Court of Justice of the European Communities (hereinafter referred to as the Court of Justice).*

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[166] 75/117/EEC;76/207/EEC; 86/378/EEC; 97/80/EC.
[167] For the full text of the Directive: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:204:0023:0036:EN:PDF

In the 9th article of the Directive coming to the fore in terms of the protection of the maternity rights of working women, suspension of the acquirement and conservation of the rights entitled by laws or contract during the paid and leaves because of births or family reasons was interpreted as discrimination. Under article 9, suspending the retention or acquisition of rights during periods of maternity leave or leave for family reasons is regarded as an example of discrimination.

In the first article of the Directive, the purpose is defined as *"to ensure the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation."* In the following part of the article it is stated in which areas this is to be applied (access to employment, including promotion, and to vocational training; (b) working conditions, including pay; (c) occupational social security schemes.)

The rules in employment concerning the implementation of the principle of equal treatment in terms of vocational training, on-the-job training, promotion at work and working conditions were settled in 14th article. According to 15th article, *"A woman on maternity leave shall be entitled, after the end of her period of maternity leave, to return to her job or to an equivalent post on terms and conditions which are no less favorable to her and to benefit from any improvement in working conditions to which she would have been entitled during her absence."* And according to 16th article the subjects arranged in 15th article are also valid for the leaves for child care. Also this article was arranged to cover working men that is *"paternity leave".* Third section of the Directive number 2006/54 relate to the regulations concerning proceeding. First and foremost member states are supposed to project necessary regulations in their national legislation oriented to the rights set forth by the Directive and show legal and official ways to relieve the victimhood arising from the failure of implementing the regulations or implementing them deficiently or inaccurately (article 17).

### 3.4. Different Dimension in Protection of Maternity Rights of Women; Questions Directed in Job Interviews

The regulations explained above concerning the protection of maternity rights of working women provide protection beginning from the formation of a job relation with the employer. But it is necessary to mention problems likely to be faced at the job application/interview stage that is when there is no job relation.

In practical terms employers can pose a set of questions to women such as “Are you pregnant?”, “Do you plan having a baby?” and/or “Do you plan to get married in a short time?”. But it is regarded illegal within the context of the regulations of Acquis to pose such questions that are only about the gender issues rather than job necessities or the qualifications of the person in employment:

In the 1st clause of 2nd article of the European Union Directive Concerning The Equal Treatment of Men and Women in Admission, Vocational Education, Promotion and Working Conditions (76/207/EEC) it was set out that “no kind of direct or indirect discrimination can be created based on the sex of person, especially based on her marital and family status”. Regulations in the same direction partake in 4/1st article of the Directive number 79/7 and in 5/1st article of the Directive number 86/378. According to article **5/1 of 86/378/EEC,** the principle of equal treatment implies that there shall be no discrimination on the basis of sex, either directly or indirectly, by reference in particular to marital or family status, especially as regards the scope of the schemes and the conditions of access to them.

Asking questions about the issues entering into the private field of women will be regarded as the violation of the prohibition of discrimination. But asking such questions due to cases the job or workplace make obligatory will not be regarded discriminatory. But except cases like these, aspects such as marital status, pregnancy status, family responsibilities of working women cannot be the criteria affecting the decision of employer at employment stage. In other words marital status and family responsibilities of the women must not cause her to be discriminated. At this point pursuant to the ILO Convention (111- articles 1 and 2), any kind of discrimination

against women was forbidden. This general regulation also forbids discriminatory attitudes explained above that can appear at implementation stage.

The answers received when women are asked whether they are pregnant or not or plan to have children or not have the characteristic of a discriminatory behavior against women as they will lead to an interview process that will result in women's being denied for the job due to maternity rights they have. From this aspect such questions asked to the future woman employee is at a situation leading to an unjust treatment because of their biological features.

Questions aiming to reveal pregnancy or maternity status of women are direct examples of discrimination made because of biological functions of women. Yet it cannot be considered as an absolute discrimination at any rate. Determining whether such questions posed to the future plans of the woman employee constitute discriminatory behavior or not must be evaluated according to the concrete incident. If the employer asks future women employee whether she is pregnant or not in the case that this question has no importance as regards the characteristic of the job and workplace, he will be violating her personal rights[168]. In some cases it may be necessary for future women employee to give the information of pregnancy to the employer herself. For example a women employee applying to a modeling agency should inform the employer about her pregnancy. However, when a modeling agency looks for a non pregnant woman because of the characteristic of work cannot be regarded as a discrimination.

In European Union Law questioning women about pregnancy is not allowed. Within the context of the Directive number 76/207 the necessity of providing equal opportunities at every stage of occupational life was emphasized:[169] *Application of the principle of equal treatment means that 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 3/1).*

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[168] Onaran Yüksel, 159.
[169] Sample resolutions (For Webb resolution and Dekker resolution) see *2.3.2.3* and 2.3.2.4.

There is scenery compatible with the regulations in Turkish Law. In the article number 11/2[170] of the CEDAW, eliminating gender discrimination in the field of employment by making necessary regulations regarding prevention of discrimination against women for reasons of pregnancy and maternity was adjudged. The aforementioned provision was put into effect as a binding legal regulation with the approval and inclusion of the Contract to our domestic law.

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

# 4. THE SITUATION IN REGARDS TO THE MATERNAL BENEFITS OF WORKING WOMEN IN TURKEY AND COMPARISON WITH THE EU LAW

## 4.1. Historical Process of the Maternity Rights of Working Women in Turkey

Working women are protected privately in point of equality in Labor Law, regulation of labor, part time working, sexual harassment and maternity. The protection of women in terms of equality has two dimensions: the equal treatment of working men and women and equal wage between working men and women. Protection in terms of regulation of work includes the prohibition of employment in underground and underwater, employment in heavy and dangerous works and working at night. Protection in terms of part time working is aimed at preventing different treatment of part time working women than full time working women. Protection in maternity implies not being faced with discrimination because of pregnancy, physical examination before birth, giving parental and nursing leave. As women mostly face gender discrimination at work they must be protected privately. The protection of women in Social Security Law is possible with maternity and senility insurance.

The process covering the period the first time the maternity rights of women were dealt with at legal level until today can be summarized as following: *One of the most important problems of women, the maternity leave was prepared in 1930 for the first time. Maternity assistance to women was arranged with the Code dated 01.07.1945* [171] *for the first time in 1945 . The arrangement of old age insurance for men and women according to equal principles was realized with the Code issued in 1949. While maternal and infant health services within the body of Ministry of Health started in 1952, the Population Planning Code arranging the free sale and distribution of contraceptive materials and giving entitlement of abortion in case of medical obligation*

[171] The Code of Work Accidents, Occupational Diseases and Insurances of Motherhood was approved on 07.07.1945 and was put into effect on 01.07.1946.

*was issued in 1965. ILO contract providing equal pay for equal work between men and women was approved in 1966. While ending of 10 weeks pregnancies with abortion and voluntary surgical sterilizations were allowed with a legal amendment in 1971, for married women the condition of getting permission from husbands for abortion was brought about.*[172].

### 4.1.1. Public Sanitation Code

The first regulations associated with the employment, prohibition of working women because of pregnancy and birth and the limitation of the termination right of the employer as a result of the suspension of labor contract during pregnancy leave were accepted with the Public Sanitation Code. According to the 155th article of the mentioned Code, working women are "forbidden to work in factories, workshops and public and private enterprises" within three weeks before and after birth unless it is determined with medical report that working women will not harm her own health and the health of the baby to be born.

### 4.1.2. Labor Code of 1936 (dated 16.06.1936)

It is the first Labor Code of the Republic period. The protection against abolition regarding pregnancy and birth was provided and the suspense period of labor contract was extended. According to the article number 25/1'e "Working pregnant women are forbidden to work three weeks before the date the birth is expected and within three weeks after birth." Compulsory leave periods either before or after birth can be extended from six weeks to twelve weeks according to medical and / or sanitary necessities. It was stated that the termination of the labor contract of working women during these periods was prohibited. Furthermore, it was stated that "Time estimations for notifications to be made by the employer regarding the termination of labor contract due to any reason taken into account in this law, can be made at the end of the legal leave times for pregnant women who are at maternity leave." (26th article).

[172] For the chronological sequence of the rights of women in Turkey see Annex II.

### 4.1.3. Labor Code of 1967 (dated 12.08.1967 )

In the protection of working women against termination of labor contracts due to pregnancy and/or birth, amendments were brought about in favor of employee in two aspects with the Labor Code, dater 1967. First of all the maternity leave was extended. Working women were forbidden to work in a period of 12 weeks in total; 6 weeks just before the birth and six weeks after birth. It was adjudged that the specified periods determined according to the health condition of working women and the characteristic of work can be extended with medical report and a certain upper limit was not set with regard to the period to be extended. Also it was assigned that the contract of working women not being able to continue to work because of pregnancy will be suspended to be abolished as a result of the situation of maternity and birth as long as it is independent from six weeks period before birth.

### 4.1.4. Labor Code of 1971 (dated 28.08.1971)

In the Labor Code, the prohibition of working in case of maternity was arranged within the same content as in the Labor Law Code dated 1967. Also it was regulated that "working women is given non-paid leave after six months after birth up to six months if she desires." Furthermore a new right in the form of "this period is not paid attention on account of the right of paid leave" was granted.

## 4.2. Rights Granted by the Constitution

When observed the Turkish regulations, the basic rule takes place in the Turkish Constitution, in article 10. According to this article, women and men are equal and the state has to take the necessary measures to provide this equality. Since it is an actual issue, it shall be mentioned that in the Constitutional Reform Package this article is being revised. Apart from the discussions regarding the appropriateness of the revision package, the revision regarding article 10 is appropriate according to my opinion. Since in the revised version it is added the statement that the measures to provide the equality between women and men shall not be regarded as breach of such rights.

In the 10th article of 1982 Constitution, with the provision saying *"All individuals are equal without any discrimination before the law, irrespective of language, race, color, sex, political opinion, philosophical belief, religion and sect, or any such considerations. The state is supposed to actualize this equality (c.2)".* the principle of equality before the law was adopted and the state was imposed the obligation of taking necessary measures and making necessary regulations to ensure equality of men and women. In the 1st clause of the aforementioned article the principle of general equality and in 2nd clause prohibition of gender discrimination are regulated[173]. Considering the remark of "actualization of equality" in 2nd clause of 10th article, it can be stated that the State can perform gender based positive discrimination and active practices aimed at preventing gender discrimination[174]. Therefore protective legal classification aiming to provide equal opportunities for women and discrimination can be performed; such discriminations are not contrary to the principle of equality[175]. Therefore the 1st and 2nd clauses of 10th article of the Constitution underlies that there cannot be discrimination between men and women regarding benefiting from rights and the principle of equal treatment in Labor law.

The equality principle included in 10th article of 1982 Constitution is not an absolute equality. When different situations are in question, relative equality regarding different treatment acceptable should be understood[176]. In order to make an interpretation concerning the issue of everyone's being definitely liable to the same provisions will not comply with women's gaining maternity rights and it will be possible to prevent an absolute equality is not applied when dealt with regard to the maternity rights of working women subject to this study. From the point of view of the definitions Constitutional Court made for the 10th article of the Constitution, it was decided that the aforementioned article can not be interpreted in a way that everyone is equal no matter what the conditions are. In one of its resolutions regarding equality before law Constitutional Court it is stated that: *"It is projected that the persons being in the same legal situation with the equality principle arranged in 10th article of the*

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[173] Zafer, Gören, **Anayasa Hukuku**, Seçkin Yayınları, Ankara 2006; 406.
[174] Gözler, Kemal; **Türk Anayasa Hukuku Dersleri**, Ekin Yayınları, Bursa, Ekim 2005**; 91.**
[175] Öden, Merih; **Türk Anayasa Hukukunda Eşitlik İlkesi**, Yetkin Yayınları, Ankara 2003;334.
[176] Onaran Yüksel, Melek; 85.

*Constitution will be subjected to the same rights and the persons in a different legal situation will be subjected to different laws. Equality before law does not mean that everyone will be subjected to the same law. The reasons valid due to being founded on characteristics and differences do not render the separate regulation contradictory but validate it. Separate regulations for the persons in the same situation render contradictoriness".* It implied that different regulations based on valid legal grounds are not contradictory to this principle by defining it by means of stating that *"The equality aim of Constitution is not actual but legal.*[177]*"* In different decisions[178] [179] the same issue is addressed.

