# The Turkish Labor Movement in the EU: The Success and the Nature of Harmonization Process

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***Abstract***

*The case for labour movement in the EU is tied to the future equilibrium of the labour market, implying a minimum harmonization that has several limits. Therefore, the question of Turkish labour movement in the EU has been subject to the legislative structure that Turkey has to cover from its present situation to a possible accession to the EU. The EU encourages Turkey to strengthen its efforts to ensure full employment and social security rights in line with EU standards. This is particular relevant for the strengthening of the social dimension inside the EU and in a candidate country through more and better jobs, adequate social protection, labour standards and fostering the development. It is essential to bring Turkish legislation closer to the EU levels and the minimum standard application under the Community Law. The debate has focused on how far Turkey's recent constitutional amendment package has brought significant improvements in the area of social policy. The purpose of this paper is to review the harmonization process for compliance with EU's acquis communautaire through the accession of Turkey. This necessitates an analysis of the policy adjustments including approximation of Turkish labour law and social policy*

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*legislation. In this context, an interesting background material for the policy issues of the legal and social status of the EU workers in Turkey, which may arise in the event of accession, are described.*

***Keywords**: European Union, Harmonization, Labour Mobility*

## Introduction

It is widely accepted that there has been limited progress on the free movement of Turkish workers to the EU. This is despite of the legal instruments of 1964 Ankara Agreement and 1973 Additional Protocol that envisaged the progressive stages of labour mobility by 1986. At the same time, Turkey has witnessed an increasing Europe-wide of skepticism towards its European prospects as far as the labour market issues concerned. This is especially true for the advent of the Lisbon Treaty of 2000 that seems to have changed the climate for the European labour markets. There are complex forms of harmonization process in which Turkey has to undertake within ''Accession Partnership Framework'', while discussions have largely centred on Turkey's membership prospect. In order to harmonize the Turkish legislation with the *acquis*, the harmonization Committee was established on 15 April 2003. As regards to the process of Turkey's accession to the EU, the Committee plays important role to assist in preparing Turkey for full membership and to examine the activities of Turkish governments in social policy, in particular.

Pointing out to the importance of harmonization process, the key to this is to help Turkey to decrease gaps as a whole, in order to reach the economic standards of the EU. A total of 2.3 billion Euros worth of EU grant funds allocated to Turkey to support the country's harmonization process until 2010 within the framework of the Instrument for Pre-Accession Assistance. The funds distributed among five main fields; institution building, cross border cooperation, regional development, human resources development and rural development. Among the large range of immediate beneficiaries are the unemployed and vulnerable groups, school children under the Active Labour Market Strategy Program by the Turkish Employment Agency (İŞKUR).[2] So, the EU is hoping to facilitate Turkey's preparation for EU membership by funding projects in these fields.

[2] Turkey Financial News, Business and Finance News from Turkey, http://www.turkeyfinancial.com/news

A question arises as to what extent Turkey has adopted a minimum harmonisation which may satisfy the EU member states. In this context, it is appropriate to highlight particular aspects of Turkey's obligation, whilst significant differences in the legislative structure of the member states still exist. Turkey, as a non-member country – that is, outside the EU's boundaries – may not be willing to adopt at least some of its rules and procedures (imposed on). It must be bound by most of the policies, but might opt-out of some of them. Here, what matters most is the scope of the EU's power to enact harmonization measures. The prospect of a better policy harmonization in the field of constitutional law, labour market and social policies in Turkey – that are the keys to stimulate the movement – is the main concern of this paper.

## Background: The Necessity of Harmonization

In European context, harmonization literally means that the process, by which the European Community (EC) set down a standard in a particular field which all the domestic legal systems must meet (Steiner and Woods 2003: 258). Thus, social policy harmonization is necessary to ensure a level playing field of fair competition in the common market. market.[3] The signing of the Treaty of Rome in 1957 that established the European Economic Community (EEC) began the process of the European integration. This process has meant that the member states accepted the need to cede sovereignty in the economic sphere. As a result, the Treaty gave the organs of the Community sweeping powers to adopt the measures necessary to promote economic integration. Free movement of goods, capital and workers, freedom of establishment, and freedom to supply services were guaranteed by core Treaty provisions. These were backed up by the power to harmonize national legislation, where necessary for the functioning of the common market and internal markets (Barnard and Deakin 2002: 1).

