GENDER SENSITIVITY IN TURKISH OCCUPATIONAL HEALTH AND SAFETY LEGISLATION:
PATERNALIST PROTECTION V. GENDER EQUALITY

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Abstract

The protection of the maternal role was the main consideration of the earlier approach on occupational health and safety of female workers. Thus, women were banned from certain types of jobs which were potentially harmful to this role. The general rules of occupational health and safety are regulated by taking male body and experience into consideration and therefore cannot always assure protection of female workforce due to both biological differences and gender. Today, the paternalistic approach that aims to protect women by banning them from certain jobs, gives way to a prevention policy which considers gender and biological differences in protection of occupational health and safety of workers. International Labour Organization (ILO) working paper "10 Keys for Gender Sensitive OSH Practice – Guidelines for Gender Mainstreaming in Occupational Safety and Health" provides the keys to ensure a gender sensitive occupational health and safety policy and legislation.

An analysis of the Turkish OHS legislation under the light of ILO's working paper shows that although some gender sensitive provisions have been adopted, gender mainstreaming efforts have not been integrated in it. The legislative coverage of all the sectors where all men and women work is not achieved, as one of the groups that are left out is very vulnerable domestic workers who are mostly female. The attention in the regulations and guidebooks mostly focus in industrial jobs which leave out the service sector that employs most women and men. Women are prohibited from working underwater and underground jobs, and this reflects the paternalistic protective approach. The biological differences between women and men are not considered enough in OHS legislation and standards except in relation to the maternal role of women. The legislation provides for the consideration of gender in risk assessment; however further guidance on this issue is needed. Although some forms of employee participation to OHS decision-making in workplace have been adopted by the OHS Act, this does not ensure the participation of women. Overall, there is a need for improving gender mainstreaming efforts in OHS legislation and policy.

Keywords: gender equality, gender mainstreaming, occupational health and safety

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Introduction

The labour market is heavily segregated; both vertically and horizontally, so women and men do different kinds of work. (ILO, 2013, p. 2). Horizontal segregation defines the concentration of women's and men's labour in different sectors. Women's employment is concentrated in services sector, especially in care work. The vertical segregation signifies that women occupy less qualified jobs and lower positions, and they are less likely to be managerial positions. Even if women and men work in the same jobs the tasks within the scope of the job may differentiate (Belin, et al., 2011, pp. 36-37; Cruz Rios, et al., 2017, p. 54). Due to these differences in jobs, women and men may be exposed to different psychosocial and physical risks at work (ILO, 2013, p. 2). For instance, the less qualified jobs that women work in can be monotonous and repetitive and make the employees prone to pressure from higher ranking employees. The women in services sector may be more open to psychosocial risks. Another risk women face a lot more than men is being sexually harassed (Belin, et al., 2011, pp. 36-37; Cruz Rios, et al., 2017, p. 54). The exposure to same risks can have different impacts on women and men due to biological differences or to due to gender-based roles that are carried outside work (ILO, 2013, p. 2). For example, it is common that women carry out the household chores, they are almost working double shifts; one at work and one at home. This workload can cause work-related injuries to get heavier or healing to take longer (Belin, et al., 2011, p. 37).

Even though there are important differences in the occupational risks that women and men face, the women's OHS is almost only considered with relation to maternity. In fact, the main and earliest rules considering women's occupational health and safety were aimed at the protection of their maternal role, thus regulated maternal leaves, working conditions during maternity and after birth or prohibited women from working in jobs that were deemed to be harmful to this role (Supiot, et al., 2016, p. 238). The work carried out by women is perceived to be healthier, safer, lighter and easier than the work done by men; so less attention is paid to women's OHS in general (Messing, 1999, p. 12; ILO, 2013, p. 2). This can be attributed to the fact that victims of fatal work accidents are mostly men (Criado Perez, 2019, p. 114). Women also have fewer compensated occupational injuries and illnesses; but the real reason for this low incidence rate is that the definition and compensation of occupational injuries and illnesses are designed around the jobs that are traditionally employ male workforce, and women's occupational health and safety problems are not recognized (Messing, 1999, p. 13).