In the first clause of 10th article, together with the equality principle before law to be applied to almost everyone, eliminating discrimination based on language, race, color, gender, political view, philosophical belief, religion, sect and reasons like these were arranged distinctively. With the regulation of the relevant reasons it is possible to say that legislator projects a more strict supervision and protection in terms of groups in the situation of actual inequality[180]. Performing different applications in favor of aggrieved party in an effort to provide the aforementioned supervision and protection and balance the situation of inequality, that is positive discrimination must no be

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[177] The resolutions of Supreme Court number 15.8.1995, E. 1995/22, K. 1995/37 ve 22.10.1996, E.1996/10, K. 1996/40 (Kantarcıoğlu, 56)

[178] In one of the resolutions of Constitutional Court taken in this direction this statement is included**: It was stated in 10th article of the Constitution that every person is equal before law irrespective of reasons such** as language, race, color, gender, political view, philosophical belief, religion, sect etc, no person, family, group or class, will be granted privilege, Government Bodies and administrative ranks have to obey the perinciple of equality before law in all of their transactions. This principle prevents the implementation of different laws for the people in the same situation, creation of privileged persons and communities. A different regulation for the people in the same situation will be accepted as the violation of equality. The equality the Constitution aims at is not absolute and actual equality but legal equality.If the same legal situations are held contingent with the same rules and different legal situations are held contingent with different rules, the principle of equality prescribed by the Constitution will not be violated." (The Resolution of the Constitutional Court dated 02.07.2009 and number 2005/114 E.; 2009/105.)

[179] The Resolution of the Constitutional Court dated 23.09.1996, Base1995/15 and number 1996/36: "The principle of equality requires that men and women in the same situation have equal rights. Making the person more privileged compared to the opposite sex violates this principle. Gender can not be a reason preventing...If there are valid reasons for some persons to be subjected to such rules, the violation of the principle of equality before law is not in question. Therefore while the differentiations necessitated by nature or functional characateristics are grounded on a valid reason and do not violate the equality , the differentiations not grounded on anything but gender openly violate the principle of equality."

[180] İnceoğlu, Sibel; **Türk Anayasa Mahkemesi ve İnsan Hakları Avrupa Mahkemesi Kararlarında Eşitlik ve Ayrımcılık Yasağı**, Çalışma ve Toplum Ekonomi ve Hukuk Dergisi, C. 4 S. 11, 2006,48.

understood as contradictory to the principle of equality within the frame of the relevant article of the Constitution[181]. Thus a regulation laying state under an obligation of actualizing the principle of equality between men and women and encouraging positive discrimination against women was added with an amendment passed in 2004. The regulation added to the 10th article of the 1982 Constitution with an amendment passed in 2004 and stated like *"women and men have equal rights"* is important in the sense that it concretizes the equality between sexes within the frame of general equality.

In 55th article of Constitution there is a provision stating that State will take necessary measures to ensure that employees get an appropriate and fair wage and benefit from other social assistances in order for protection of working women and prevention of discrimination between sexes. The aforementioned provision is important in the sense that it ensures the equality between men and women in employment. According to the 50th article of our Constitution *"No one can be employed in the jobs not appropriate for her/his gender and strength." Young people, women and people physically and spiritually deficient are distinctively protected in terms of working conditions.* This provision constitutes the basic foundation of women's protection in work life. There is also a regulation aimed at protection of women in the article number 41/2 of the Constitution[182].

The regulations made either at national or at international legislation in an effort to provide the special protection of women in the face of men serve to prevent the unjust treatment of women in work life because of their biological functions and family responsibilities and in this way to provide equality.

In line with the provisions included in the Constitution protecting women and explained above, special regulations were made aimed at protecting women in Labor Law legislation and laws and bylaws[183].

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[181] Ibid 180.

[182] 41th Article –The Protection of the Family /2. The government takes the necessary measures and establishes the organization to provide the welfare of the family and ensure the training of the protection of children and family planning and implementation.

[183] Onaran Yüksel, Melek;168.

### 4.3. Rights Granted By the Labor Code

#### 4.3.1. Labor Code dated 2003 and Relevant Legislation

Working women may be subject to gender discrimination in the establishment of job relation, its maintenance and termination and charging. According to the Labor Code, discrimination between men and women workers is prohibited. This fundamental rule is firstly regulated under 10th article of the Turkish Constitution as stated above and under 5th article of Labor Code. The principles of equal treatment arising from the idea of justice and using the equality principle in 10th article of the Constitution are the characteristics of a general legal principle[184]. Equal treatment means employer's treating equally between employees without searching for valid reasons[185]. This principle must not be interpreted as absolute equality. There can be discrimination between such employees. But this must be suited to the characteristic of work and objective measures[186]. According to the legal grounds of the 5th article it is stated that *"the principle of equal treatment of employees in order to determine the legal framework of work life and to comply with the United Nations' Contract of Preventing Every Kind of Discrimination Against Women approved by Turkish Republic and Union Acquis [187]"*. It was adjudged in 1st clause of 5th article of Labor Code that there cannot be discrimination based on reasons such as language, race, gender, political view, philosophical belief, religion, etc. In the 3th clause it was arranged that an employee cannot be discriminated at the stage of making labor contract, setting the appropriate conditions, implementing and terminating them due to reasons like gender and pregnancy unless there is a necessity arising from biological reasons or reasons related to the characteristic of work. Biological reasons are psychical and anatomical features peculiar to women and men and treating differently based on gender due to the mentioned reasons, does not constitute discrimination. Reasons related to the characteristic of work are in question in cases when it is contradictory to the

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[184] Tuncay,137.
[185] Hamdi Mollamahmutoğlu, **İş Hukuku**, 2. bsk., Turhan Kitabevi, Ankara 2005; 430
[186] Çelik; 179.
[187] Süzek; 407.

characteristics of the work to expect a work to be done by the other sex[188]. But the reasons related to the characteristic of work must be discussed as well. Otherwise, prohibition of gender discrimination will be violated[189].

According to the 5th article[190] of Labor Code , the employer can not treat differently an employee at the stage of making labor contract, setting the appropriate conditions, implementing and terminating them due to reasons like gender and pregnancy unless there is a necessity arising from biological reasons or reasons related to the characteristic of work. Pursuant to the 3th clause of 5th article of Labor Code, *"the employer can not treat differently towards an employee at the stage of making Labor contract, setting the appropriate conditions, implementing and terminating them due to reasons like gender and pregnancy unless there is a necessity arising from biological reasons or reasons related to the characteristic of work."* As explained clearly in the aforementioned regulation employer's treating differently considering biological reasons or reasons related to the characteristic of work will not be evaluated within the framework of prohibition of discrimination. By biological reasons it is meant psychological and anatomical features peculiar to women and men. Reasons related to the characteristic of work means that the description of work at first requires to belong to a sex and expecting the other sex to do the job is contradictory to the nature and obligatory characteristics of work[191].

Treating equally to the employees at work and creating equal working conditions for the employees doing the same work is a liability acknowledged by labor

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[188] Günay, Cevdet İlhan; **İş Kanunu Şerhi: Açıklama-Yargı Kararları- İlgili Mevzuat**, C. I, 2bsk. Yetkin Yayınları, Ankara 2006; 256.

[189] Keser, Hakan; "**Avrupa Birliği Bünyesinde Bireysel İş Hukukunun Dayandığı Esaslar**", İzmir Barosu Dergisi, Ocak 2002,; 1

[190] The significant parts of 5th article of the principle of equality are as follows : "..
The employer can not treat differently to full time employee in the face of part time employee, to definite time working employee in the face of definite time working employee unless he has valid reasons.; The employer can not treat differently to an employee directly or indirectly in the forming of labor contract, establishing conditions, implementing them and terminating it due to gender or pregnancy unless he is obliged by biological reasons or reasons about the characteristic of work. A lower wage can not be decided for the same work or a work in equal value just due to gender. ... The employee is obliged to prove that the employer violates the provisions of clause above on the condition that the provisions of 20th article. But the employer is obliged to prove that such a violation does not exist when the employee reveals a situation strongly demonstrating the possibility of existence of a violation.

[191] Mollamahmutoğlu; 437.

law and based on the principle of justice in general[192]. In line with the regulation in 10th article of the Constitution it is stated in 1st clause of 5th article that there can not be discrimination based on reasons such as language race, gender, political view, philosophical belief, religion, etc. In the 2nd clause of the mentioned article, the employer was forbidden to make discrimination between employees either for a full or partial duration, definite or indefinite period, in other words because of the type of contract, in the 3th article it was regulated that there can not be discrimination due to reasons like gender and pregnancy unless there is a necessity arising from biological reasons or reasons related to the characteristic of work. According to other regulations in the article a lower wage for the same work or same conditions based on sex can not be decided and for this reason the implementation of distinctive protective provisions does not validate the implementation of a lower wage. The employer can not make discrimination between his employees in any way based on the reasons included in the relevant regulation. Consequently in the fields requiring an absolute compliance to the rights and freedoms of the person, obligation of equal treatment finds an absolute field of application[193]. It is required to mention about a significant decision regarding this matter given by the Supreme Court of Appeals: it is specified in the decision that non-payment of severance benefit and pay in lieu of notice to the worker whose labor contract was terminated due to childbirth, shall not legitimize the termination thereof, and worker shall receive compensation for bad faith for such unfair termination. Furthermore it is prohibited the distinctions against woman through some amendments and it are stated that language, religion, race and gender discrimination shall not be made is stated in the following decision: "*Disputes assemble in one point regarding that whether plaintiff shall receive any compensation for bad faith. In conformity with 10th Article of the constitution, all individuals are equal without any discrimination before the law, irrespective of language, race, color, sex, political opinion, philosophical belief, religion and sect, or any such considerations. "Second article of the Covenant on Economic, Social and Cultural Rights come into force on 23.03.10.1973 prohibits the general discrimination. Third article prohibits the special discrimination against women. International covenants and this amendment of the Constitution reflected on*

[192] Çelik;177.
[193] Ertürk, Şükran**,; İş İlişkisinde Temel Haklar**, Ankara 2002; 109.

*Labor Code dated 2003, which was not in effect on that termination date. Employee may not carry out any direct or different transaction because of the pregnancy or gender upon the termination of labor act in accordance with the 5th Article of the act at issue. On the other hand, the same article contemplates sanction. Compensation for bad faith is regulated under the 13/C-3 Article of the Labor Code dated 1967. It is the transposition of second article of Civil Code to Labor Law. Hereunder, right to terminate shall be deemed as abuse in the event of present of a right legally recognized, misuse of right in terms of objective bone fides rules, and other party suffering from misuse of right or creation of a damage risk. The termination of plaintiff worker's labor contract due to the pregnancy is understood from the course of events and plaintiff witnesses in the concrete event. Termination is malicious. While the acceptance of the request for the compensation for bad faith is required by the court, denial is required to be cancelled in writing."*[194]

In this sense the employer can treat differently without an intention of discrimination in the issues of employment, wages and termination of job relation based on the personal characteristic of labor contract and the freedom of contract[195]. The first clause of 5th article stated as *"there can not be discrimination based on reasons such as language race, gender, political view, philosophical belief, religion, sex etc."* is valid for *"job relation"*. This means that the prohibition of discrimination based on relevant reasons will be valid at the stages after the establishment of a job relation[196]. It was stated that the regulation in the first clause of 5th article of the Labor Code is valid in the job relation and there is not a clear regulation in the Law about the job announcements having a discriminatory quality. But according to the evaluation made objectively, making a job announcement having a characteristic of creating discrimination unless it is not required by the characteristic of work or using remarks only directed to a sex group in the job announcement constitute a contradiction to the principle of equality included in 10th article of the Constitution. Such discriminatory job announcements of the employer can not be evaluated within the framework of freedom of contract in the

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[194] Yargıtay 9. Hukuk Dairesi File no. 2004/25538, Decree No. 2005/14932 Date. 28.04.2005

[195] Please see title, " Different Dimension in Protection of Maternity Rights of Women; Questions Directed in Job Interviews" stated above due to its relevance with the subject

[196] Süzek**, İş Hukuku**, İstanbul 2005; 333.

face of 10th article of the Constitution and it must be acknowledged that it violates personal rights by means of imposing limitation on the right of improving physical assets of people[197].

At this point a detail regarding bad faith compensation shall be briefly mentioned. According to Labor Code, in order for a woman to benefit from the rights and compensations granted, shall bear some conditions that are stated in the Labor Code like having at least 6 months of seniority and other conditions mentioned therein. Women who do not bear such conditions shall be entitled to bad faith compensation if her labor contract is terminated due to an unfair reason like her pregnancy or motherhood or family responsibilities.

It was ensured in the 4th clause of 5th article of the Law that employer cannot make discrimination based on gender regarding the issue of wage. According to this a lower wage can not be decided for the same and equal work based on sex. According to 5th clause of the article "The implementation of distinctive protective provisions due to the sex of the employee does not validate the implementation of a lower wage." Within the framework of this regulation paying a lower wage to a working woman working equally just because she is woman is not in question and the implementation of some protective provisions in the legislation directed to working women being in the first place health and safety of the employee because of biological reasons does not validate paying a lower wage[198].