The development of the EC entails harmonization of policies in many areas (Montanarı 1995: 1). In the first place, harmonization was the social policy strategy adopted by the EC in the first Social Action Programme (SAP) of 1974; more than 30 measures were adopted over an initial period of three to four years. However, as the EEC Treaty of 1957 did not provide the necessary legal competences to intervene in the social field, social policy had to be justified as necessary to promote the common market. Essentially, harmonization of social policy was based on Article 94 EC (now Article 115 TEU), which provided for approximation of laws that directly affected the establishment or functioning of the common market.

[3] Eurofound, Harmonization, www.eurofound.europa.eu

This provision reflects the ambivalence of harmonization in the social policy context. Harmonization is an objective to be made possible, but the passive result of the functioning of the common market is cause for concern. One complexity is that the active use of procedures in the Treaty and approximation of laws is not a clear instrument of harmonization. As originally envisaged, harmonization is a market process, not a legal process.[4] In other words, the concept of harmonization is ambivalence inherent because of the question of whether harmonization of laws or harmonization of substantive conditions is at issue. Besides it is not always essential to harmonize the substantive conditions which derive from the different national labour.

The necessity of harmonization has gained prominence over the years. This can be well illustrated with the Lisbon Treaty when the EU set itself the goal of becoming 'the world's most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion'. As with all strategic goals in the history of European integration, a specific method has been established to reach it. For the single market, the method consisted of setting minimum standards and mutual recognition of norms (Porte et al. 2001, 2). For the social policy, coordination can be perceived as the lever of an incremental, rights-based 'homogenization' (Wallace et al. 2005: 264).

It might be tempted to highlight this limited progress, which is made in the general direction embarked upon. A real danger is that disparities in existence in the EU between negative and positive integration remain to be removed. As harmonization process proceeds, there are problems in store in terms of policy design, actor coordination and monitoring reform across highly diverse systems, not to mention the legitimacy of a process which explicitly seeks to penetrate previously protected national policy domains. And yet, in most member states there are already processes in place, frequently involving social partner concentration, which are tackling the complex interdependencies between social protection, employment and broader economic policies upon which a new coordinated policy for the EU can build.[5] Therefore, enormous political will is required to initiate a new approach among the new member states, as well as candidate countries, which all will have to undergo changes. Otherwise they can easily disrupt the harmonisation process that has already initiated.

[4] Ibid.

[5] The Lisbon European Council and the Future of European Economic Governance, http://aei.pitt.edu/62/1/lisbonforum.html

**Mobility Facilitation**

*Co-operation in the Field of Constitutional Law*

Steps towards constitutional changes are evident. In this regard, referendum on a number of changes to the constitution that was held in Turkey on 12 September 2010 shows the commitment to a more democratic Turkey. In all, the reform package included 26 amendments to the 1982 constitution, many of them backed by the EU. Of significant is that workers are allowed to join more than one union, since ban on politically motivated strikes are removed. The democratic nature of the revised constitution reflects on the right to collective bargaining for government employees, while government employees are granted the right to collective bargaining, the Public Employees' Arbitration Board consisting of government employee representatives will have the final say. Consequently, civil servants have the right to collective bargaining or strikes. So, the revised constitution removed restrictions on the right to strike. This has advanced workers' right regarding politically motivated strikes and lockouts, and in turn was in part a response to the functional requirements of deepening the EU.