The general rules of occupational health and safety are regulated by taking average male body and experience into consideration. Therefore, a seemingly gender-neutral approach is, in fact, far from being neutral and does not respond to the needs of women and the men who are different from the average (Gervais, et al., 2014, p. 7). A gender sensitive approach in OHS needed to ensure that both women and men are protected in their work (ILO, 2013, p. 2). Such an approach considers different working situations and gender relations as well and varieties and differences within the groups of female and male employees (Gervais, et al., 2014, p. 7). To ensure every worker is equally protected, gender needs to be considered in in the design of legislation, policies and OSH practice; so that specific hazards and

risks affecting women and men can be determined and tackled, working conditions and protective and preventive measures, benefiting both and not adversely affecting either men or women can be implemented (ILO, 2013, p. 2).

Turkish occupational health and safety legislation went through a major reform in the last decade. In 2012, Occupational Health and Safety Act (OHS Act) was enacted. New regulations were adopted according to the new law. Although this reform has modern aspects; such as widening the application scope of the health and safety legislation, focusing on OHS process in general rather than a casuistry method, and introducing more democratic methods of participation of workers in OHS processes; gender perspective is not a part of the reform. Some provisions that reflect the archaic paternalistic protection approach, are still in force. Some gender sensitive provisions that are related to OHS could be found dispersedly in the legislation. However, there is lack of a general gender sensitive approach. The general OHS policy neither contains a gender sensitive approach, in fact only two of the goals of 2014-2018 "National Policy Document and Action Plan on Safety and Health at Work" mention gender or women: "*increasing the number of precautions for the protection of groups* (including women) *that require specific policy in working life"* and *"Contribution through scheduled inspections and audits to the compliance of OSH services and OSH conditions at workplaces with the legislation"* so that the special policy groups (including women) are protected (Republic of Turkey Ministry of Labour and Social Security, 2014, pp. 24, 27).

ILO working paper "10 Keys for Gender Sensitive OSH Practice – Guidelines for Gender Mainstreaming in Occupational Safety and Health" provides the keys to ensure a gender sensitive occupational health and safety policy and legislation. In this paper the "Keys" related to legislation will provide me the main reference point in examining Turkish OHS legislation to identify where and how it lacks a gender sensitive perspective and to provide suggestions to integrate gender mainstreaming efforts to it. However before passing to gender sensitivity analysis of the OHS legislation, I must underline that there is a pressing and drastic need for improvement in OHS of all workers in Turkey, as the constantly high number of fatal work accidents, the most visible and dramatic indicator of this need, demonstrates: 745 employees in 2012, 1360 employees in 2013, 1626 employees in 2014, 1252 employees in 2015, 1405 employees in 2016 and 1633 employees in 2017 lost their lives in workplace accidents, according to official statistics (Social Security Institution, 2012-2017).

1. Ensuring full legislative coverage of the sectors and occupations where women and men work

The first step in developing a gender sensitive OHS legislation is to ensure full legislative coverage of all the sectors and occupations where women and men work (ILO, 2013, p. 4). In Turkey, the first Occupational Health and Safety Act no. 6331 entered into force in 2012. The law is applicable to all sectors and all workplaces regardless its size with certain exceptions. These exceptions are: the activities of armed forces excluding sewing workshops et al., the police and the intelligence activities; the

interventions of emergency services; domestic work; the self-employed workers; the vocational courses, training, security and workshop activities for the convict and prisoners. Here, I will discuss the exclusion of domestic work from the law in relation to gender even though the exclusion of self-employed workers and prisoners are also problematic (Karadeniz, 2013, pp. 56-57).

Traditionally women have performed and continue to perform domestic work. This area where female labour is predominant has always been subject to late and weak regulation. It is also more difficult to ensure supervision in domestic work (Supiot, et al., 2016, p. 237). These observations are also valid for Turkey. It is estimated that more than 90% of domestic workers are women in Turkey (Erdoğdu & Toksöz, 2013, p. 14) and as stated above this work is excluded from the scope of OHS legislation.