According to the regulation in 4th article in parallel with the relevant Union Acquis differences in wages not just for works having the same characteristic but also for works having equal value but different characteristic is not in question. While a different wage among working men and women because of their sex is not projected, it is possible to pay lower wages considering other objective reasons such as seniority, efficiency, level of education[199].

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[197] Onaran Yüksel, 144.
[198] Süzek, 408.
[199] Mollamahmutoğlu, 437.

In the 18th article of the Labor Code , titled *"cancellation on a valid reason",* after it is stated that the employer must rely on the efficiency and behaviors of the employee and the employer must rely on a valid reason raising from the necessities of the workplace and work for the cancellation of the employee having at least six months of length of service at workplaces employing thirty or more employees and *"race, color, marital status, family responsibilities, pregnancy, birth, religion, political view etc"* and *"working women's not coming to work pursuant to 74th article because of pregnancy, birth and maternal leave"* are counted explicitly among the situations that will not be reason of cancellation. Therefore if the employer cancels the labor contract because of the aforementioned reasons by violating the obligation of equal treatment, abusing the right of cancellation is in question.

According to 55th article, the days working women are not working after birth or before birth are regarded as having worked within the scope of the annual paid leave pursuant to the principle of equality accepted by Labor Law number 4857. When it is impossible for the employee to work due to pregnancy and birth temporarily, the labor contract is suspended[200]. In other words, if a woman worker is on maternity leave, total 16 weeks of maternity leave specified under 74/1 Article of Labor Code shall be taken into account in accounting of the annual leave period[201]. In addition to the times the employee has actually spent at work, the times she did not actually perform work or the times she spent without doing her actual work are included in the daily working times in the Labor Code. One of these situations included in 66th article of the Labor Code is the times working women will determine to breastfeed their children[202]. According to this pursuant to 74th article of the Code, working women are given totally one and a half hour breastfeeding leave in a day to breastfeed their babies younger than one year. It is the employee who will determine between which hours and in what portions she will take such leave. However in case that the leave of the worker due to childbirth and pregnancy extends over a particular period (Labor Law, Article 25) and worker absents for a long time due to pregnancy employee may terminate the labor act of the worker

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[200] Aktay, Nizamaettin; Arıcı, Kadir; Kaplan Senyen, E. Tuncay; **İş Hukuku**;Seçkin Kitabevi; Genişletilmiş 3. Baskı; Ankara 2009;172.

[201] Caniklioğlu Nurşen, "İşçinin Yıllık Ücretli İzin Talep Hakkı ve İznin Kullandırılmasının Sonuçları", Prof. Dr. Nuri Çelik'e Armağan, C.2, İstanbul 2001; 1152.

[202] Ibid, 199.

concerned[203]. This provision may give impression of a provision of a right granted to the employer to terminate the contract at the first glance. However the issue that accords the employee the right of termination is related to the period following the maternity leave and two weeks' notice. To expect from the employee to employ the worker who does not come to the work for a long time up to 7 months (16 weeks+ 2-8 weeks +6 weeks) will be unfair. For this reason, it is not feasible to say that this amendment in our legislation is a kind of discrimination against pregnant women[204].

In order to protect the working women *"women are forbidden to work in jobs that is underground or underwater such as mining, laying cables, drainage and tunnel construction."* in 72nd article.

With 78th article of the Labor Code, titled *"By laws and legislations of health and security",* it is regulated that the Ministry of Labor and Social Security shall issue bylaws and legislations to take measures of working health and safety, prevent work accidents and occupational diseases, regulate the working conditions of the persons to be protected because of their age, gender and private situations.

Again according to the regulation in 88th article "It is shown in a legislation that is going to be prepared by the Ministry of Labor and Social Security by taking the opinion of the Ministry of Health within which periods and in what kind of works pregnant or breastfeeding working women are forbidden to work and to which conditions and formalities they will obey in works that are appropriate for them, under which circumstances breastfeeding rooms and kindergartens are to be founded."

In the incident subject to the resolution[205] of Supreme Court dated 17.9.2007 the working woman took "maternal leave" almost after five months she started working and her labor contract was cancelled on the condition that she will be paid payment in lieu of notice amounting to her two weeks salary when she comes back to work. The working women demanded compensation for bad faith damages by asserting that the

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[203] Süzek, 505.

[204] Özer, Hatice Duygu; **Doğum İzninin İşçinin Kıdemine ve İş Sözleşmesinin Feshine Etkisi.** Çalışma ve Toplum Dergisi, İnternet Baskısı; Soruce : http://calismatoplum.org/sayi21/ozer.pdf.

[205] Yarg. 9.HD, 17.9.2007, E.2007/29103, K.2007/26743

cancellation was made due to pregnancy and birth in addition to gap payment in lieu of notice that will be counted by adding the maternal leave to the working time[206]. According to the resolution: *"The plaintiff employee also demanded compensation for bad faith damages by asserting that the cancellation was made due to her pregnancy and birth." Even if it was decided that the demand be rejected because the bad faith was not proven the witnesses listened stated clearly that the plaintiff was required to resign because of her pregnancy, she did not resign and her labor contract was cancelled after birth. Even if it is not necessary to demonstrate a reason in the pre-notified cancellation of the employee not in the scope of labor security, it was not proven in the concrete incident that in the face of the claim of bad faith of the plaintiff and the specified statements of the witnesses the employer grounded on a legitimate and reasonable reason. According to this demand of compensation for the bad faith damages of the plaintiff must also be accepted. Its rejection with a written justification is another reason of violation."*

#### 4.3.1.1. The Bylaw Regarding the Working Conditions of Pregnant and Breastfeeding Women and Kindergartens

This Bylaw issued pursuant to 78th and 88th articles of the Labor Code, determines the implementation of the measures that are going to provide and improve working health and safety conditions of pregnant and breastfeeding women, within which periods and in what kind of works these working women are forbidden to work and to which conditions and formalities they shall obey in works that are appropriate for them or under which circumstances breastfeeding rooms and kindergartens are to be founded.

Pursuant to the 7th article of the mentioned Bylaw, women who are pregnant while their labor contract is still in effect are obliged to inform their employer about their pregnancy. According to the mentioned article *"the employee informs the employer when she starts to breastfeed or get pregnant."* It is fundamental that the notice is made on time to make the evaluation of the "protective and preventive

[206] Ekonomi, Münir; **Kadın İşçilerin Gebelik ve Doğum Halinde Feshe Karşı Korunması;** Çalışma ve Toplum Dergisi, Mart 2009; 19.

measures" to be taken regarding the health of the woman employee and her child and for the employer to fulfill the obligations details of which are regulated in the bylaw. Otherwise the woman worker shall have no right to claim from her employer, for rights granted by the regulations.

According to 7/2 clause of the bylaw, when determining the measures to be taken “The employer has to take into account the stress factors such as shift working because of job, the fear of losing job, work load etc. and psycho-social and medical factors that affect the employee personally. The pregnant, puerperant and breastfeeding employee is informed about the result of the evaluation and the measures to be taken for security and health at work.

Pursuant to 14th article of the Bylaw, the employer is obliged to give breastfeeding leave to nursing working women at specific hours of the day within the scope of the article 74 of the Labor Code The times specified for breastfeeding are included in working times. In the case of mother's not being able to breastfeed her child for any reason the aforementioned leave must be given by the employer. The purpose of the regulation is to enable the mother to care for her child closely.

According to 15th article of the Bylaw regulating the obligation of opening kindergartens and rooms, it is compulsory for the employer to found a breastfeeding room at most 250 meters away from the workplace to provide the care of children under one year old age and to enable nursing employees to breastfeed their children at workplaces employing 100-150 women employees no matter what their age and marital status are.(m.15/I)

It is compulsory for the employer to found a dormitory close to the workplace and separate from working rooms at workplaces employing more than 150 women employees no matter what their age and marital status are to provide the care of children between 0-6 age and to enable nursing employees to breastfeed their children. The employers under the obligation of opening dormitories must also open kindergartens inside the dormitories. The employer is obliged to provide a vehicle if the dormitory is 250 meters away from the workplace.

According to the Labor Code, the pregnant working woman must be employed to easy jobs more appropriate for her health if it is considered necessary with the medical report (article 74/ 4). And according to the Bylaw working women are forbidden to work more than seven and a half hours beginning from the diagnosis of their pregnancy with medical report until birth (article 10).

According to 13th article of Bylaw, for the nursing women to be employed at jobs that is specified to be appropriate for women in the Heavy and Dangerous Jobs Bylaw[207], it must be determined by report that there is no obstacle for them to work after being getting examined by the doctor of workplace, common health unit of workplace, dispensers of employee health and if they do not exist respectively by the closest Social Security Institution, Health Care Center, doctors of State or municipality (article13/1). The employer whose working is identified to be harmful at heavy and dangerous jobs by medical report is forbidden to work at these jobs within the first six months after birth (article13/2). According to the Directive number 92/85/EEC[208] the measures to be taken must include being granted leave of absence or the extension of maternal leave in cases when the transfer of working women to day shift is not possible in technical or objective terms or when it can not be demanded because of concrete reasons (article7/ 2).

Also according to the Bylaw again when the pregnant working women are employed at easier works, her wage can not be decrease.

According to the Bylaw again the breastfeeding employee is forbidden to work at night, during the first 6 months following birth (article 9/1). The nursing employee at night at the end of eight weeks period following birth and the breastfeeding employee after six months period are forbidden to work during the period when it determined with medical report that her working at night is harmful in terms of safety and health (article 9/2). Also working women will not be forced to work at night beginning from the diagnosis of their pregnancy with medical report until birth within the period before

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[207] See for the full text of Legislation published in the Official Journal dated 16th June 2004 and number 25494.
http://www.alomaliye.com/agir_tehlikeli_isler_yonetmeligi.htm

[208] See Council Directive 92/85/EEC , above

birth (article 9/3). And according to European Union Directive number 92/85/EEC if it is determined by medical report that harmfulness of work at night for pregnant, puerperant or nursing women in terms of safety and health is determined by national authorities of health and safety with medical report in accordance with the procedure projected by member states, they will not be forced to work at night in the period of pregnancy and the period after birth (article 7/1).

#### 4.3.1.2. The Bylaw Regarding the Working Conditions of Women at Night Shifts

The aforementioned Bylaw[209] arranges the procedures and principles regarding the night shift working of women 18 years and above. The concept of "night shift" mentioned in the Bylaw is the working time including night shifts specified in 69th article of Labor Code and not exceeding seven and a half hours as stated in the relevant provision of the Bylaw.

The employer desiring to make women employees work at night shifts has some obligations. These obligations include the notification of the name list of women to work at night shift, arranging night periods according to spouses and driving home from work. In 8th article of the Bylaw it is stated that the working women's demand that her night shift does not coincide with her husband's night shift if her husband also works at the same or separate workplace where the work is conducted by shifts will be arranged and if the couples working at the same company demand that their night shifts coincide, this demand will be met by the employer as much as possible. This provision enables working women having family responsibilities and children to leave someone at home to care for the child by arranging their working hours[210]. According to the 6th article of the aforementioned Bylaw it is adjudged that the employers at workplaces of any kind outside the borders of municipality and employers of workplaces within the borders of municipality having the difficulty of coming to work with common vehicles

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[209] The Legislation was put into effect after being published in the Official Journal dated 09.08.2004 and number 25548 and the full text of the Legislation can be accessed from; http://www.isguvenligi.net/mevzuat/4857_isig_yonetmelikleri/kadin_iscilerin_gece_postalarinda_calistirilmasi.pdf

[210] Tunçomağ, Kenan; "**Türk İş ve Sosyal Güvenlik Hukukunda Kadının Durumu**", **Ümit Yaşar Doğanay'ın Anısına Armağan**, İstanbul 1982, 126.

at shift transfer hours are obliged to take the women employees they will make work at night shifts from the nearest place to their residence and bring to workplace with appropriate vehicles.

### 4.4. Comparison of the Bylaws of Labor Law with EU Regulations

In addition to bringing difficulties in every aspect motherhood also brings various difficulties in terms of working life. Therefore working women is granted some protective provisions to enable them to lead a healthy life.

According to the Labor Code (dated 2003), it is aimed to provide equality between men and women in working life and to ensure eliminating every kind of discriminatory implementations. In accordance with this law The Bylaw Regarding the Working Conditions of Pregnant and Breastfeeding Women and Kindergartens and The Bylaw Regarding the Working Conditions of Women at Night Shifts have been renewed. With these changes made within the frame of National Programme of Harmonization with EU Acquis labor legislation was brought into conformity with the directives of EU.