Until 2003, Turkey had developed an increasingly complex set of laws to regulate immigration matters – often resulted in a blurring – which consisted of more than 70 regulations and decisions. A series of different bodies were charged with the responsibility of issuing work permits, but were greatly overlapped. This system was considered as incompetence when it distorted the economic competition, mainly resulting from a lack of information about foreign workers. A specific concern was related to the shadow economy which had increasingly been fragmented over the years. In the first place, in order to deal with this complexity in a European context, Regulation No. 2007 in 1932 *Art and Services for Turkish Citizens* was abolished and replaced by Regulation No 4817 *Foreign Nationals' Work Permits* on 6 March 2003. With this modification, a particular important role was assigned to the Department of Employment and Social Security (DESS). Yet, a desire to bind different regulations together has not been entirely achieved. Various government departments including defence, health, trade, the Higher Education Council and the Prime Minister's Office still play a part in setting the overall framework, but they do not have a completely free hand. The DESS's views must be sought in connection with granting work permits to the foreign workers.

With regards to foreign workers' employment in Turkey, the question of national priority plays important role that may have immediate economic

implications. Regulation No. 4817/3 *Foreign Nationals' Work Permits* defined the concept of foreigner as ''those who are not considered as Turkish citizens'' in accordance with Regulation *403 Turkish citizenship*. At the first sight, this definition may seem concisely coherent, but it reflects some deficiencies. The only criterion for Turkish citizenship is Regulation No 403, which largely excludes other possible sources of law (Aybay, 2005: 69).

Article 35 allows the foreign workers to undertake certain professions concerning the conditionality of employment. It was previously prohibited by the Regulation 2007, which did not mention about the type of posts that foreign workers were eligible to take up (Güneri 2007: 4). Article 13(2) reinforces the existence of similar provisions, dealing with the limits for foreign workers in professions. Moreover, somewhat more difficult to achieve is the Regulation 6197 *Pharmacists and Pharmacy* that excludes the employment of foreign workers on the basis of nationality. Furthermore, Regulation No 1512 *Notary Public's Office* permits discriminatory conditions of employment once access is granted. Simply, the foreign workers are denied to perform this post. Only Turkish workers, who have the status of civil servants, are appointed to this particular job. Furthermore, Regulation No 5683/15 is confined to certain occupations for the foreign workers in Turkish labour market. It reflects some forms of discrimination which will be of limited use with the EU accession.

Many of these changes are inspired by the Community Law. Surly, any modification to national legislation should be in line with the *acquis.* Far from alignment with the EU rules and regulations, more and more European politicians complained about foreign nationals' working conditions in Turkey. With foreseen complications, deficiencies can seriously threaten the level of employment in a given occupation. In order to provide a better transparency regarding granting work permits to the foreign workers, these regulations must be reviewed by both parties. (Yılmaz 2008:122). Generally, the basic provisions for the purposes of employment that were laid down in the Turkish Constitution grant equal rights to both the Turkish nationals and foreign workers. Nevertheless, this does not necessarily mean the total elimination of the restrictions on the condition of employment.

In the case of foreign workers, the derogation has been considered for both Articles 16 and 23 of the Turkish Constitution concerning a number of measures (i.e., visa policy). In fact, it is no longer appropriate to abolish Article 16 completely, but modify it as the fundamental rights and freedoms are restricted for non-EU foreign workers into Turkish territory were laid down in the Constitution. Article 16 stated that 'the fundamental rights and freedoms can be restricted in accordance

with nationals in accordance with the international law'. Simply, the rights granted to the EU nationals ''with distinction'', allowing Turkey to provide special treatment for these workers, who are very strictly construed. Although the fundamental freedoms to travel and reside within Turkish territory were laid down in Article 23, it permits Turkey to derogate from this freedom on the grounds of public policy, public security and public health and, perhaps most important of all, the dynamics of economic well-being. Beyond these specific and limited provisions, any other mechanisms should be prohibited because of their effects on the labour movement.

To this end, the provisions regarding the condition of Turkish citizenship, which enable foreigners to take up the post, will likely be abolished. Thus, anything that constitutes risks to public security has to be taken into account when adjusting the laws (Ayhan, 2004: 53). This new measure may be a step forward when Turkey is under enormous pressure to introduce new legislation. As far as foreign workers are concerned, the Turkish national sovereignty becomes far more important. Obviously, this situation is difficult to maintain, since the Community Law should be taken into account with the EU accession.