The domestic workers face many OHS hazards; these include falling from height, electric shocks, exposure to chemicals, musculoskeletal risks (Karadeniz, 2013, p. 57). Due to the private nature of the workplace where the domestic worker might be the only employee, domestic workers are also more vulnerable to psychosocial risks and violence; including, physical violence, harassment, and sexual harassment (Etiler & Lordoğlu, 2010, p. 107; Erdoğan, 2018, p. 487). The psychosocial risks are particularly worse for migrant workers due to their fear of losing their job or even being deported (Coşkun, 2014, p. 193). Considering both physical and psychosocial risks faced by domestic workers, domestic work cannot be categorized as "safe work".

The legislative preamble of OHS Act does not include an explanation on why domestic work was excluded from the law. The General Directorate of Occupational Health and Safety of the Ministry of Labour and Social Security explained the reason for the exclusion as the uncertainties in the employment relation, the difficulty of supervision and the fact that domestic work mostly does not include commercial purposes. The Directorate also stated a need for simple, understandable and applicable OHS legislation for domestic work and other sectors excluded from the scope of the law (Erdoğdu & Toksöz, 2013, p. 29).

As the domestic workers are excluded from the OHS Act, the employers' general obligations on occupational health and safety services, including risk assessment, occupational health and safety training, consulting occupational physical and occupational safety expert are not valid for them. The legal basis of the occupational health and safety obligations of the employees for the domestic workers is Law of Obligations Art. 417 (Baycık, 2013, p. 110). According to this, the employer must protect the employee from psychological and sexual harassment, must take every precaution to ensure the health and safety of the employee and must provide the needed equipment. In order to determine the scope of the employer's obligations included in this article, the general obligations stated in Art. 4 and 5 OHS Act can be taken into consideration by analogy (Caniklioğlu, 2012, p. 34). Yet, the exclusion of domestic workers from the law and the lack of other legislation that would cover OHS issues rather than a general obligation of prevention indicates that a majorly female part of workforce is ignored in OHS policy and legislation.

ILO suggests that OHS legislation should not be restricted to protecting workers in visibly dangerous jobs associated with high levels of accidents and injuries; but more attention should be paid to all sectors and occupations, and in particular, those where women predominate (ILO, 2013, p. 4). In Turkey, 56,1% of women are employed in services sector, 28,3% work in agriculture, and 15,6% in industry. While 53,2% of men work in services, and 31,4% in industry, and 15,4% in agriculture (Turkish Statistical Institute, 2019). Even though the OHS Act covers all the sectors and occupations with the exceptions explained above, when it comes to regulations and guidelines, the focus is mostly on the industrial jobs that are more visibly dangerous. For instance, there is no specific guide on OHS in services sector, where most of the workforce is employed, among the guidelines released by the Ministry. There are sectoral guidelines in various areas of industry, including but not limited to mining, textile production, paint production, furniture production, dairy product industry, meat industry. These efforts should also be expanded to jobs and sectors where female employment is concentrated.

2. Lifting the prohibitions on women from working in certain jobs

The first rules aiming women's protection at work were aimed at regulating the working conditions of women in relation to their motherhood with a protective and paternalistic approach, as seen in earlier ILO conventions. One of the means of ensuring this protection was prohibiting women from working at night or in dangerous jobs that were considered to be dangerous to their health (Supiot, et al., 2016, p. 238). Today, the approach that aims to protect women by banning them from working in certain jobs, gives way to a prevention policy which considers gender and biological differences in protection of occupational health and safety of workers (Gervais, et al., 2014, p. 13). In industrialized countries, the introduction of equality legislation led these bans to be reconsidered as a restriction to women's access to employment and they were lifted. For developing countries, it is pointed out that these restrictions can still be beneficial in protecting women from violence and extreme working conditions. (ILO, 2013, p. 3).

In Turkey women were banned from working three groups of jobs; night work in industrial jobs and certain jobs that were listed under heavy and dangerous jobs, and underground and underwater work. The first two groups of prohibition were lifted at different times while the latter is still ongoing.

