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Equal Employment Opportunities in The Adaptation Process of Turkey to EU

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ABSTRACT

Equal opportunity in working life is one of the most important topics in the adaptation process of Turkey to European Union and also in EU itself. Personnel selection is the first stage of working life and job advertisement is a widely used method for recruitment. In this study, statements which prevent equal opportunity and lead into discrimination in job advertisements which are published in one of the Turkish and one of the English newspaper supplements are examined. It is found that there were direct discrimination statements like age, gender and university preference in job advertisements in Turkey. There was not direct discrimination statement in the job advertisements of the English newspaper but there were indirect discrimination statements like working term, personal criterion, wage and a term which prevented disabled people applications in both newspapers.

INTRODUCTION

Idea of the modern society is based on the recognition of the right for making decision on the subjects that are related to someone's own life. This principle refers to the need for the right of each person to benefit from the society's opportunities equally. Actually there are some groups that have no equal opportunities. Therefore equal opportunity is one the most supported justice notions in modern democratic countries. Despite the lots of national and international laws and regulations, some people and groups are still subject to discrimination because of the reasons like race, age, gender, physical or mental handicap, education or religion and have no equal opportunities in work life.

Equality of opportunity sets, that is, rendering the sets of choices available to different individuals the same (Roemer,2002:456). It aims justice for all by preventing discrimination. The term "equal employment opportunity" was created by President Lyndon Johnson when he signed Executive Order 11246 which was created to prohibit federal contractors from discriminating against employees on the basis of race, sex, religion, color or national origin on September 24,1965 (Webb, 1997:160). In Europe, equality of opportunity is based on Article 119 that is about equal pay and Article 6 that prohibits racial discrimination of the Treaty of Rome,1957.

Most of the time discrimination begins with the first stage of work life, in personnel selection. Schuler (1995:218) defines the personnel selection as "process of combination of the people who apply for the work at the legal shape can be defended" and he points out importance of the legal issues in this process. Personnel selection is the starting point of the work life and the job advertisement is beginning of the recruitment process (Gatewood&Field,1994:153).

Discrimination may be defined as selection of the candidates for a work according to the criterias which are not related to the job directly (Daft,1991). Discrimination in recruitment process might be classified in two categories (Lawler&Bae,1998:137):

Direct discrimination: It is a different treatment of an employer to the employees who have similar qualifications because of the some reasons like race, gender, marital status. Gender or age limitations in job advertisements may be given as examples.

Indirect discrimination: It happens if an employer's any decision, criteria or treatment that looks as if neutral causes a disadvantaged situation between the employees who have different characteristics like race, ethnic origin, sex or age. Indirect discrimination derives from the differential impact itself, along with its unwarranted character. In that sense, indirect

discrimination is perceptible only by statistical reasoning, using the data collected in various selection and allocation procedures (Simon 2005:10). One of the most common examples of indirect discrimination is limitation for working term in recruitment. Cascio (1992:29) gives another example and says a white man works as a cashier but a black man works as a cleaner even though they have similar qualifications.

Discrimination prevents equality of opportunity in any way. If an employer asks for a requirement that is not a bona fide occupation qualification(BFOQ)¹ candidates who have no that special requirement can not apply for the work.

Equality of opportunity is also important for EU's new employment policy which aims to provide a humanly life quality and standard for everybody in an active and healthy society. European Commission published the White Paper on Growth, Competitiveness and Employment in 1993. It focused on how EU could achieve sustainable employment and better work opportunities for disadvantaged people who looked for job. There were lots of discussions about this subject that reflected to Treaty of Amsterdam and at last European Employment Strategy arised. Equality of opportunity is one of the four base elements of European Employment Strategy that was confirmed in the Lisbon Summit in March 2000. It was prepared to lessen unemployment rates of some groups like the elderly or disabled people, migrants and minorities. European Commission designated 2007 as "European Year of Equal Opportunities for All" as part of a concerted effort to promote equality and non-discrimination in the EU (Walker, 1999:367). The European Year is the centrepiece of a framework strategy designed to ensure that discrimination is effectively tackled, diversity is celebrated and equal opportunities for all are promoted. European Union in some cases gives a transition period to candidate country for adaptation after membership but it wants all of candidate countries to implement all EU legislation about equal employment opportunity with the accession synchronously.