For that reason, attempts must be made to work out a common ground for transparency. The 2004 amendment to Article 90 has had a significant effect on the scope of fundamental rights and liberties. Such amendments regulate international agreements, strengthening their safeguards (Yazıcı 2004: 97). Quite apart from this principle, Article 90 makes it clear that Turkey is now in a position to review the main legal system regarding the direct applicability or supremacy of the EU law over the domestic law. This can only be achieved through the consent of the Turkish Grand National Assembly. Its view is sought in the decision making, something of which the EU authorities are becoming increasingly aware. The Assembly provides the basic setting for the adoption of the international laws. Thus, the EU treaties must be extended by the inclusion of the legitimacy of the Assembly. This is essential for a significant broadening of freedom to move. If one is to find this unacceptable, it would imply to deprive Turkey of further integration with the EU.

However, neither the Treaty on the European Union nor any international organization regulates effectively the notion of supremacy of the Community Law. There is then little legal basis. The issue is still left to the discretion of Turkey. In fact the experiences have shown that there is a disagreement among the member states; some preferring not to make such a grand step, but rather retain sovereignty over labour movement issues. Such issues may politically be sensitive, whilst others swiftly involving in reforms with their constitutions. Indeed, attempts to revise much-

criticised articles that make the fundamental rights circumscribed have been evident since Turkey first applied to the EC for full membership. Turkey has modified its Constitution several times to meet the Copenhagen Criteria for membership, including reforms in the penal code, institutionalisation of women's rights, and improvement in its human rights record – particularly with regard to minorities (Watson 2006: 35). Perhaps, the accession process has provided the most direct incentive for legislative change in labour market policies despite being not fully sufficient. Turkey is required to pass comprehensive amendments to the Acts mentioned above, which will help clear the path towards freeing its labour.

Although the process is not yet completed, Turkey is slowly transforming itself into a truly democratic society based on Community Law. With all aspects of free movement, the Turkish government is able to seize upon the opportunity for revising Article 62 of the Constitution regarding 'Turkish citizens working in the foreign countries', when the rights are endangered. Article 62 is a question mark over traditional forms of harmonization. It is designed to protect Turkish families abroad to strengthen their ties with the homeland and takes necessary measures for returning migrants. Of great social significance is the principle of the cultural needs and social security entitlements, coupled with the access to a higher quality of education for the children of Turkish workers. Compliance with the Community standards can strengthen the grass roots of social partnership. The improvements will involve a process, implying gradual alignment of social policies under the impact of the EU legal system. The clashes with the EU rules and regulations in relation to the treaty of freedom cannot be justifiable because the problems deriving from the implementation constitute the real barrier to labour movement.

*Harmonization of Labour Law Policies*

In the context of the EU legal system, the idea of a minimum harmonization measure, which began with a sense of modification, has already been addressed in Turkish national programme. The modernization of public employment services was launched in 2005. As a result, the employment sector continues to improve its institutional capacity. In a similar vein, a progress is made in the preparation of the Joint Assessment Paper for Employment Policy Priorities (JAP) by both European Commission and Turkish authorities. Still, much remains to speed up Turkey's efforts for the development of a national employment policy reflecting the Union's strategy. The 2006 Progress Report noted that little progress was made in the area of employment policy. Turkey must review several laws and the role of professional organizations in order to remove barriers to the movement of foreign

workers. It stated that the overall employment rate fell to 43.4% in 2005, while the unemployment rate was stabilised at 10.3%. The scale of undeclared work accounted for 50.1% of the overall employment and 88.2% of the employment in the agricultural sector, which continues to be concerned. A low level of labour force participation, particularly among women, a high level of youth unemployment and a strong rural/urban labour market divide remain the main challenges in this area. This is despite the fact that recent constitutional amendments included gender equality is strengthened and discrimination against children, the old and disabled banned.