#### 4.4.1. Developments Regarding Equal Remuneration

Equal pay for equal work is a permanent principle in labor legislation. Turkey approved "Equal Remuneration Convention" of ILO (No 100) and CEDAW which includes equal wage provision. The principle of "Equal pay for equal work" was approved with the Law Regarding the Alterations of Some Articles of the Labor Code dated 25.01.1950 for the first time in our Law.

With the directive of European Council number 75/117/EEC concerning "Making the Legislations of Member States about the Implementation of the Principle of Equal Pay for Women and Men, the member states are required to exclude the provisions including the gender based wage discrimination from national legislations [211]. In 5th article of the Labor Code, the principle of equal pay for equal work is included. In 4th clause of 5th article of the Labor Code the provision of "..a lower wage

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211 See 2.3.1above

for the same work or pari passu based on gender can not be decided ...” and in 5th clause the same article “the implementation of special protective provisions due to the gender of the employee does not validate the implementation of a lower wage” are included. [212].

### 4.4.2. Equal Treatment and Equal Opportunities

Directive 76/207/EEC of European Council Concerning Putting the Principle of Equal Treatment into Effect for Women and Men in Job Application, Vocational Training and Promotion and Working Conditions [213] describes the principle of equal treatment in job application for all jobs, sectors or business lines. Pursuant to the Directive the member states reserve the right of granting the application of such a job or the education necessary for this job to that gender in cases when gender is a decisive factor. Pursuant to 70th article of the Constitution “Each Turkish citizen has the right of entering into public services.” The provision of "no discrimination can be made other than the ones required by the job in employment" is included. With this article it was determined that no discrimination shall be made including gender based discrimination at the stage of employment in civil service. In addition to this, the Prime Ministry Circular number 2004/7 about “Acting In Accordance With the Principle of Equality in Employment regarding prevention of gender discrimination in employment of civil servants” was put into effect on 15th January 2004[214].

With the alteration in the law of Self Employed in Agriculture number 2926 associated with the directives number 79/7/EEC, 86/613/EEC, 86/378/EEC (amending 96/97/EC) “concerning the equal treatment of men and women in the field of social security”, the obligation of being head of the family for women was eliminated and the principle of equal treatment was provided.

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[212] Moroğlu, Nazan; **Uluslararası Belgelerde Kadın Erkek Eşitliği, İ**stanbul Barosu Yayınları, 2005, 288.

[213] See Council Directive 76/207/EEC, above

[214] Çubukçu, Nimet; “Toplumların Gelişmişlik Düzeylerini, Yaşamın Tüm Alanlarına Kadınlar ve Erkeklerin Katılımları ve Sorumluluk Paylaşımları Belirler”, (Çevrimiçi) http://mpm.org.tr/duyurular/197.asp

This principle also has to be accepted in terms of private sector. It is not enough just to prohibit gender based discrimination in employment criteria in private sector. A legal procedure that will conclude such a claim of discrimination must be determined. For example, if a company asks an applicant whether she is pregnant or not when she is interviewed or the company does not hire married or married with children women applicants because of these reasons or does not give promotion or provide on-the-job training, the question of what must be done to eliminate the injury must be clarified[215]. A principle titled equal treatment is included in the Labor Code to make the principle of providing equality in employment and working conditions valid for private sector [216]. According to 5th article titled “the principle of equal treatment”, "There can not be discrimination based on reasons such as language, race, gender, political view, philosophical belief, religion, etc. in job relations.” Also it is regulated that there can not be gender based discrimination at the stage of forming of a labor contract, determining working conditions, their implementation and the termination of labor contract. The discrimination based on gender and pregnancy is prohibited under the mentioned article. These terms should be assessed under the abovementioned Regulations of the European Union. Therefore it will be mentioned about the discrimination if a worker faces more negative and less favorable attitude which one another worker is object of or will be object of due to the discrimination accounts such as sex, pregnancy or race, language. There is a criterion prohibited lawfully behind of decision of the employee regarding the direct discrimination. For instance, decision pertaining to recruitment or dismiss is resulted from worker’s pregnancy or gender. In indirect discrimination, employee’s decision, behavior or transactions which are not apparently related to the accounts of discriminations prohibited put the one into negative situation against the other of opposite gender and affect negatively. Criterion, behavior or decision constituting discrimination is not proved to be right due to an account deemed legally legitimate[217]. The provision “The employer can not make discrimination against an employee at the stage of making labor contract, setting the appropriate conditions, implementing and terminating them due to reasons like gender and pregnancy unless there is a necessity

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[215] Onaran Yüksel, 137.

[216] For Article 5, please see footnote 190

[217] Özdemir, Erdem. (2006); “**İş Sözleşmesinden Doğan Uyuşmazlıklarda İspat Yükü ve Araçlar”**, Istanbul, 222-224.

arising from biological reasons or reasons related to the characteristic of work." is included in the new Labor Code.

#### 4.4.3. The Burden of Proof

The Directives 97/80/EC and 2000/78/EC regulate the burden of proof in charges regarding discrimination claims. The burden of proof belongs to the plaintiff as a rule but once the plaintiff reveals the presumptions of discrimination, the burden of proof shall pertain to the defendant. Member states can set forth rules of burden of proof in favor of the plaintiff. Burden of Proof rules under Turkish Civil Code is effective in Labor Law as well. However, diversities peculiar to exceptional cases in this regard may occur due to the difference of understanding regarding the principle of "interpretation in favor of the worker"[218]. The burden of proof in cases of discrimination based on sex is included in 5th article of the Labor Code. In the last clause of the article titled "the principle of equal treatment", it is stated that the employee will have the obligation of proving employer's violating the other provisions of the article; but when the employee reveals a situation strongly demonstrating the possible existence of a violation, the employer shall have the obligation of proving that such a violation does not exist [219]. According to Article 20, the burden of proof shall pertain to the employer regarding the claims due to unfair termination of the worker's labor contract. However if the employee brings up facts that termination grounds are based on a different account, the employee shall prove that fact. It is accepted that termination of the pregnant workers' labor contract, violates the rules of employee's bona fides [220]. However, it is not feasible to perceive the termination of labor contacts of each pregnant worker as malicious; unless it is proved that the termination is based on this phenomenon. Herein, worker is responsible for the burden of proof and it is sustained that bad faith should be revealed with convincing evident[221]. However, as the faith of the employee is to be proved, adversity in proof should be moderated, taking into

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[218] Özdemir;306.
[219] Kurt, 8.
[220] Onaran,251.
[221] Özdemir, 344.

consideration points such as presumption of facts, chronological development of the events. Thus the Supreme Court of Appeals sets forth the following in its decision [222]:

"The termination of plaintiff worker's labor contract due to the pregnancy is understood from the course of events and plaintiff witnesses in the concrete event. ***Termination is malicious. While the request for the compensation for bad faith is required by the court, denial is required to be cancelled."***

#### 4.4.4. Regulations Regarding Pregnant Women, Confinement and Nursing Women Workers

European Council Directive No. 92/85/EEC is on taking measures to encourage developments in the occupational safety and health of pregnant women, women who recently gave birth and breastfeeding women workers. Amendments on Labor Law and "regulation stipulating pregnant and breastfeeding women's working conditions, nursing rooms and children's nurseries that has been effective as a result thereof and our legislation is conformed with EU legislation regarding to occupational conditions of pregnant, nursing and puerperant women workers. The Directive enforces employers to detect chemical, physical and biological risks which could be hazardous for pregnant and breastfeeding workers in working areas and determine to what kinds of measures to be taken, and inform the employees about such risks and measures taken.

Employers are under obligation to take the necessary measures so as to assure occupational safety and health; provide the equipments in a complete manner; keep the employees informed of occupational risks at the workplace, measures to be taken, their legal rights and undertaking; and provide required health and security training in conformance with 77$^{th}$ article of Labor Code. Moving the worker under this directive to another job when deemed necessary and in case of occurrence thereof, Directive stipulates that respective worker shall be granted leave in conformity with national legislation, following the establishment of the risks for workers. If the results of the assessment detect a risk to the occupational safety or health or an effect on the pregnancy or breastfeeding of a worker, the employer shall temporarily adjust the

[222] Yargıtay 9. HD; File No. 2004/25538; Decree No 2005/14932; Date 28.04.2005

working conditions and/or the working hours of the concerned worker, providing that the exposure of that worker to such risks is avoided under regulation, in conformance with Directive. If the arrangement of the working conditions and/or working hours is not feasible, it is established that the employer shall take the necessary measures to move the respective worker to another job. It is required to regularly provide time off for natal inspection so as to avoid mother's and child's life from any kinds of pregnancy and birth risks.[223]

If deemed necessary by a medical certificate, directive stipulates that pregnant worker shall be employed in appropriate light works for her healthy without any reduction in payments. There are such provisions regulating that if her moving to another job is not feasible, the worker concerned shall be granted unpaid leave for the period required to protect her safety or health in the event that the worker concerned requests so, and that annual leave right shall not be taken into account in her payment[224].

Worker shall be entitled to a continuous period of maternity leave of at least 14 weeks, before and/or after childbirth in accordance with Directive. This period is 16 weeks in total, as eight weeks before and eight weeks after the childbirth (18 weeks for plural pregnancy) according to Turkish Labor Code.

#### 4.4.5. Parental Leave and Prohibition of Overworking

Directive 96/34/EEC regulates parental leave right for at least three months to men and women workers who have child on the grounds of the birth or adoption, so as to take care of the child, until it reaches maximum 8 years old[225]. Conditions for application rules and implementation for parental leave shall be defined by legislation or collective agreement in the Member States, as long as the minimum requirements of this agreement are respected. It is indentified that "parental leave" is regulated under the Draft of Law Pertaining to Readjustments of Maternity Leaves represented to the

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[223] Sözer, Ali Nazım; "**Hamilelik ve İş Hukukundaki Sonuçları**", **Adalet Dergisi**, S. 6, Kasım-Aralık,1982 1053.

[224] Centel, Tankut; **İş Kanunu ve İlgili Yönetmelikler,** MESS Issue No: 457, Istanbul, 2005, 424.

[225] See Council Directive 96/34/EC, above.

Presidency at the Turkey International Program Regarding the Undertaking of European Union Acquis aiming to establish parental leave. "It is targeted to adjust unpaid maternity leave of our women working as employees and officers as a parental leave for the use of both mothers and fathers and benefit from such rights of leave in case of adaptation of child, in Draft Code[226].

Furthermore, it is resolved that workers who are pregnant or have recently given birth shall not be imposed to over work pursuant to 8th Article of Regulation on Overtime Working and Working Extended Hours under Labor Code [227]. Herein, it will be beneficial to mention about a decision of the Supreme Court of Appeals stating that breast-feeding leave shall not be deemed as overwork and in case of maternity leave, any overwork payment for its equivalent shall not be requested "... *Amendment regulating that daily 1.5 hours* breast-feeding leave *is required to be provided to the woman worker up to a year, was enacted under 74 Article of Labor Law No. 485.Sanction in respect with non provision of* breast-feeding leave to *employee is regulated under 104th Article of the Law mentioned. Also, it has not been yet mentioned about any law in regard to additional payment to workers in case of non-provision of breast-feeding leave. So, it is wrong to conclude by assessing the breast-feeding leave as overworking time. For, overworking time more than weekly 45 hours of plaintiff worker is accounted and secured under the provision. Rejection of the request regarding the compensation for malicious is required*[228].

### 4.5. Social Insurances and General Health Insurance Code [229] [230] (Social Insurance Code)

"Maternity" begins following the childbirth in its literal meaning and includes 3 periods in social security meaning. "Maternity" is defined as a social risk and

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226 Çubukçu, Nimet; "Toplumların Gelismislik Düzeylerini, Yasamın Tüm Alanlarına Kadınlar ve Erkeklerin Katılımları ve Sorumluluk Paylasımları Belirler", (Çevrimiçi) http://mpm.org.tr/duyurular/197.asp

227 RG. 6.4.2004, No. 25425

228 Yargıtay 9. H D 2007/4893E, 2007/13796 K,01.05.2007

229 The Law was issued in Offical Journal no 26200 and dated 31/5/2006.

230 Full text can be obtained from http://www.ssk.gov.tr/wps/wcm/connect/c71ae3004e2b80d1b683beb00c7ce123/5510.pdf?MOD=AJPERES (official web site of the Ministry of Social Security)

composes of pregnancy period, birth period and confinement period referred to convalescence time after the birth. This process generates a temporarily incapacity for the woman worker. Not only insured woman but also maternity of the insured wife of insured man worker has a significant effect on work life. Treatment, doctor controls, birth, hospital charges, breastfeeding, and nutrition of the baby require some conditions to be undertaken by employee as well as employers. In brief, maternity insurance aims to provide health benefit for the pregnancy of insured women workers or uninsured wife of the insured men worker and to satisfy the consequential income loss thereof[231].