As it is known that Turkey launched its EU accession negotiations on October,3 2005. Now it is necessary to go along more intensely adaptation studies to EU legislation by extending to all areas of the economic, social and cultural life for Turkey and working life is one of those areas. Recruitment is also important as first step of the work life.

This paper examines job advertisement that is a common way in recruitment process. The aim of the paper is to present a comparison of job advertisements that were published in

¹ BFOQ: A specific job-related requirement that is legitimate and considered a precursor to hiring a candidate for a position (Cook,2003).

Turkey and UK, an EU member, in terms of direct and indirect discrimination factors. UK where all of the EU legislation is valid has a lot of regulations for equal opportunity in working life. In first part of the paper legal frameworks of EU, UK and Turkey for work life will be touched on. In second part, comparison findings of the job advertisements that were published in a Turkish and an English newspaper will be presented.

I. LEGAL FRAMEWORKS RELATED TO DISCRIMINATION OF EU, UK AND TURKEY

1. Current State of EU

There are a lot of international documents that were used to regulate the working life in Europe like UN Universal Declaration of Human Rights (1948), UN International Convention on the Elimination of All Forms of Racial Discrimination (1969), UN International Covenant on Economic, Social and Cultural Rights (1980), UN Convention on the Elimination of All Forms of Discrimination Against Women (1979), ILO Equal Remuneration Convention, (C100), Discrimination (Employment and Occupation) Convention (C111), Workers with Family Responsibilities Convention (C156) and Maternity Protection Convention (C183). Also there are some other treaties and directives related to discrimination in working life in EU:

Treaty of Rome: The treaty established the European Community and entered into force in 1958. Article 119 of the treaty prohibits discrimination and wanted all of the member states to provide equal pay for everybody.

European Social Charter: It was adopted in 1961 by European Council and came into force in 1965. It regulates social rights as a whole.

Community Charter of the Fundamental Social Rights of Workers: Its goal is to improve working conditions in all of the member states. Article 8 prohibits discrimination on race, sex, religion and etc.

Treaty of Amsterdam: It came into force on May,1 1999. Article 118 wants all of the member states to improve working conditions and equal opportunity especially in recruitment.

Equal Pay Directive (75/117/EEC): It intends to provide gender equality in payment and was enacted to ease implementation of Article 119 of the Treaty of Rome.

Equal Treatment Directive (76/207/EEC): It is about the implementation of the principle of equal treatment for men and women in employment and training.

Race Directive (2000/43/EC): Its goal is to implement the principle of equal treatment between persons irrespective of racial or ethnic origin. There are definitions of equal treatment, harassment, direct and indirect discrimination in the directive. It prohibits discrimination on working conditions in terms of recruitment, vocational training, wage and dismissal.

Equal Treatment in Employment and Occupation Directive (2000/78/EC): It intends to establish the principle of equal treatment in employment and prohibits discrimination on religion, handicap, age and sexual orientation.

2. Current State of UK

UK, the pioneer of Industrial Revolution and union rights, is a West European country and an EU member. After Industrial Revolution, people had to work in very hard conditions in UK. Working class reacted against these life and working conditions and then social upheavals arised like the Revolution 1830 and 1848. In 1851 Amalgamated Society of Engineers was established in England. Also vote rights were widen and right to strike was accepted. As a result of not having a constitution, working life was regulated by common law and case law in UK. Some of the current regulations are as follows:

Equal Pay Act 1970: It is based on Article 119 of Treaty of Rome. Its goal is to carry into effect equal pay for work of equal value between men and women.

Sex Discrimination Act 1975: It prohibits sex discrimination in employment, education and other areas. It abolished right for late dismissal of married people.