Attempts to put in place in Turkey's Employment policy in line with the *acquis* have been bedevilled from the outset as to how to create new regulations on the rights of civil servants in terms of job security. This is an area of disagreement in which Turkey is, like other member states, required to remove job security on the grounds that it conflicts with the free market mechanism. The core issues are at stake due to the disparities between the status of civil servants and workers. The Turkish government insists that everyone in the public sector to be considered a ''public employee'' instead of being categorized as either a worker or civil servant. In principle, the rules for compliance in employment policy remain to be difficult, at the very least.

As a candidate country, Turkey has committed itself to adjust and coordinate its labour market institutions and employment policies. The process of co-operation and coordination is likely to have two crucial effects on policy making in Turkey. First, Turkey is yet to establish the institutional framework that is necessary for designing and implementing employment policies. This requires major improvements in the national statistical system, strengthening the Turkish Employment Institution (ISKUR), etc. Second, Turkey is hopefully going to implement, after decades of neglect and disorientation, consistent and systematic employment policies that bring forward long term objectives. These policies should be in conformity with the three objectives of the EES (full employment, quality and productivity at work, and cohesion and an inclusive labour market) that are also priority issues for Turkey (Taymaz and Özler 2004, 25). Efforts to strengthen the capacity of the Turkish Employment Institution continued. These concerned, in particular information technology infrastructure and training to allow job-matching services in an electronic environment. Further efforts are needed to prepare for participation in the EURES (European employment services) network (Progress Report for Turkey 2008: 40).

Specific national arrangements obviated the need for harmonization of labour

law policies. A drive for new legal rules has already begun to be undertaken in Turkey. As indicated above, Regulation No 2007 in 1932 *Art and Services for the Turkish Citizens*, which restricted the entry to and residence in the country for foreign workers, modified the access of those workers to employment. Such a modification might be of benefit to the EU citizens. Some posts that are applicable to only the Turkish citizens will have to be redefined by the requirement of a fundamental change by the EU. Almost immediately, it is argued that Turkey must meet the requirements of a minimum harmonization. This is particularly relevant in the context of the Act of Cabotage, the Act of Residence and Travelling for Foreigners, the Act of Passport and the Act of Title-Deed which, more or less, restrict economic activities of foreigners in Turkey. They comprise the Act of Promoting Tourism, the Act of Mineral, the Act of Sea Work, the Act of Aliens and Firms, where their capital is divided into shares and the Act of Insurance Ltd. There are other areas, where new measures need to be adopted. Turkey should adjust the provision for the candidates of representatives of employee – who stand for the election of the minimum wage verifying commissioners – must be Turkish (Karluk 2003: 603). These objectives should be framed in sufficiently broad terms. However, it may not be possible to introduce a stricter standard when one has to take into account the specific nature of national situation.

Often, the process of achieving a satisfactory result can take years, with difficulty of implementing measures. The mismatch between regulations and implementation has manifested itself from the 1960s to the present. This is when Turkey failed to meet the requirements which frustrated both the EU and Turkish workers. Following the Decision 3/80 of the Association Council, the stipulations of Regulation 1408/71 were declared applicable to Turkish employees, albeit in a limited form. Article 3 Decision 3/80 contains a non-discriminatory clause according to which persons who live within a member state and are covered by this ruling enjoy the same rights and responsibilities, as stipulated by the respective member state, as do nationals of the member states unless the ruling states otherwise (Feik, 2000: 227). Accordingly, a resolution deals with matters including the questions of transferability of monies within the context of death, old age, disability, accidents at workplace. It also included the insurance scheme covering health, maternity leave, temporary incapacity to work and family allowances for migrant workers and their dependents employed in various member states. All periods were taken into account in terms of calculating the amount of insurance. The Decision 3/80 envisaged revision of the basic regulations on social rights of Turkish workers and their families residing in the member states, but fell short of implementation.