The ban on night work in industrial jobs was lifted when Labour Law no. 4857 entered into force in 2003. The lift of this prohibition is in line with the modern approach. Today both women and men can work maximum 7,5 hours at night as a rule (with certain exceptions where written consent of the employee is obligatory). There is a regulation on women working in night shifts. According to this regulation, pregnant women and nursing women cannot be employed at night shifts. The said regulation obliges the employer to provide safe transport for women who work at night shifts if the workplace is outside municipality borders or there is a difficulty in commuting with public transport. This obligation seems to be reasonable, but the difficulty is also valid for men. It would be reasonable to extend this obligation to all employees regardless their sex (Bakırcı, 2012, p. 163).

There used to be a ban on women from working at certain heavy and dangerous jobs until 2012. Now abrogated Regulation on Heavy and Dangerous Jobs had an annex which contained the list of the jobs where women could work. The new legislation has a different approach instead of banning women from working in certain jobs. OHS Act provides that the risk assessment should take women workers into consideration. This new approach abandons the out of date interdictions and takes the subjective risks into consideration, therefore is more appropriate in gender mainstreaming efforts (Özdemir, 2014, p. 267).

Today women are only prohibited from working in underground and underwater jobs by Art. 73 of Labour Law. This approach of protection is no longer valid today. Even though said rule is in conformity with Article 2 of ILO Convention No. 45 (adopted in 1935), which bans all women working in underground jobs in mines; the approach of ILO has evolved over years. ILO CEACR has requested Turkey to withdraw from Convention No. 45 and ratify Convention No. 176 in its direct requests in years 2004 and 2009 (ILO CEACR, 2005; ILO CEACR, 2010). The committee states that the ancient approach of banning women from working in mines is no longer valid and today the modern standards focus on risk assessment management and the adoption of prevention OHS measures for all miners regardless their sex. Turkey has ratified Convention No. 176 in 23 March 2015. However, the ban in the Labour Law is still in force. The ban on women from working in underwater and underground jobs reflects a paternalistic and protective approach. This point of view needs to be abandoned and OHS measures that take women into consideration should be adopted (Bakırcı, 2012, p. 378).

At this point it must be underlined that the demand on the lifting on the bans on women from working comes along with a demand for ensuring healthy and safe working conditions for all employees in all sectors. The sectors where women are prohibited from working are dangerous sectors in which the working conditions of men are also poor, and the rates of occupational accidents are high. If the prohibitions are lifted without ensuring healthy and safe working conditions for all, it would result in women working in unsafe conditions along with men, therefore an equality in poor conditions (Kapar, 2015, p. 194).

3. Taking biological differences into account in legislation

To achieve gender mainstreaming in OHS, legislation should take the biological differences between men and women to ensure they are equally protected (ILO, 2013, p. 4). The biological differences between men and women, are generally not taken into consideration by legislation, except from the specific regulations on pregnancy and breastfeeding. Even though the Turkish legislation provides protection with regards to the maternal role of women, the other biological differences seem to be missed in the secondary legislation. It is not possible to give an exhaustive list of these issues so; I will provide some examples regarding menstruation related sick leaves, manual transport of loads and personal protective equipment.

It must be underlined that when the gender biased legislation could result over-protection and this might have adverse effects the job opportunities of women. Now abrogated menstrual leave provision in Turkey provides an interesting example to this. Abrogated regulation on Heavy and Dangerous Jobs contained an article titled "women's special days" that provided for a five day leave for women working on heavy and dangerous jobs during mensuration, with a possibility of extension by getting a doctor report. The start of the menstruation was considered to be the day the employee signalled it. This provision provided for five days of extra leave for women created a risk for women not to be employed in these better paying jobs. It relied on the assumption that women would be "invalid" during the menstruation. However, while some women might experience the physical discomfort before or during menstruation, some women might not experience any physical discomfort at all. The new regulation on danger classification does not contain a similar provision. However, it could have been appropriate to include a provision in the legislation that provides for sick leave or a possibility to demand to work in lighter jobs when women cannot work or have difficulties in working in their normal jobs, due to menstruation related discomforts (Bakırcı, 2012, p. 368). It is possible for women experiencing pain related to menstruation to get sick leave according to general sickness insurance. However, the payment by the social insurance starts on the 3rd day of the leave according to the Social Insurances and General Health Insurance Law (Art. 18/1-b) temporary incapacity payments that are based on the ordinary sickness insurance start on the 3rd day of the incapacity. Therefore, women who have serious difficulties due to menstruation every month would have to accept the risk of losing up to two daily wages to take sick leave (except for the ones who are payed a fixed monthly salary regardless the number of the days worked).