Respective provisions of the Code are mentioned below : According to article 15 of the mentioned Code, Maternity is regarded as disablement and illness with regard to pregnancy and maternity continuing up to first eight weeks from the onset of pregnancy of insured woman or uninsured wife of an insured man and first ten weeks in case of multiple pregnancy. Furthermore, under article 16 it is stated that the rights granted in maternity. According to the regulation, nursing benefit is granted monthly to insured woman or insured man whose wife has given birth, during the first six months following the birth in one-third proportion of minimum wage effective on her childbirth date provided that baby is alive. Insured woman and insured man whose wife shall benefit from the rights of maternity are provided with nursing benefit provided that their premium are paid at least for three months within the fifteen months before the date of birth, if the those provided with nursing benefit whose insurances have expired have a baby within three hundred days following the expiry date of insurance in accordance with 9th Article.

Maternity insurance benefits under mentioned article are more than the sickness insurance and also child protection is targeted besides the protection of the mother[232]. Any grants provided under maternity insurance can be collected under temporary incapacity benefits, nursing benefits and health services headings under the mentioned Code[233].

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[231] Can; Ekmekçi; 302

[232] Güzel, Ali; Okur, A.Rıza; Caniklioğlu, Nurşen; **Sosyal Güvenlik Hukuku;** 5510 Sayılı Kanuna Göre Hazırlanmış 12. Bası; Beta Yayınları; Nisan 2009; 404.

[233] Ibid, 222; 405 – 406.

### 4.5.1. Maternity Insurance under Social Insurances and General Health Insurance Code

Under the condition that women workers and / or men workers whose wives shall benefit from the rights granted under the Social Insurance Code bear the necessary conditions regulated under the mentioned article, are granted the following rights :

### 4.5.2. Health allowance, Illness and /or Miscarriage during Pregnancy

In case that pregnant woman has a miscarriage, she shall benefit from maternity insurance not sickness insurance under the Social Insurances Code. In this regard, any conditions such as diseases or miscarriage which pregnant woman worker and wife of insured man worker faced shall be secured under the maternity insurance.

### 4.5.3. Nursing Allowance

Nursing allowance is provided to every women under maternity insurance for the new born child on the condition that it is alive and under the condition that the women bears the conditions regulated by the Social Insurance Code (having being insured for a certain time; having a certain service period, which are regulated in the Code mentioned). This allowance shall be paid to the insured women workers or to the wives of insured men workers who have given birth, even after the expiration of insurance. For such allowance, it is necessary that the child to be born within the 300 days following the expiration of insurance as required by 16th Article of Social Insurance Code (article 16/5).

### 4.5.4. Temporary Incapacity Allowance

Insured women are provided daily allowance of incapacity to work during the temporary incapacity due to the maternity in accordance with 16$^{th}$ article of the Social Insurance Code. This allowance is provided (for period of 8 weeks as eight weeks both before and after the childbirth and 2 weeks for most pregnancy) for periods of leaves contemplated in Labor Code.

### 4.5.6. Reducing or Reclaiming the Temporary Incapacity Allowance

Treatment charges of the insured for maternity may be reduced or reclaimed in case that it is detected with medical certificate that the insured woman failed to comply with the treatments determined by the doctor. Though this is specified under 22nd article and it is arranged that a regulation regarding its implementation will be established. It is still not clear how the supervision of the insured shall be made. According to article 22 of the Social Insurance Code, **i**n case that the insured suffers from occupational accidents and professional sickness, falls ill, duration of their treatment extends, or incapacity to works increases due to the reasons provided below, temporary incapacity or continuous incapacity benefit is reduced by the Institution in one-fourth rate, predicating on extended duration of treatment or increased incapacity, if the insured apart from those who do not have any penal responsibility and who have a valid excuse fail in complying with the measures and advices declared by doctor regarding occupational accidents, professional sickness, illness, or maternity and thereupon give rise to extension of the duration of treatment and increase in incapacity. Furthermore it is stated that the incapacity benefit shall be reduced by the Institution in one-third grounding on extend of fault of insured who suffers from occupational accident, or professional sickness, or falls ill, except from insured bearing no penal responsibility. Finally no temporary incapacity benefit is granted to the insured worker without having any medical certificate of no objection and certificate stating cessation of treatment by their doctor and any benefits paid are claimed back.

### 4.5.7. Debt of Services (Birth Dept)

A significant opportunity provided by the mentioned Code, is the grant of the right to loan for unpaid leave days in case of maternity of insured women. The process is established in 41st article. It is stated that for those deemed insured in accordance with this Code, unpaid maternity or birth leave periods provided as per laws can be indebted if they or their beneficiaries make a written request and daily gain is somewhere between the lower limit and upper limit grounding on 82nd Article on date of request and providing that they pay their premiums to be calculated over % 32 proportion of

daily gain to be fixed by themselves within a month from the date of debt notification, periods being indebted are deemed for their insurances.

Birth debt is a new implementation and also it is not common in other foreign countries as well[234]. Details thereof were established within scope of the notification issued in September, 2008. This opportunity for working women is a big challenge when compared to EU legislation. By this way, women workers are granted the right to can take care of their children without being deprived of economic support.

### 4.6. Evaluation of the Maternity Rights of Working Women Under EU Law and Turkish Law

As explained above in details, even if maternity starts by birth, according to labor and social security law, maternity covers three stages. That is pregnancy, birth and confinement. In labor law and in Turkish Social Security Code the maternal rights are regulated. Besides the maternal rights, according to the Turkish Labor Code it is forbidden to terminate the contract of the women worker due to maternity situation. Under article 20, the employer has to prove that the termination is made on legal grounds. However if the worker claims that the termination was made due to any other reason, in that case the claimant has to prove his claim. But according to the decisions of the Supreme Court and just as accepted in the EU, this article has to be implemented in an easy way. In this means, by the historical progress of the events and by witness statements, after the discrimination fact is put forward, it shall be the employers' duty to prove that no discrimination is made.

EU Legislation has developed detailed amendments both to maintain working conditions and ensure women workers' health conditions together with their children's development, for protection of maternity rights of women workers. Necessary amendments have been made in Turkish Laws due to EU harmonization process. Essentially, there have been amendments regarding protection of maternity rights of women workers as from the beginning date of the Republic, in our country, before UN works and subsequently the legal amendments of EU. It shows both Turkey's emphasis

[234] Ekmekçi, Tuncay; **Yeni Mezuat Açısından Sosyal Güvenlik Hukuku'nun Esasları**;466.

on this matter and emphasis given on maternity rights of women workers. It is clearly seen that protective provisions within Turkish Law are comprehensive in terms of working conditions of women workers in comparison with EU legislation and adequate to protect women's health and fertility and provides protection specified in EU Directives [235]. While 4857 Labor Law grants women rest and leave right to breastfeed, raise and care her child in case of pregnancy, birth and maternity, no amendments pertaining fathers have been made on this matter, in the respective Law. However, in EU countries parental leave directive secured men's right of "maternity leave" at least for 3 months in 1996, in the event of and birth or child adoption. One way differentiating from EU legislation is amendment pertaining to "parental leave." In this regard, works on draft of law have been conducted so as to align with EU legislation; it can be stated that our legislation will be fully harmonized with EU legislation in terms of amendments referring to protection of maternity rights of women workers, in the event that above mentioned draft is legitimatized. Responsibility to harmonize our national legislation with "Council Directive 96/34/EC on The Framework Agreement On Parental Leave" of EU Council has been imposed on Directorate General on the Status of Women. The mentioned draft law regulating parental leave is prepared through utilizing opinions and suggestions of parties concerned and taken its place on the agenda of Turkish National Assembly.

Turkey has established laws pertaining to harmonization of work life in parallel with implementation of member states in European Union membership negations process. It has been a result of this process that maternity leave period has been increased up to 16 weeks, and in plural pregnancy up to 18 weeks under Turkish Labor Code.

Maternity leave is 16 weeks and over in most European countries. For example, Austria, France, Holland, Spain, Luxembourg, and Belgium grant 16 weeks maternity leave for woman workers, Greece grants 17 weeks, Italy grants 21 weeks and Denmark grants 28 weeks.[236] Pregnant women may work up to 3 weeks before the

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[235] Onaran Yüksel, 80.

[236] Şakar, Müjdat; **Gerekçeli ve İçtihatlı İş Kanunu Yorumu**, Ankara: Yaklaşım Yayıncılık San.Tic. A.Ş., 2006, 510.

childbirth with doctor consent if health condition enables to work, time passed by working is added to postpartum period; so it is provided that mothers can have more time to spend with their children. If deemed proper by the doctor, women workers may be employed with lighter works in accordance with the types of work. In such a situation, no reduction is made on worker wage.[237]

[237] Şakar, 2006,;509.

# CONCLUSION

The reason for selecting the subject of this thesis was to examine and lay down the regulations about working women's maternal benefits and to learn how much it is considered in the EU, besides the regulations in Turkish law. It is observed that despite the wide ranged rights working women are granted, when it comes to pregnancy, women come face to face with critical problems. There are many reasons under these problems. First of all, nations can not get themselves free of the believes that rely upon a long historical custom Through history, due to women's characteristic and due to patriarchal society structure women were always given heavy responsibilities within family life. Due to this understanding, it was always accepted that women and men should be in different positions in social life and family, works peculiar to women and men have been distinguished; therefore it has resulted in some situations which are called today as discrimination against women. Such discrimination has been the major problem faced by women workers who are trying to hold on despite such problems in working life, both during and after pregnancy.

The most affecting factors on people within the environmental conditions are characteristics of the society. Each individual lives in a specific cultural structure and gets affected from that structure. Ideals and interests of individuals are formed under these cultural conditions. There are many indirect or direct situations which constitute an obstacle in preventing women to improve themselves in work life. Most institutions were set up by men and are based on men's experiments. Although, it is accepted that women of last generation have taken part substantially in labor force and in general they have contributed to working life, organizational definitions regarding leadership is still burdened with stereotype specifications referred to men, such as firm, aggressive, determined. On the other hand, it is doubtless that legal protection is available when taken into account all legal amendments. Thus, when respective legal amendments are analyzed, it is appropriate to say that protection of women maternity rights in Turkey are fully harmonized with European Union legislation. While full harmonization is not still available, amendments carried out during the EU harmonization process,

continuing works on drafts of law and therewith working groups created, units to protect women's rights and non-governmental institutions as well as projects conducted, constitute the basis of the developments towards securing such rights.

It is important to activate mechanisms to facilitate implementations of legal amendments to provide protection of maternity rights of women workers both in terms of Turkish legislation and European Union legislation. When taking into account that after women entered into working life and their role in working life extended, it was again women demanding for their rights and upon such demand amendments have been made nationally and internationally. The major factor which affected the states and the EU was principally the provision of economic development. Despite the amendments of rights granted in great detail, sanctions pertaining to non-fulfillment thereof are not adequate. Establishing a mechanism to supervise the implementations of such rights and sanctions thereof will be beneficial; such as a supervisory authority working effectively in supervising the employers in work place for providing rights of women workers who are not permitted to use their maternal rights.

Family responsibilities of women workers constitute a significant obstacle in regards to employment opportunities and this triggers the discriminatory structuring in labor markets. Consequently it is not fully possible for women to take part in working life equally as men do, due to restraints faced within in working life despite legal protections.

Maternity rights of women workers are human rights as well as being a physical need for both the mother and the child. Even if it was due to economical and social reasons, the need to regulate women worker's maternal benefits, it shall be accepted that in both EU legislation and Turkish Laws essential regulations are made.

# BIBLIOGRAPHY

Acuner, Selma Yapıcı; **Diyalog**, KA-DER, , Ankara 2006.

Akman, M. Sait; Dartan, Muzaffer; Nas, Çiğdem, (2004), "Çalışma Standartları – Ticaret İlişkisi: Türkiye'nin Avrupa Birliğine Katılım Sürecinde Bir Değerlendirme";**Marmara Avrupa Çalışmaları Dergisi**, Sayı: 1-2, Cilt: 12

Aktay, Nizamaettin; Arıcı, Kadir; Kaplan Senyen; E. Tuncay; **İş Hukuku**; Seçkin Kitabevi; Genişletilmiş 3. Baskı; Ankara 2009

Arısoy, Alper; Demir, Nesrin; Avrupa Birliği Sosyal Hukukunda Ayrımcılıkla Mücadele Kapsamında Kadın Erkek Eşitliği, **Ege Akademik Bakış Dergisi**, Cilt. 7, Sayı. 2, 2007

Aydın, Senem; **Avrupa Birliği'nde Kadın Hakları ve Türkiye**; İktisadi Kalkınma Vakfı, 2003, İKV Yayınları No:175, İstanbul

Aydıner, Ayşe; **Avrupa Birliğine Giriş Sürecinde Avrupa Eğitim Politikaları ve Türk Eğitim Sistemine Yansıması**, Yayınlanmamış Yüksek Lisans Tezi, Gazi Üniversitesi, Ankara, 2006.