The main reason is that the Decision was blocked by the Greek veto, despite the concrete result of the fundamental review by the Commission before the implementation by the member states (State Planning Organization 1993: 152).

As a legal basis to harmonize areas in which Turkey must adopt the measures, the Turkish legislation lacks relevance for the statues of foreign nationals concerning the rights to reside depending on the residence permit. The provisions regarding the residence permission have been laid down in Turkish Constitution. However, such permission is usually issued with work permit except for the international students for educational purposes and for some individuals with special circumstances. The necessary step to improve the right for residence in Turkish legislation is not to preclude the EU citizens' right to movement. There is a restriction to apply for most posts in the public services by the foreign nationals who can only apply for ''certain posts'' with the exercise of official authority. So, they are subject to conditions of access. Similarly, Regulation 5683/7 calls for the establishment of a scheme to prohibit certain professions that are designed for Turkish citizens. Under the Turkish employment law, the requirement of work permit is a bureaucratic tangle. Various government departments are still solely entrusted with responsibility for acting as a key point for applications for work permits. The updated version of Regulation 4817 defines cursorily the employment conditions of foreign workers, and thus is interpreted by many as incapable of laying down a uniform legal framework.

In the debate that has ranged over the pros and cons of Turkish membership to the EU, some see weaknesses in the Turkish employment law as a means with which to assert non-compulsory practice. Such a practice is legitimate in the Community Law without full membership. A label for rights and freedoms is limited in the Turkish Constitution. Being a non-member does not allow Turkey to increase the rights attached to the notion of citizenship. This obligation will, however, take effect with full membership. This is to say, Turkish membership may enhance the possibility of Turkey to be a service provider with a much broader range of rights granted to the EU nationals. Indeed, establishing the right to work in a variety of private sectors may encourage more Europeans to move to Turkey for merely employment purposes.

If anything, the difficulty arises from a lack of relevant provisions in the Turkish Constitution. The rules and the breaches, which alleged in each member state and Turkey, are not similar. A Turkish worker can, for example, take up employment in Germany despite Turkey is not a member of the EU, but the Turkish legal system explicitly excludes such a right for a German worker. The point is that the EU's policy should be respected within the spirit of its legal system, which

seeks to use the mechanisms for the provisions on employment matters. Such a policy directly relates to the rules and regulations for entering the territory of the Community, whilst restrictive nature of the Turkish Constitution draws upon the ideas of employment policy.

There is another angle and it is one that resonates with the foreign workers in Turkey. Under certain conditions, Article 6 Decision 1/80 of the Association Council for the enactment of ''flanking'' measures to ensure more uniform standards of workers' protection conforms to an equal footage with the arrangements of the prospect of granting temporary work permit. Article 5/4 defines the eligibility criteria for work permit of foreign workers on a part-time basis for the duration of employment. A member of the workers' family has to reside lawfully and continuously for at least five years. The rights only apply to those who perform or wish to perform an activity of an economic nature, but those who attained student statues are not entitled to work permits. Article 7 indicates that a permanent work permit is obtainable after meeting these conditions. Even so, such a right may manifestly works to the advantage of migrant workers. Although Article 5/4 Decision 1/80 of the Association Council supplemented by Articles 6 and 7, which defines the right to entry as conditional on the holding of visa, there are limits. They can bestow one of the most precious commodities in labour movement – the benefit of the doubt.

And yet by the national law, the length of stay does not make workers eligible for a residence permit in Turkey. Normally, a right to permanent residence does stem from the duration of stay. That is, in the EU context, the right to permanent residence has a direct effect in cases where a worker in a duly attest long-term stay. In 2001, the Commission proposed a directive to create the status of long-term residence under the EC law. Among other, the proposal that specified the granting of a residence and work permit is conditional on the continuous stay of the nationals of the third-countries for five years minimum. For Turkey, this principle could serve as a good example and there is no harm to follow suit. The conditions which simply ''hinder or make less attractive'' the freedom to work and pursue certain professions provided by the Turkish legal system require a revision. There is a complaint by workers' families who work in the embassies, consulates and firms backed by foreign capitals and tourism enterprises (Kindsmann and Ekşi 2002: 35). Such an obstacle does not only have relevance with the nationals of the EU, but the nationals of the third-countries that are equally important.