Disability Discrimination Act 1995: Disabled person, physical and mental handicap are defined in first part of the act. In second part there are rules on discrimination in working life.

Protection From Harassment Act 1997: Harassment is accepted as a crime. Employers are responsible for taking necessary steps to prevent harassment in work place according to the act.

Data Protection Act 1998: It prohibits to give personal information of the employees to the unauthorized persons.

Employment Rights Act 2002: It includes issues related to working life like working period, wage, social security, retirement age, maternity right, dismissal and structure of the labour courts.

Religion, Belief and Sexual Orientation Employment Equality Regulations 2003: It undertakes discrimination on these grounds in detail.

Equality Act 2006: It is adopted on February 16,2006. Age, handicap, sex, race, ethnic origin, religion, belief and sexual orientation are listed as the areas that are prohibited discrimination.² It is also stated that all of the organizations have responsibility to eliminate the discrimination and sexual harassment and also provide the equal opportunity for all.

² http://www.opsi.gov.uk/acts/acts2006/ukpga_20060003_en.pdf

There are a lot of rules to prevent discrimination in UK but it is not possible to say that full employment is performed and discrimination is removed in whole working life of UK. Phillipson (1998:76) says that percentage of the old employees lessened in labour force. Although population over the 50 years old increased to 31.7% from 30.8% between 1971-1998, percentage of this group in labour force decreased to 34.2% from 44.1% at the same period of time. According to The Disability Rights Commission data, there are approximately 10 million disabled people in UK and 46.6% percent of them are employed. 29% percent of people who have learning disabilities and 20% percent of the people who have mental health problems are working.³ Although rate of the women in labour force is 67% and is higher than average of EU, Knights and Richards (2003:213-215) say that the working areas of the women are limited and densed in social service, secretaryship and sales/marketing. Thornley and Coffey (1999) express that although the wage gap has been narrowing in the past couple of years, largely due to the introduction of the national statutory minimum wage which has affected substantially more women workers than men, women earn 81.6% of men's hourly pay and 74.7% of men's weekly pay. Osborn et al. (2000:21) argue that the history of women in working life has moved from exclusion to segregation and women still encounter obstacles that make difficult entering untraditional areas.

3. Current State of Turkey

In Turkey, current legal framework that regulates the working life is Labour Law that was adopted in May,22 2003. Turkey made the necessary domestic law regulation of CEDAW and Equal Remuneration Convention with Labour Law, but there are no definitions of harassment, direct and indirect discrimination in the law. Although most of the EU countries regulate different areas of discrimination like sex, handicap and age with specific laws, Turkey has only one law for these areas. Besides there is no an independent agency to monitor the discrimination complaints. There is an enormous need to make detailed regulations for selection criterias in recruitment and employment terms that were arranged only with Article 10 of the Constitution about equality principle.

According to the OECD 2004 data, employment rate of the population which is between 55-64 ages is 56.1% in UK, 34.2% in Turkey.⁴ Employment rate of the disabled is 46.6% in UK and 22% in Turkey; employment rate of the women is 67% in UK and 23% in Turkey. In short, it may be said that participation of the elderly or disabled people and women in working life is lower in Turkey than UK. It might be said that EU regulations are important and effective in UK.

³ [http:// www.drc-gb.org/employment](http://www.drc-gb.org/employment)

⁴ <http://www.oecd.org/dataoecd/36/30/35024561.pdf>

Meehan and Collins (1996:226-229) say that the EU legislation shaped British policies especially on retirement, pay and pensions, maternity and parental rights, sexual harassment in the work place and protective legislation. In Turkey, the EU legislation is more effective than UK. In the adaptation process, a lot of regulations are made like new Labour Law in Turkey. Although Labour Law brought reforms to working life, it is not possible to say that they are enough. Because it doesn't meet minimum standards of EU on discrimination and equality of opportunity.

II. DISCRIMINATION IN THE JOB ADVERTISEMENTS IN TURKEY AND UK

In this paper job ads that were published in weekend supplements of a Turkish and an English newspaper were compared in direct discrimination and indirect discrimination. While age, sex and university preference were selected as direct discrimination factors, working term, personal criterion, handicap and wage are selected as indirect discrimination factors.