Another area that requires women and men to be subjected to different rules is the manual transport. ILO CEACR states that the maximum manual load that can be transported by women should be substantially lower than the maximum load determined for men and the maximum load for two sexes should be defined separately. The Committee recommends the maximum load for women to be 15 kilograms. The fact that these are not defined in Turkish legislation has been criticised. (ILO CEACR, 2016). "Occupational Health Surveillance Guide", which is not a binding legal document, draws the limits in line with the standards pointed out by CEACR (General Directorate of OHS, 2015, p. 85). It must be also pointed out that the manual transport should take into consideration the weights lifted in care work and cleaning work. The employees who work in these jobs might carry more load than a construction worker or a miner in a single shift (Criado Perez, 2019, p. 113).

The design and choice of personal protective equipment (PPE) is another aspect of OHS, where biological differences are very important. Work equipment and PPE are mostly designed for an average male worker and the ergonomic needs of women are not considered (Gervais, et al., 2014, p. 14). As the female and male anatomy are different, PPE designed for men would not be protective for women most of the time. The Regulation on The Working Conditions of Pregnant and Breastfeeding Women contains an appendix that lists the risk factors and precautions for the health of pregnant and

breastfeeding women. Here, it is explicitly stated that the PPE should properly fit the bodies of the pregnant and breastfeeding women in order to ensure a complete protection and should not limit their movement and the PPE should be renewed according to changes in the body's size. If the PPE is not provided, the employee cannot be made work in the related work. Therefore, the biological changes in the anatomy of a woman during pregnancy and breastfeeding is taken into consideration by legislation. However, Personal Protective Equipment Regulation that generally regulates PPEs has no reference to gender; it only contains a provision that states the PPE should fit the ergonomic needs and the health situation of the employee that is using it. This, of course, by implication covers the anatomical differences of female and male bodies; but it would have been more appropriate to explicitly state that biological differences between sexes will be considered in choosing PPE to ensure these are not neglected.

To sum up, even though pregnancy and breastfeeding are explicitly taken into consideration in OHS legislation, other biological differences are mostly not explicitly mentioned. While the legislation provides for that needs of the employees should be considered in many provisions, an explicit reference to biological differences, where necessary, could be helpful to ensure that these are not neglected. These references should also be concrete where necessary, for instance the abovementioned "Occupational Health Surveillance Guide" includes a chapter on women's OHS, where the biological differences are mentioned; such as lower haemoglobin levels, lower respiration capacity, higher exposure to chemicals that are dissolved in fat due to higher percentages of body fat and so on (General Directorate of OHS, 2015, pp. 185-188); however this information is not integrated concretely in the relevant guides or regulations on the measures for protection from chemicals for example.

4. Gender sensitivity in risk assessment and management

Gender sensitivity should also be a part of risk assessment and management: *"In the design of all risk management strategies and their implementation in the workplace, the characteristics of both female and male dominated jobs, the specific features of the jobs (who does what, when, how and for how long), and women and men's biological differences in exposures and health outcomes, […] should be considered"* (ILO, 2013, p. 11). There are two façades of this process; participation of both genders in risk assessment, and more research on OHS of women. Women's participation in risk assessment should be ensured so that the specific features of the jobs and the different responsibilities at home and the accumulating risks can be really considered. More research on OHS is needed so that the safe exposure rates and health outcomes for both women and men can be determined effectively.