Batum, Süheyl; **Avrupa İnsan Hakları Sözleşmesi ve Türk Anayasal Sistemine Etkileri**, İstanbul 1993.

Bolayır, Cenk; **Amsterdam Antlaşması: Bütünleştirilmiş Haliyle Avrupa Birliği Kurucu Antlaşmaları**, İktisadi Kalkınma Vakfı, (2000), İktisadi Kalkınma Vakfı, İKV:162, İstanbul

Caniklioğlu, Nurşen; **İşçinin Yıllık Ücretli İzin Talep Hakkı ve İznin Kullandırılmasının Sonuçları**, Prof. Dr. Nuri Çelik'e Armağan, C.2, İstanbul 2001.

Centel, Tankut; **İş Kanunu ve İlgili Yönetmelikler**, MESS Yayın No: 457, İstanbul, 2005

Chappell, Duncan; Di Martino, Vittorio; **Violence at work;** Third edition, Geneva, International Labor Office, 2006

Çalışır, Eyüp; **AB Anayasasının İlkeleri**; Yayınlanmamış Yüksek Lisans Tezi, Adana, 2006

Çelik, Nuri; **İş Hukuku Dersleri**, Beta Basım Yayım Dağıtım, İstanbul Eylül 2009; 22. Bası

Çelikel,Aysel; **Farklı Cinslerin Eşit Haklardan Yararlanması ve Eşitlik İlkesinin Yorumu**, Edip F. Çelik'e Armağan; 1. Bası, İstanbul 1995

Çelikel, Aysel; **Uluslararası Sözleşmelerde Kadın, Her Yönüyle Türkiye'de Kadın Olgusu**, Yayına Hazırlayan Nejla Arat, Say Yayıncılık; İstanbul 1992

Doğan Yenisey, Kübra; **İş Hukukunda Eşitlik İlkesi ve Ayrımcılık Yasağı**, Çalışma ve Toplum, Sayı. 11,Cilt. 4

Ecevit, Yıldız; "Çalışma Yaşamında Kadın Emeğinin Kullanımı ve Kadın-Erkek Eşitliği", **Kadın- Erkek Eşitliğine Doğru Yürüyüş: Eğitim, Çalışma Yaşamı ve Siyaset**, TÜSİAD Yayınları No: TÜSİAD-T/2000-12/290, Aralık 2000

Ekin, Nusret; **Dünyada ve Türkiye'de Çalışan Kadınların Sorunları, Şükrü Baban'a Armağan**, İstanbul Üniversitesi İktisat Fakültesi Mecmuası, C.40

Ekonomi, Münir; **Kadın İşçilerin Gebelik ve Doğum Halinde Feshe Karşı Korunması, Çalışma ve Toplum Dergisi**, Mart 2009???

Ekonomi, Münir; Adakale Demirhan; F.Elif –; Türkiye'de Kadın İşçilerle İlgili Koruyucu yasal düzenlemeler ve 4857 sayılı yeni İş Kanunu ile getirilen Yenilikler; **İTU Dergisi**/d; Cilt 4; Sayı 5; 55-67; Ekim 2005

Ertürk, Şükran; **İş İlişkisinde Temel Haklar**, Ankara 2002.

Gemalmaz, Mehmet Semih; **Ulusalüstü İnsan Hakları Hukukunun Genel Teorisine Giriş**, 5.Baskı. Ekim 2005

Göçmener, Sinem; **Avrupa Birliği'nde Uyum Sürecinde Türkiye'de Kadın Erkek Eşitliği**; İstanbul, 2008

Gören, Zafer; **Anayasa Hukuku**, Seçkin Yayınları, Ankara 2006

Gören Ataysoy, Zafer; **Genel Eşitlik İlkesinin Bir Uygulama Hali Olarak Farklı Cinslerin Eşit Haklara Sahip Olmaları** (Türk, İsviçre ve Alman Hukukuna göre), İzmir 1991

Gözler, Kemal; **Türk Anayasa Hukuku Dersleri**, Ekin Yayınları, Bursa, Ekim 2005

Guerrina Roberta; Equality, Difference and Motherhood: The Case For a Feminist Analysis of Equal Rights and Maternity Legislation, **Journal of Gender Studies**, Vol 10. No. 1, 2001

Gülmez, Mesut; **Avrupa Birliği'ne Sosyal Politika**, Ankara: Türkiye AB Sendikal Koordinasyon Komisyonu Yayınları, 2003

Günay, Cevdet İlhan; **İş Kanunu Şerhi: Açıklama-Yargı Kararları- İlgili Mevzuat**, C. I, 2. baskı; Yetkin Yayınları, Ankara 2006

Güzel, Ali; Okur, A.Rıza; **Caniklioğlu, Nurşen; Sosyal Güvenlik Hukuku**; 5510 Sayılı Kanuna Göre Hazırlanmış 12. Bası; Beta Yayınları; Nisan 2009.

Hantrais, Linda; **Social Policy in the European Union**, Second Edition, London, Macmillan Pres, 2000.

İnceoğlu, Sibel; Türk Anayasa Mahkemesi ve İnsan Hakları Avrupa Mahkemesi Kararlarında Eşitlik ve Ayrımcılık Yasağı, **Çalışma ve Toplum Ekonomi ve Hukuk Dergisi**, C. 4 S. 11, 2006

İştar, Cengiz; Kadın İşçilerin Hamilelik ve Analık Durumlarının İş Sözleşmelerine Etkisi, **Kamu-İş İş Hukuku ve İktisat Dergisi**, C.10, S.4, 2009

Kadıoğlu, Süheyla; **20. Yüzyıl ve Kadın: Batı Ülkelerinde Kadın Hareketleri**, Gri Yayınevi, İstanbul 2005

Kantarcıoğlu, Fulya; "Anayasa Mahkemesi Kararlarına göre Farklı Cinslerin Eşitliği", **Farklı Cinslerin Eşitliği Sempozyumu: Bildiriler**, yayına hazırlayan Zafer Gören, Dokuz Eylül Üniversitesi Hukuk Fakültesi Döner Sermaye İşletmesi Yayınları No: 86.

Kaya Pir Ali, **Avrupa Birliği ve Türk İş Hukuku Bağlamında Eşitlik İlkesi**, Ankara 2007

Keser, Hakan; Avrupa Birliği Bünyesinde Bireysel İş Hukukunun Dayandığı Esaslar, **İzmir Barosu Dergisi**, Ocak 2002

Koray, Meryem; **Avrupa Toplum Modeli**, İmge Kitabevi Yayınları, Ankara, 2005

Lewis, Jane; Work/Family Reconcilition, Equal Oppurtunities and Social Policies: The Interpretation of Policy Trajectories at the EU Level and the Meaning of Gender Equality, **Journal of European Public Policy**, Vol. 13, No. 3, April 2006

Mcglynn, Claire; Ideologies Of Motherhood in European Community Sex Equality Law, **European Law Journal**, Vol. 6, No. 1, March 2000

Medhurst, David; **A Brief and Practical Guide to EU Law**; Third Edition; UK 2001.

Millns, Susan; **Gender Equality Citizenship and the EU's Constitutional Future, European Law Journal**, March 2007, Vol. 13 No. 2

Mitchell, Juliet; Oakley, Ann; **Kadın ve Eşitlik**, Çeviren Fatmagül Berktay, Pencere Yayınları, İstanbul 1998

Mollamahmutoğlu, Hamdi; **İş Hukuku**, Ankara 2005

Moroğlu, Nazan; **Uluslararası Belgelerde Kadın Erkek Eşitliği**, İstanbul Barosu Yayınları, 2005

Moroğlu, Nazan; "Avrupa Birliği Antlaşmalarında ve Yönergelerde Kadın Erkek Eşitliği İle İlgili Düzenlemeler," **Avrupa Birliğine Giriş Sürecinde Türkiye Cumhuriyeti Anayasası ve Kadın- Erkek Eşitliği Politikaları**, T.C. Başbakanlık Kadının Statüsü ve Sorunları Genel Müdürlüğü Yayınları, Ankara, 2000

Onaran Yüksel, Melek; **Karşılaştırmalı Hukuk Işığında Türk İş Hukuku'nda Kadın – Erkek Eşitliği**; Birinci Bası; Ekim 2000

Öden, Merih; **Türk Anayasa Hukukunda Eşitlik İlkesi**, Yetkin Yayınları, Ankara 2003

Özdemir, Erdem; **İş Sözleşmesinden Doğan Uyuşmazlıklarda İspat Yükü ve Araçları**; İstanbul 2006.

Pakin, Ebru; **Türk Hukuku'nda Kadın İşçilerin Sosyal Güvenliği**, 1.Baskı, Temmuz 2005

Pur,Necla; **Sosyal Ekonomi**, İstanbul, 1981

Review of Policy **Research, Parental Leave and Gender Equality: Lessons from the European Union**, Volume 20, Issue 1; March 2003.

Sayın, Aysun; **Avrupa Birliği'nde Çalışma Yaşamında Kadın Erkek Eşitliği: Türkiye Açısından Bir İnceleme**, Yayımlanmamış Yüksek Lisans Tezi, 2007, Ankara

Sözer, Ali Nazım; Hamilelik ve İş Hukukundaki Sonuçları, **Adalet Dergisi**, S. 6, Kasım-Aralık,1982

Süzek, Sarper; **İş Hukuku, Beta Yayım Dağıtım**, İstanbul 2008, 4. Bası

Steiner, Josephine; **Woods, Lorna; Text Book on EC Law**, Oxford University Press 2003

Şakar, Müjdat; **Gerekçeli ve İçtihatlı İş Kanunu Yorumu**, Ankara: Yaklaşım Yayıncılık San.Tic. A.Ş., 2006

Talas, Cahit; **Toplumsal Politikaya Giriş**, S Yayınları, Ankara 1981.

Tekinalp, Ünal; **Tekinalp, Gülören; Avrupa Birliği Hukuku**, İstanbul 2000

Tulukçu, N.Binnur; **İş ve Sosyal Güvenlik Hukukunda Gebe ve Anne İşçilerin Korunması,** T.Haber-İş Sendikası Yayınları No:21, Ankara 2000

Tuncay, A.Can; **İş Hukukunda Eşit Davranma İlkesi**, İstanbul, 1982

Tuncay, Can; Ekmekçi, Ömer; **Yeni Mevzuat Açısından Sosyal Güvenlik Hukuku'nun Esasları;** 2. Baskı; İstanbul Kasım 2009

Tunçomağ, Kenan; Centel, Tankut; **İş Hukukunun Esasları**, 4.Bası, Beta Yayım Dağıtım, İstanbul Eylül 2005

Tunçomağ, Kenan; **Türk İş ve Sosyal Güvenlik Hukukunda Kadının Durumu**, Ümit Yaşar Doğanay'ın Anısına Armağan, İstanbul 1982

Uçkan, Banu; Avrupa Anayasası'nın Genel Çerçevesi ve Sosyal Politikalara İliskin Temel Düzenlemeleri, **Çalışma ve Toplum Ekonomi ve Hukuk Dergisi**, 2005/3

Walby, Sylvia, 2004, "The European Union and Gender Equality: Emergent Varieties of Gender Rejime", **Social Politics**, Vol. 11, No. 1

Vural,Dinçkol, Bihterin; "Kadının Hukuksal Statüsünün Tarihsel Gelişimi", **20. Yüzyılın Sonunda Kadınlar ve Gelecek Konferansı**, Ed. Oya Çitci, Türkiye ve Ortadoğu Amme İdaresi Enstitüsü Yayın No: 285

European Union Official Journal L 045, 19.02.1975

European Union Official Journal L 39, 14.2.1976

European Union Official Journal L 225, 12.08.1986

European Union Official Journal L 46, 17.2.1997

European Union Official Journal L 359, 19.12.1986

European Union Official Journal L 348, 28.11.1992

European Union Official Journal L 145, 19.06.1996

European Union Official Journal L 014, 20.01.98

**Internet Sources**

A Roadmap for Equality Between Women and Men: 2006–2010", the European Union Official Site, http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/c10404_en.htm

Conditions of Work Digest 1994 on Maternity and Work. Geneva, 1994 : http://www.ilo.org/public/english/protection/condtrav/publ/wf-cwe-94.htm

Çelik, Aziz; Avrupa Birliği Sosyal Politikası : Gelişimi, Kapsamı ve Türkiye'nin Uyum Süreci–1:http://www.kristalis.org.tr/aa_dokuman/absosyalpolitikasi1.pdf

Çelik, Aziz; 'Sosyal Şart' Şartsız Onaylanmalı; Radikal 26 Mayıs 2006, Internet Baskısı (Çevrimiçi http://www.radikal.com.tr/haber.php?haberno=188298