*Harmonization of Certain Rules on Social Policy*

The obligation to comply with the EU provisions on social policy raised some special difficulties with respect to minimum wages provisions and health and safety rules, as well as environmental protection norms. With unease growing within the member states about enlargement in general and Turkey's social policy direction in particular, a risk is that the impasse over the movement of Turkish workers to the EU is likely.

At the beginning of 1990, when the EU was deeply involved in reforming its own social policy, it sent some messages to Turkey to do the same. Almost all EU summits have scheduled to implement the measures on the White Paper (1993) with the aim of rescuing the EU from economic stagnation, widening employment opportunities and strengthening labour market capacity to compete with the third-countries. The White Paper contained widespread issues in which the EC encountered in the 21st century. These issues included training at work place, boosting efficiency of labour market and rearrangement of working hours. They were considered more or less as precautions to prevent the unemployment level in the EC wide (Tekeli and İlkin 2000: 280).

As the pressure to meet the convergence criteria grew the sceptics about the social practices of the Turkish government as an exasperating towards the Community Law mounted. The Turkish authorities are already working to harmonise social policy and law with the *acquis* as laid out in the Accession Partnership (AP) strategy for Turkey of March 2003 and the National Programme for the Adoption of the *acquis* (NPAA) of July 2004 (Decision of the Council of Ministers dated 23 June 2003, No. 2003/5930). This exercise covers the entire range of EU policies, including one that receives little public attention, but carries high salience both to the EU and Turkey – Justice and Home Affairs (JHA) (Apap et al. 2004: 1).

The Commission Report (2006) noted that some progress has been made to bring Turkey's employment and social policies in line with the *acquis*. With regard to legislative changes, steps are taken in the fields of labour law and health and safety at work, although little or no progress have been made in the fields of social dialogue, gender equality and anti-discrimination. In parallel to the Association programme, especially the Customs Union framework, the harmonization of specific laws could, unlike the other candidate countries, be seen as significant steps forward before the opening negotiations (State Planning Organization 2004, 5). That is, the alignment of Turkish legislation with the *acquis* is only the beginning. In the early years of the Ankara Agreement and the Additional Protocol, broader issues of labour mobility were of little relevance, but helped to sharpen up the existing ones. The growth of its social competencies through subsequent treaties such as the Single European Act, the Maastricht and Amsterdam treaties widened the

responsibilities of Turkey. They provided precious guidelines in the policy-making of Turkish Grand National Assembly despite the growing overlap of interest with that of the EU national authorities. This may lead to either co-operation or conflict.

To provide a structural approach to Turkish social policy, the movement of labour entails changes which should be recognized as further steps, but such changes might prove a tremendously difficult project for Turkey. The provisions of the Association Agreement and the subsequent treaties of the EU on social policy included some solid social security entitlements and demonstrated obstruction due to mainly structural differences between the EU and Turkish systems. To illustrate this, the rules concerning the foreign workers to move and receive certain benefits in Turkey are staggering. In the field of social security law, systemic source of diversity can easily create obstacles to the free movement arrangement. Turkey has an outright complexity in social security system, with little indication that it is going to be improved. While constituting a single social security model, as might be expected in what is still preferred, the emphasis should be based on coordination or co-operation between the EU and Turkey.