Occupational Health and Safety Law provides for risk assessment procedure as the first step in determining health and safety measures. Risk assessment is not only about listing the possible risks, dangerous factors that can create risks by interacting also need to be taken into consideration. Risk assessment is neither only about analysing the risk by experts, the involvement of the employees who might be exposed to these risks is essential (Akın, 2013, pp. 99-100). Some risks might be hard to

determined by people who do not face those. The involvement of the employees in the risk assessment process might prove to be useful in creating solutions as well (Akın, 2013, p. 113). According to OHS Act Art. 10/2 the OHS measures and the personal protective equipment is determined according to the risk assessment procedure.

OHS Act provides that in risk assessment process, the situation of the "young, old, disabled, pregnant or nursing" employees that require special policies and the female employees will be taken into consideration. This provision is also repeated in many OHS regulations. To accomplish this in practice the participation of women in risk assessment is essential. According to the Risk Assessment Regulation, the risk assessment is a teamwork. The employees in the team must represent all units of the workplace and should have information on the working, the already existing and the potential risks. This provision implies that the team should be able to provide information on different risks that women and men are exposed to. However, it would have been more appropriate to explicitly state that gender equality should be respected in building up the risk assessment team to make sure employers pay attention to this aspect (Erdoğan, 2018, pp. 467-477).

The risk assessment process should consider different responsibilities of women and men at home to achieve a full protection of the employees (ILO, 2013, p. 11). For instance, as women do most of the household work at home, they are exposed to chemicals in cleaning products; these exposures could accumulate with the chemical exposures at work and may have adverse effects in their health (Criado Perez, 2019, p. 115). An explicit provision providing for the consideration of dangers outside work and how these can interact with the dangers resulting from workplace during risk assessment is needed. Both women's and men's participation in the process would be again essential to properly examine the interaction of workplace and household risks.

I must point out that even if a gender-sensitive approach is established in legislation on risk assessment and risk management there is still a serious worldwide need of research in women's OHS. There are differences in immune systems, hormones and anatomies of men and women. These differences can for instance, play role in the absorption of chemicals or determination of safe limits of exposure to radiation. For example, women tend to have thinner skin than men, so this factor affects the safe exposure levels to chemicals differently. Women's higher percentage of body fat can cause chemicals to accumulate in the body (Criado Perez, 2019, p. 115). Efforts in a gender sensitive OHS research are needed in Turkey as well. There is no reference made to gender, sex or women in the regulation that establishes the duties, competences and responsibilities of the "Presidency of Institute of Research and Development of Occupational Health and Safety"; it could be a start to add gender sensitive research to duties of the Institute.

5. Integrating violence and harassment preventing policies to OHS legislation

"Women are concentrated in many of the occupations with a high-risk of violence; working in contact with the public and in solitary settings, particularly as teachers, social workers, health-care workers, and as clerks in banks and shops. Women also tend to work in low-paid and low status jobs where violence is more common; while men predominate in better-paid, higher status jobs and supervisory positions." (ILO, 2013, pp. 3-4) For instance, according to the Eurofound's 4th European Working Conditions Survey, women (6%) are more subject to bullying than men (4%) and there is a greater risk for younger women (8%). Sexual harassment also affects men more than women, generally women are three times more subjected to sexual harassment than men (Eurofound, 2007, pp. 36-37). The prevalence of sexual harassment in the survey seem to be gender specific while the prevalence of bullying might be related to circumstantial aspects like sectoral concentration, gender of the boss, level of customer contact (Hurley & Riso , 2007, p. 9).

In order to tackle these psychosocial risks that tend to effect women more than men ILO suggests governments to introduce specific legislation and guidance requiring employers, to assess psychosocial risks associated with stress, work-related violence and harassment within the risk assessment process and put into place measures to prevent or control those risks (ILO, 2013, p. 11). The OHS legislation dealing with these risks should also take the existing legislation on violence and harassment into account (ILO, 2013, p. 4).