Division for the Advancement of Women, Department of Economic and Social Affairs: http://www.un.org/womenwatch/daw/cedaw/cedaw.htm

Evans, Patricia M.; School of Social Work; Carleton University; *Canadian Journal of Sociology;* http://www.cjsonline.ca/reviews/newpol.html

Gender Equality Road Map for The European Community 2006–2010, (Nowember 2005), European Women's Lobby: www.womenlobby.org

Global Employment Trends for Women, 2004, Employment Strategy Papers, Geneva, 2004 http://kilm.ilo.org/GET2004/DOWNLOAD/trendsw.pdf

International Labor Office; Report IV 2A; Maternity Protection at Work; Revision of the Maternity Protection Convention (Revised) 1952 (No.103), and Reccomendation 1952 (No.95); International Labor Conference 88th Session 2000, Geneva http://www.ilo.org/public/english/standards/relm/ilc/ilc88/pdf/memo.pdf

Lowen, Linda;Women's Issues Guide; http://womensissues.about.com/od/feminismequalrights/f/CEDAW.htm

Maternity at work;A review of national legislation; Findings from the ILO's Conditions of Work and Employment Database; Ida Öun and Gloria Pardo Trujillo: http://www.ilo.org/public/english/protection/condtrav/pdf/wf-iogpt-05.pdf

Nimet Çubukçu, "Toplumların Gelişmişlik Düzeylerini, Yaşamın Tüm Alanlarına Kadınlar ve Erkeklerin Katılımları ve Sorumluluk Paylaşımları Belirler", (Çevrimiçi) http://mpm.org.tr/duyurular/197.asp

Oğuşgil, Atilla; Avrupa birliği Sosyal Politikaso Kapsamındaki Risk Gruplarına Polis Desteği; Turkish Journal of Police Studies Vo: 11 (1), 2009:www.pa.edu.tr

Özer, Hatice Duygu; Doğum İzninin İşçinin Kıdemine ve İş Sözleşmesinin Feshine Etkisi. Çalışma ve Toplum Dergisi, İnternet Baskısı; Soruce : http://calismatoplum.org/sayi21/ozer.pdf.

Report Of The Fourth World Conference On Women, Beijing, 4-15 September 1995; http://www.un.org/esa/gopher-data/conf/fwcw/off/a--20.en

Şener, H.İbrahim;Diş Ticaret Uzman Yardımcısı – Avrupa Birliği Genel Müdürlüğü; Lizbon Stratejisi Ve Türkiye'nin Rekabet Gücü; www.dtm.gov.tr/dtmadmin/upload/EAD/.../Lizbon.doc

United Nations Fourth World Conference on Women; Action for Equality, Development and Peace Beijing, China - September 1995 http://www.un.org/womenwatch/daw/beijing/platform/economy.htm#object6

United Nations Information Center - Ankara http://www.unicankara.org.tr

Ülker, İrfan Kaya; Avrupa Birliği Hukuku'nu Ne Derece Tanıyoruz? http://uiportal.net/print.php?plugin:content.413

Work And Famıly, New Call For Publıc Polıcıes Of Reconcılıatıon Wıth Socıal Co-Responsıbılıty; Santiago, International Labor Organization And United Nations Development Programme, 2009 http://www.undp.org/publications/pdf/undp_ilo.pdf

World Of Work; The Magazine of the ILO; No:56, April 2006; Geneva. http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/dwcms_080599.pdf

Workıng Condıtıons Laws 2006-2007 A global review; International Labor Office, Geneva, 2008; http://www.ilo.org/public/english/protection/condtrav/pdf/work_laws.pdf
http://www.ilo.org/public/english/protection/condtrav/publ/wf-iogpt-05.htm
http://www.ilo.org/ilolex/cgi-lex/convde.pl?C003
http://www.ilo.org/ilolex/english/convdisp1.htm
http://www.ilo.org/ilolex/english/recdisp1.htm
http://europa.eu/legislation_summaries/human_rights/fundamental_rights_within_european_union/ c10107_en.htm

http://www.delmkd.ec.europa.eu/en/europe-a-to-z/eu-constitution.htm

http://en.euabc.com/upload/rfConstitution_en.pdf ;

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31975L0117:EN:HTML

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31976L0207:EN:HTML

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:204:0023:0036:EN:PDF

http://www.un.org/en/aboutun/index.shtml

# ANNEXES

## ANNEX I

**CEDAW**
**Full text of The Conventin on the Elimination of All Forms of Discrimination Against Women**

**PART I**

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

***Article 2***
States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

***Article 3***
States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to en sure the full development and advancement of women , for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

***Article 4***
1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women

shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

***Article 5***
States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

***Article 6***
States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

## PART II

***Article 7***
States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

***Article 8***
States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

***Article 9***
1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

## PART III

***Article 10***
States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d ) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particulary those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same Opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

***Article 11***

1. 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;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

***Article 12***

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

***Article 13***

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

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

***Article 14***

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counselling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

## PART IV

### *Article 15*

1. States Parties shall accord to women equality with men before the law.

**2 (*)**. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

**4 (*).** States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

### *Article 16*

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

**(c) (*)** The same rights and responsibilities during marriage and at its dissolution;

**(d) (*)** The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

**(f) (*)** The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

**(g) (*)** The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

## PART V

### *Article 17*

1. For the purpose of considering the progress made in the implementation of the

present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee’s responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

***Article 18***

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned;

(b) Thereafter at least every four years and further whenever the Committee so requests.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

***Article 19***
1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

***Article 20***
1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. (amendment, status of ratification)

***Article 21***
1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

***Article 22***
The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

**PART VI**

***Article 23***
Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

(a) In the legislation of a State Party; or

(b) In any other international convention, treaty or agreement in force for that State.

***Article 24***
States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

***Article 25***
1. The present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.

3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

*Article 26*

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

*Article 27*

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

*Article 28*

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

*Article 29*

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

*Article 30*

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

***(*) : The amendments at issue are those that Turkey entered into reservation when it concluded the Convention in 1985. Turkey cancelled the reservation in 1999. The articles, for which reservations used, are provided entirely in Annex IV.***

## ANNEX II

## DEVELOPMENT AND CHRONOLOGY OF WOMAN'S RIGHTS IN TURKEY

Initially, amendments mostly carried out regarding the education rights of women follow the reforms provided in Europe with a short time interval on circa same years. For instance, (apart from professional and handwork schools) while the first state high schools were set up for girls in Prussia, in 1872 and in France in 1880, Ottoman Empire established the first girls' high school in 1880. University of Vienna accepted its first girl student in 1897, Sorbonne in 1899 and German universities between 1895 and 1905; coeducation system was initialized in Istanbul Darülfünun between 1914-1921.

Reforms pertaining to the women's position in private law gained emphasis in II. Constitutional Period in Turkey, polygamy was regulated via a law enacted in 1917 in line with European norms. Equality of men and women in private law (with some exceptions) was actualized under 1926 Civil Code.

***Though samples as for women's claims to get their rights in political and professional life have been seen from 1908-1914, noteworthy developments in this area, however were able to carried out in Republic Period***

Following Finland the first country which gave the right to vote to women (1906), Russia in 1917, United Kingdom and Canada in 1918, Germany and Austria in 1919 and USA and Georgia in 1920 gave right to vote to women. In Turkey, women reached the right said in 1930 and 1934 in a period when real political elections were not yet regulated.

### Pre-Republic

**1843:** Turkish women firstly began to take part in social life by midwife training they received in Medical School (Tıbbiye Mektebi).

**1847:** İrade-i Seniye which accords equal title by descent to both female and male children was issued.

**1856:** It was prohibited to sell women as slaves and odalisques within Ottoman lands.

**1858:** Land Law issued had a provision stipulating that insurance shall be allocated equally between man and woman and therewith women had property rights by means of inheritance. Ottoman Girls' Junior High Schools were founded within the same year.

**1869:** Women reached their first magazine in 1869. 'Terakk-i Muhadderat' which was described as the first periodical publication for women started to be published.

**1869:** 'Maarif-i Umumiye Nizamnamesi' which imposed the first legal obligation on girls' education was issued in 1869. After a year, 'Dar-ül Muallimat' which was a girls' teacher training school was founded.

**1871:** Legal Family Regulation (Hukuk-ı Aile Kararnamesi) contemplating that marriage contracts should be concluded before a formal officer, marriage age should

be 17 for women and 18 for men, and marriages by force were deemed null and void was legislated in 1871.

**1876:** Primary schools were obligated under Kanun-i Esasi, the first constitution of Ottoman Empire, in 1876.

**1897: Women who were increasingly participating in social life, started to participate in working life as "wageworkers" in 1897. Women had to wait for 16 years from the date abovementioned to serve as public officers.**

**1913: Women firstly started to employ as public officers in 1913. After a year, women entered into working life qua merchant and artisans, as well.**

**1914:** The first higher education institution for girls was set up under the name of 'İnas Darülfünunu' in 1914.

**1922:** Women first got acquainted with science world in 1922. On that date, seven female students enrolled in Faculty of Medicine and started their education.

**REPUBLICAN PERIOD, 1923-1950**

**1926:** Regulations as regards polygyny and unilateral divorce were repealed via Turkish Civil Code and right to divorce, parental right and tenure over properties were granted to women.

**1930:** Women were granted the right to elect and be elected locally.

***1930: Maternity leave were established.***

**1933:** Girls' Technical Education Directorate was established for the purpose of providing girls with vocational education.

**1933:** Women were entitled to be elected as mukhtars and members for village council via amendments made within the scope of Village Law.

**1934:** Women were granted the right to elect and be elected by means of Constitutional amendment.

***1936: Labor Act came into force. Some amendments as respects women's working life were adopted.***

***1937: 1935 ILO Convention No. 45 which abolishes women's employment in heavy and dangerous works was concluded.***

***1945: Maternity insurance (birth benefit) was regulated under the Law No. 4772.***

***1949: Amendment of old age insurance on equal bases was provided under the Law, No 5417.***

**REPUBLICAN PERIOD, POST-1950**

**1952:** Child health care services began to be provided under Ministry of Health.

**1965:** Law on Population Planning stipulating the right to freely sell and distribute contraceptive medicines and right to exercise abortions in case of medical necessity was enacted.

***22 December 1966: 1951 ILO Convention, No 100 ensuring wage equality between men and women worker was ratified.***

**27 May 1983:** Exercising abortions in the first 10 weeks of pregnancy and permitting voluntary sterilization methods were provided under amendments of Law on Population Planning.

***1985: Turkey concluded the United Nations Convention on the Elimination of All Kinds of Discrimination against Women (CEDAW) and Convention at issue come into force the following year.***

**1985:** 5. Women matter took its place as a separate heading under Five Year

Development Plan and policies regarding this matter were established.

***1987: State Planning Organization*** Advisory Board on Policies Regarding Women ***which was the first formal institute focusing on women issues was founded.***

**1989:** The first Research and Application Center of Women's Studies was established in Istanbul University. The amount of such centers today reached up to 13 under the universities throughout the country.

**24 January 1989:** Ministry of Internal Affairs declared that women would be admitted to the district governorship examinations.
***29 November 1990: Constitutional Court annulled the 159th Article of Civil Code requiring husband consent for woman's working. Decree of annulment was published in 21272 Official Journal dated 2 July 1992.***

**1990:** 438th Article of Turkish Criminal Code contemplating reduction of rape penalty in case that the victim is a prostitute was annulled by Turkish Grand National Assembly.

**14 April 1990:** The Women's Library and Information Center Foundation, the first women library and the first information center was established.

**1990:** Women's Guest Houses under the Social Services and Child Protection Institution General Directorate started to be established to provide support service women and children exposing to violence. This amount reached up to 7 and their capacity increased to 170 as of 2000.

***1990: Presidency of Women's Status and Problems was established with Statutory Decree No. 422 General Directorate on the Status and Problems of Women as a mechanism nationwide regarding women's problem that was established with Law dated 25 October 1990 and numbered 3670 and affiliated to the Ministry of Labor and Social Security was affiliated to the Prime Ministry in 24 June 1991.***

**September 1990:** Local administrations began to serve for women issues particularly women exposed to violence. The first women's shelter of Turkey was established in Bakirkoy Municipality.

***20 February 1992: General Directorate on the Status and Problems of Women was accepted as the contact point on women issue in Turkey, at the United Nations International Research and Training Institute for the Advancement of Women Assembly (INSTRAW ), programs and projects started to be implemented in cooperation with UN.***

**1992:** Social Structure and Women's Statics Division under the State Statics Institute was set up so as to create a database based on gender.
**1993:** The first Women Studies Department in Istanbul University has been founded and the University started to give relative master's program. Today number universities which founded Women Studies Department and provide Master's Program has reached up to four.