Beyond this minimum level, Turkey is at least free to set its own standards. The earliest Regulation 1408/71 made on 14 June 1970 improved, to some extent, the condition of work and the rights of foreign workers, which can be regarded as a progressive step. The Regulation 4817/1 in 2003 *Foreign Nationals' Work Permits* reads as 'the aim of this Regulation is to issue work permits for foreign workers and establish the principles accordingly'. The new Act allows foreign nationals to work on the same basis as the Turkish nationals, something which was not possible under the earlier legislation. For the employment condition of the foreign workers relevant provisions enshrined in the Turkish Constitution are not as much despairing (Yılmaz, 2008: 122). Anyone moving to Turkey for work-related reasons may not be placed at a disadvantage, and thus requiring Turkey to concern itself with social insurance scheme to protect migrant workers and their families. The rules that protected the right to move for work and to remain in Turkey subsequently gave entry rights to families and elaborated a complex system for the maintenance of social security rights (El-Agraa 2001: 422). For the first time ever, these changes gave a high profile to social inclusion of foreign workers. This is so, through a good deal of attention, primarily because of the watchful prodding of the Turkish Parliament that proposes new laws within the framework of the accession strategy.

The most rigorous attempt to reform social policy is the decision to implement the Public Personnel Reform, which the Government has been working on since

2003 to bring Turkey's public administration up to par with the EU standards. The bill, which closely concerns approximately 1.7 million civil servants comprising 62 percent of all public employees, allows talented and qualified people in the public sector to be moved to senior-level positions so as to improve the performance of public administration. The bill also foresees allowing women employees to take unpaid maternity leave for up to 24 months after birth to care for the child. In cases where the mother can not use this, fathers who are public employees will be granted the right to take unpaid leave for up to 24 months as well. Under the current laws, male civil servants are only allowed three days paid paternity leave. If the bill passes, this will increase to 10 days.[6] Obviously, this reform is good illustration of Turkey's harmonization efforts.

In the social policy context, another area of harmonization is the linguistic barrier which is a constant cry of reform. The current emphasis continues on the importance of teaching foreign languages and the increasing number of schools in Turkey. The aim is to facilitate access to language training for particularly low income earners. With the prospect of enlargement to include Turkey, the new basis for the criterion will be a good command of language of the host country. Obviously, Turkey will be required a considerable change and a great deal of effort to improve fluency in at least one EU language. Others include possession of relevant qualifications and adequate skills and expertise as the EU officials often spell out. This is so to protect the social and economic framework from a dilution of objectives. Employability depends on the skills that workers possess. Therefore, language training and teaching should be given more emphasis through spreading the process in the entire Turkish population. An impetus has to come from the need to help to improve language skills, together with setting up more schools.

## Conclusion

This analysis has been undertaken with the objective of evaluating recent attempts to enhance Turkey's competence in the area of labour market. There have been substantial changes in the process of harmonization. Concerning Constitutional and labour laws, some progress has, as outlined, been made in particular with respects to collective bargaining for government employees, the employment conditions of foreign workers and the capacity of the Turkish

[6] Todays Zaman, 'Public Administration to Become Compatible with EU standards', 12 October 2010.

Employment Institution. However, significant efforts are still needed in particular concerning employment policy, social security law and foreign language learning. This situation may hamper labour mobility even if Turkey is granted the right to free movement in the case of the EU membership.

As the analysis has shown, Turkey should ensure that the domestic system provides what is required by the EU rules and regulations. Harmonisation is necessary in the Turkish labour law. The process by which the EU sets down a standard in labour market condition that all Turkish domestic legal system must meet in the event of full membership, Turkey will be thrived to be empowered to act. The evidence has presented that, the freedom to move can only be achieved through the enhancement of Turkey's competence in the area of social policy. Given the disparities between Turkey's social policy legislation and Community Law there needs to be a legal clarification to fill some of the main weaknesses highlighted by the European Commission in Turkey's progress report.

The study has demonstrated that there is now more room for Turkish authorities to incorporate adjustments when transposing the EU directives into the national law. With a specific concern to reduce inequalities, the task needs to be carried out through the promotion of the system, since Turkey has not lived up to its obligations under the Community Law. Essentially, harmonisation process is deeply controversial, but is continuously evolving. Signing agreements with the EU means that Turkey have taken small, but crucial steps in the harmonisation of the domestic laws and practices in the field of EU activity. Overall, the progress grasped, albeit in a partial and incomplete way, it is important to retain a sense of perspective.

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