In Turkish legislation, the legal basis for employer's duty to protect the employees from psychosocial risks can be found in the Law of Obligations, among the duty of the employer to protect the employees' personality, including prevention of psychological and sexual harassment (Art. 417/1). Being subject to sexual harassment is a cause for rightful termination according to Labour Law no. 4587 and although it is not mentioned by the law, mobbing is recognized by jurisprudence as a cause for rightful termination as well. I must point out that the mentioned legislation is applicable to private law employment contracts but not the civil servants. Law of Human Rights and Equality Institution of Turkey recognizes both physiological and sexual harassment as discrimination if they are based on the ten categories of discrimination accepted by the law (Art. 2/1-j, Art. 4-1g). It must be underlined that sexual orientation and gender identity are not among the categories of discrimination recognized by the law; therefore, this law does not provide protection from discrimination, harassment and sexual harassment based on sexual orientation and gender identity.

In the OHS legislation, psychosocial risks are mentioned in the regulatory instruments but not in the OHS Act. The Regulation on Risk Assessment states the psychosocial dangers among the other dangerous factors and states that these should be taken into consideration during risk assessment. The regulation also mentions in more detail that the potential dangers arising from the work organisation, hierarchical order, visitors, people other than employees etc. must be considered. Similarly, The Regulation on Duties of The Occupational Physician states that one of the duties of the physician is to consider psychosocial risks. However, these regulations do not provide detailed information on

assessment or preventive measures. When it comes to guidance, the main source of information provided by the Ministry of Family, Labour and Social Services is the Information Guide on Psychosocial Risk factors assessment. There is also a guidebook on Psychological Harassment at Workplace (Mobbing) published by Social Security Institution.

Information Guide on Psychosocial Risk Factors consists of 36 pages. The guide lists and briefly explains psychological risks and the problems arising from these risks, then further focuses on stress and mobbing. In its annex, the guide lists 20 foreign tools that can be used for psychosocial risk assessment and only one of them is available in Turkish. It could be concluded that this guide provides a little guidance on the issue. What is more, sexual harassment is almost neglected in the guide, it is only mentioned twice as a sort of mobbing (p. 19 -20).

The ignorance on the sexual harassment is an important defect of the abovementioned regulations and legislation with regards to gender mainstreaming; as a problem that is mostly affecting women is being neglected. There are no official statistics on the prevalence of sexual harassment at work in Turkey, however some EU statistics include Turkey. For instance, according to 4th European Working Conditions Survey conducted by Eurofound in 2005, fewer than 2% of the participants were sexually harassed at work in the past 12 months, while in Turkey the rate was 6% (Eurofound, 2007, p. 37). The number would be much higher if the question was formulated to ask if the participants were subject to sexual harassment during their professional lives.

The inclusion of psychosocial risks in the OHS legislation is a step forward in tackling these risks. However, further guidance is needed in this domain; such as development of assessment tools on these risks or more information on the prevention. Sexual harassment also needs to be addressed in the new tools in relation with the existing legislation on the issue. Efforts in this domain would both benefit gender mainstreaming in OHS but also the protection of employees' well-being and dignity at work in general.

6. Ensuring gender balance in OHS decision-making

Gender imbalances need to be eradicated in OHS related decision making; women are poorly represented in the decision-making mechanisms both at national and enterprise level. Therefore, gender balance can be reached by ensuring women's participation in these mechanisms (ILO, 2013, p. 28). I will here focus on the enterprise level, as engagement in a genuine tripartite consultation on national level is rather a policy issue than OHS legislation and achieving women's representation on national level is also related to the internal mechanisms of the social partners represented in the related institutions.[1] On the enterprise level *"Employers should consult workers and their representatives about*

[1] The main dialogue mechanism on OHS issues in Turkish legislation is the National OHS Council provided for in the OHS Act. However, there are some shortcomings in the functioning of the Council indicated by both the social partners and the government. ILO CEACR has called upon Government to engage in genuine dialogue with all social partners and to take all the necessary steps to enhance and strengthen tripartite social dialogue on OSH

safety and health, ensuring that women workers are properly consulted and involved in OHS decision making and encourage women workers to participate in OHS bipartite committees." (ILO, 2013, p. 29)

In OHS Act two mechanisms of participation are provided for: employee representatives and OHS committees. These mechanisms are further regulated in respective regulations; however, they do not contain any reference to gender equality.