**1993:** Women's Solidarity Foundation established the center of women's solidarity and women's shelter with the support of Altindag Municipality.

***1993: Halk Bankasi initialized the soft loan application peculiar to women to encourage women for initiatives.***

**1994:** Information Consultation Bank (3B) was established under General Directorate on the Status and Problems of Women so as to render service regarding legal and physiological consultation, entrepreneurship and appraisal of manual labor to the women exposed to the violence.

**5 April 1994:** Projects regarding women started to be conducted in cooperation with World Bank. Documentation Center was established under General Directorate on the Status and Problems of Women.

**1994:** Turkey participated in the United Nations International Conference on Population and Development held in Cairo. It was focused on the concept of "reproductive health" emphasizing the relation between status of women and health and an "integrated" approach was adopted on women's health. "National Action Plan for Women's Health and Family Planning" was prepared in line with that approach under the coordinatorship of Health Ministry. Action Plan made public in 1998, was developed by six main working groups. Coordination of Women's Status group was undertaken by General Directorate on the Status and Problems of Women.

**1995:** Beginning from the date of its foundation, The Mor Catı Kadin Siginma Vakfi (Purple Roof Women's Shelter Foundation) which renders consultation service under women solidarity center it established, for women who exposed to violence founded the first women's shelter.

**November 1995:** CATOM, Multipurpose Community Centre (Cok Amacli Toplum Merkezleri) which targeted to enhance women's status within the region and integrate them into the process of development was first launched in Urfa by Southeastern Anatolia Project Regional Development Administration. This amount reached up to 21 in the region in 2000.

**29 June 1996:** Constitutional Court annulled the 441$^{st}$ Article of Turkish Criminal Code contemplating as a crime for man who commits adultery on the ground of its incongruity with the principle of equality under constitution.

Fornication of man was no more deemed as a crime as of 27.12.1997 for no amendments were made within a year stated in the decree published in 228600 Official Journal dated 27 December 1996.

**1996:** "Department for Women in Rural Development" was established under the Ministry of Agriculture and Rural Affairs.

**1997:** "Women's Status Units" were established within 13 provincial administrations with the coordination of General Directorate on the Status and Problems of Women.

**22 May 1997:** Women were entitled to maintain their own maiden name along with the last name of their spouses by means of the amendment of 153$^{rd}$ Article of Civil Code.

**19 November 1997:** Ministry of Interior Affairs issued a circular regulating the usage of "married" or "single" statements on the civil status of identity cards instead of "married/ single/ widow/divorced" upon the proposal of General Directorate on the Status and Problems of Women.

**13 November 1997:** Turkish Republic hosted **4$^{th}$ Council of Europe Ministerial Conference** on **Equality between Women and Men aiming the participation of women to the activities of European Council in the fields of professional ministers along with relative matters.**

**23 June 1998:** Constitutional Court annulled the 440$^{th}$ Article of Turkish Criminal Code regulating the adultery for women as a crime on the ground of its incongruity with the equality principle of constitution. Justified decree was published in 23638 Official Journal dated 13 March 1999.

**17 February 1998:** New Draft for Turkish Civil Code was brought to the public attention in a meeting held in cooperation with Ministry of Justice and General Directorate on the Status and Problems of Women.

**21 October 1998:** As a result of the agenda

determined by the General Directorate on the Status and Problems of Women and women organizations, Ministry of Justice issued a circular regulating that virginity control shall be made, by providing the consent of victim in case of offences based on complaints; a judicial decision in case of offences prosecuted sua sponte such as rape; a written consent of Public Prosecutor in the non-delayable cases

**1998:** Ministry of Interior Affairs ensured the usage of just "spouse, daughter, son, mother" instead of statements such as "widower etc" on propinquity to pensioner part of widow or orphan identification card provided by General Directorate of Retirement Fund in parallel with adjustments on identity cards.

**17 January 1998:** The Law on the Protection of the Family No.4320 regulating the required measures to be taken for the protection against domestic violence was enacted.

**1998:** Family head declaration of income tax was abolished; it is ensured that women and men declare individual incomes through the amendment of Income Tax Act.

**1998:** Studies of solidarity centers for women were also initialized by Bars principally in Ankara and Istanbul. "Union of Turkish Bar Association, Women's Rights Commission (TÜBAKKOM)" was established under Bars in order to coordinate Commissions on Women Rights/Law. Commissions increasing gradually reached up to forty in 2001.

***September 1999: While Turkey ratified the Convention on Elimination of All Kinds of Discrimination against Women, it cancelled the_reservations pertaining to 15th and 16th Articles thereof.***

**1999:** Civil Code Draft including significant amendments in terms of equality of men-women was prepared and submitted to Turkish Grand National Assembly.

***8 September 2000: Additional Optional Protocol was signed by Turkey and taken into agenda of Turkish Grand National Assembly for affirmation stage. In the event of violation of Additional Optional Protocol established by United Nations and the Convention by state party, right of petition is granted to the individuals or groups consisting of individuals in order to fulfill the Convention on the Elimination of All Kinds of Discrimination against Women (CEDAW) more effectively and also rights to receive and revise the complaints made against Committee on the Elimination of Any Discrimination against Women (CEDAW) are provided in order to inspect the implementations.***

**24 November 2000:** A panel regarding "Violence Against Women" was held in cooperation with General Directorate on the Status and Problems of Women and Sanlıurfa Governorship by virtue of "25 November the Day for Elimination of Violence against Women" so as to create public opinion against ever- increasing honour killings. Panel formed a base to resist the honour killings at an official level.

**17 February 2001:** General Directorate on the Status and Problems of Women and Women's organizations carried out some activities to create a public opinion so as to protect and legitimize the equality essence of Civil Code Draft being discussed within the TBMM Justice Commission by the virtue of anniversary of Turkish Civil Code. A march organization for "Medeni Yasa Tasarisi Icin Hep Birlikte (All Together for Civil Code Draft)" was carried out with the participation of Woman associations and other non-governmental organizations.

**21 June 2001:** After TBMM Justice Commission passed the Turkish Civil Code Draft, it was transferred to plenary session.

**22 November 2001:** New Turkish Civil Code was adapted by TBMM.

**1 January 2002:** New Turkish Civil Code came into force.

**30 July 2002:** CEDAW Additional Optional Protocol was ratified.

**7 January 2008:** Resolution 26749 on putting into force the agreement regarding to the giving of cash gift by European Council under the Campaign to Combat Violence against Women including Domestic Violence, which would be conducted by Council of Europe, Task Force to Combat Violence against Women.

**ANNEX III**

The Correlation between age and physical working capacity of men and women is as in the following chart.

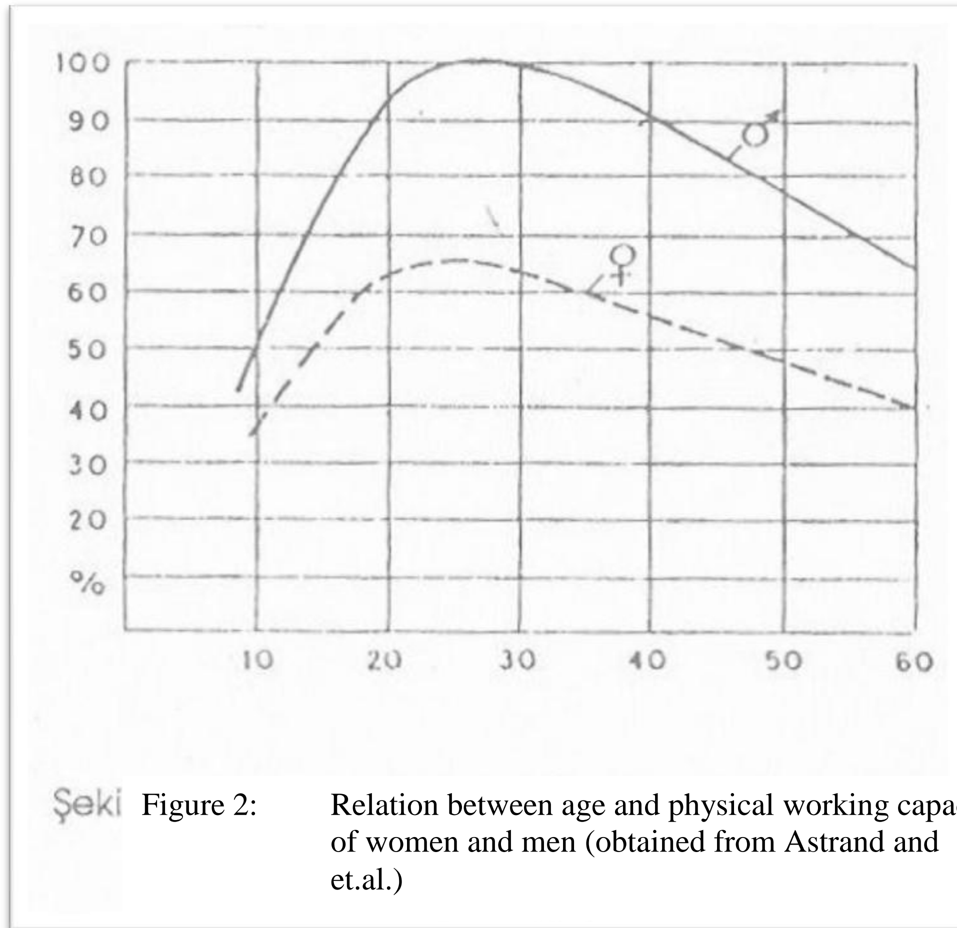


Figure 2: Relation between age and physical working capacity of women and men (obtained from Astrand and et.al.)

The chart above was obtained from the publication named "Çalışma Ortamı (Working Environment)" on http://www.isguvenligi.net/co/calisma_ortami1.pdf web-site. Prof. Per Olaf Astrand who was mentioned above in the chart is a Swedish exercise physiologist. Vertical lines indicate the performance level and horizontal lines indicate ages. Dashed lines indicate the women.

## ANNEX IV

Turkey entered into reservations regarding the Convention on the Elimination of All Kinds of Discrimination against Women (CEDAW) in 1985, and the articles are as follows regarding which it cancelled the reservations in 1999.

15. Article (2. Clause): To accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, to grant women equal rights to conclude contracts and to administer property and to treat them equally in all stages of procedure in courts and tribunals

15. Article (4. clause): To accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile

16. Article (1. clause, c): To ensure the same rights and responsibilities during marriage and at its dissolution.

16. Article (1. clause, d): To give the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount

16. Article (1. clause, f): The grant to men and women same rights and responsibilities pertaining to guardianship, adoption of children, or other legal procedures; in all cases the interests of the children shall be paramount.

16. Article (1. clause, g): To have the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation.

# ANNEX V

## ILO CONVENTIONS AND RECOMMENDATIONS AFFECTING EMPLOYMENT OF WOMEN INDIRECTLY (*)

| | | **Date of adoption by ILO** | **Date of ratification by the Turkish Republic** |
|---|---|---|---|
| Convention | Forced Labor Convention (No.29) | 1930 | 1998 |
| Convention | Freedom of Association and Protection of the Right to Organise Convention (No.87) | 1948 | 1993 |
| Convention | Protection of Wages Convention (No.95) | 1949 | 1960 |
| Convention<br>*Recommendation* | Right to Organise and Collective Bargaining Convention<br>*Collective Agreements Recommendation (No.91)* | 1949 | 1951 |
| Convention | Abolition of Forced Labor Convention (No.105) | 1957 | 1960 |
| Convention | Equality of Treatment (Social Security Convention, 1962 (No.118) | 1962 | 1971 |
| Convention<br>*Recommendation* | Minimum Age Convention (No.138)<br>*Minimum Age Recommendation (No.146)* | 1973 | 1998 |
| Convention | Human Resources Development Convention (No.142) | 1975 | 1992 |
| Convention | Occupational Safety and Health Convention (No.155) | 1981 | 2004 |
| Convention<br>*Recommendation* | Workers with Family Responsibilities Convention (No.156)<br>*123 Employment (Women with Family Responsibilities) Recommendation (No.123)*<br>*165 Workers with Family Responsibilities Recommendation (No.165)* | 1981 | Not ratified |
| Convention<br>*Recommendation* | Part-Time Work Convention (No.175)<br>*Part-Time Work Recommendation (No. 182)* | 1994 | Not ratified |
| Convention<br>*Recommendation* | Home Work Convention (No.177)<br>*Home Work Recommendation (184)* | 1996 | Not ratified |
| Convention<br>*Recommendation* | Maternity Protection Convention (No.183)<br>*Maternity Protection Recommendation (No.191)* | 2000 | Not ratified |

(*) The chart is taken from the official web site of the Turkish Republic Prime Ministry Directorate General on the Status of Women; http://www.ksgm.gov.tr/uluslararasi_Belgeler.php