The employee representative is authorised to participate and monitor OHS operations, to ask for preventive measures, make suggestions and to represent the employees in OHS issues in general. (m. 3/-c) Election is the essential process in determining the employee representative, but in case where this is not possible the representative is appointed by the employer. In both cases the number of employees and the risks in different units of the workplace must be taken into consideration in determination of the representative. If a trade union has the authority to enter collective bargaining and has appointed a union representative, the union representative also carries out the OHS representation mission. It would have been appropriate to add the gender equality in the criteria of determination of the OHS representative in order to ensure a gender sensitive OHS representation. Women workers can convey their demands and problems through the OHS representative even if that person is a man. However, having a woman representative would contribute to gender sensitivity more than an indirect representation through a man, especially in reproductive health issues (Erdoğan, 2018, p. 477).

Art. 22/1 of OHS Act provides for the establishment of OHS committees in undertakings with at least 50 employees and where permanent work is performed for more than six months. The committee works on OHS issues and the employer is obliged to act according to decisions of the committee that are in line with the legislation. Drafting an OHS internal directive, monitoring the application of the directive, detecting the necessary measures according to monitoring, guiding employees in OHS issues, evaluating the OHS risks and taking precautions are among the duties of the OHS committees. The committees are composed of the employer or employer's representative, OHS expert, occupational physician, one employee who carries out duties of HR, finance, administration or social affairs, if present the expert of civil protection, if present the foreman and the employee representative. It is necessary that the members of the committee are aware of different risks for women and men to be able to take necessary precautions for them. It would be appropriate to consider gender equality in the composition of the committee and its functioning. Adding provisions to ensure these could be helpful in designing the committee's role in ensuring gender sensitivity in OHS (Erdoğan, 2018, p. 478).

at the national level in 2015 (ILO CEACR, 2016), and called upon the government to continue providing information in this aspect (ILO CEACR, 2017).

Conclusion

Gender mainstreaming in OHS legislation is essential in ensuring both women and men are protected at work, as the rules, standards and policies designed according to average man falls short in providing healthy and safe working conditions for the ones whose bodies, tasks and experiences are different from the average man. There are many façades of the gender mainstreaming efforts and including this perspective into policy; more data and research regarding OHS that consider gender and specifically women are needed as well as integrating the results from these to the legislation. In this paper I tried to analyse the Turkish OHS legislation relation to gender sensitivity. Although there are some gender sensitive provisions; the legislation has not adopted a gender mainstreaming perspective.

The legislative coverage of all the sectors where all men and women work is not achieved by the new law, as one of the groups that are left out is very vulnerable domestic workers who are mostly female. The attention in the regulations and guidebooks mostly focus in industrial jobs which leave out the service sector that employs most women and men. The prohibitions on women from working in certain jobs is an archaic way of protection. Today the needs of both female and male workers should be considered and safe and healthy working conditions for all workers must be ensured. In Turkey, the bans are mostly lifted, except from underwater and underground jobs. The mentioned ban should also be lifted; but I must stress that the working conditions in these jobs must be improved for all. Biological differences between women and men have important impacts on OHS of women. The examples provided in this respect show that the legislation adopts a gender-neutral approach (except regarding the maternity related provisions) which risks women to be neglected or adversely affected. The legislation provides for the consideration of gender in risk assessment; however further guidance on this issue is needed. The secondary legislation lacks a focus on sexual harassment for instance. The efforts in gender sensitive risk assessment must also be backed by scientific research on gender sensitive OHS. Although some forms of employee participation to OHS decision-making in workplace have been adopted by the OHS Act, this does not ensure the participation of women. In conclusion, there is an overall need for a revision in OHS legislation with a gender sensitive perspective.

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