1. Findings of Direct Discrimination Factors

AGE: In English newspaper, there wasn't age limitation for application but in 393 Turkish ads there were age limitations. There were different limitations for male and female applicants in a few Turkish ads and there was sex discrimination as well as age discrimination in those ads.

		NEWSPAPER		TOTAL
		Turkey	UK	
AGE LIMITATION	Yes	393		393
	No	649	1282	1355
SEX LIMITATION	No	828	282	1656
	Only for men	147		147
	Only for women	66		66
	Equal opportunity	1	454	455
UNIVERSITY PREFERENCE	Yes	68		68
	No	974	1282	1364
TOTAL		1042	1282	2324

SEX: It could be seen that in 213 Turkish ads (20%) there was sex preference. Some of the positions were only available for men, others were available only for women. Sales engineering, management and secretaryship were the occupations in which sex preference made mostly. Female applicants were asked for secretaryship and male applicants were asked for engineering and management. In fact there were some requirements that supported the

application of women in secretaryship ads even there was no sex preference. There was not any ads wanted a special sex for the application in the English newspaper. Also it was stated that gender equality would be supported in 454 ads of the English newspaper.

UNIVERSITY PREFERENCE: In 68 Turkish ads there was a qualification that asked for being graduated from a specific university. It was stated that candidates who graduated from universities like Bogazici or METU would have priority over other applicants. It can be said that there is direct discrimination in these ads.

2. Findings of Indirect Discrimination Factors

WORKING TERM: Generally when age limitation is forbidden, employers asked for a particular working period. In both Turkish and English newspapers ads there were special conditions wanted candidates to have been worked in a similar position for application. However in Turkish ads, the wanted periods were longer, for example 60 ads asked for experience more than 10 years. It is a common acceptance of course it is not possible to meet this claim for young candidates who were newly graduated.

		NEWSPAPER		TOTAL
		Turkey	UK	
WORKING TERM	1-3 years	263	241	504
	3-5 years	136	140	276
	5-10 years	116	7	123
	More than 10 years	60		60
	No	467	894	1361
PERSONAL CRITERION	Yes	415	87	502
	No	627	1195	1822
WAGE	Yes	3	1156	1159
	No	1039	126	1165
TERM FOR APPLICATION OF THE DISABLED	Yes	176	6	182
	No	866	871	1737
	Equal opportunity		405	405
TOTAL		1042	1282	2324

PERSONAL CRITERION: Some subjective specifications were asked in Turkish and English ads. 415(40%) of the Turkish ads and 87(7%) of the English ads covered such a condition. Although there was a similarity between two newspapers at first sight, when we look

into the inside of them, the situation has been changed that in English newspaper the qualifications were related to behaviours in workplace like “result oriented, team player, dynamic, good at verbal and written communication, working in organizally”. In Turkish ads personal or indefinite specifications like “sociable, warm, close, compatible, extrovert, balanced, patient, polite, self-sacrificing, idealist, mature, serious, hard working, trustworthy, ambitious, active, sportsman, friendly, reticent, presentable” were asked. It might be possible to have a general idea about behaviours of a candidate in the workplace by talking to a former colleague of him or her, but how can be measured if a candidate is sociable or presentable? Also what is the relationship between being friendly and the nature of work?

WAGE: There was an approximate wage in 1156 of the English ads, while there was only in 3 Turkish ads the position stated. Uncertainty of the wage may cause different treatment between the persons who have similar qualifications. As it is known finding a job is so hard in Turkey and in this condition most of the time candidates have to accept the wage set by the employer and because of that obligation, the employers do not need to state the wages in the ads.

PHYSICAL OR MENTAL HANDICAP: There were 176 Turkish and 6 English ads that had a term which made harder application of the disabled. Rates of the ads that had not such a condition were similar. However there was no any advertisement supporting the equal opportunity among the Turkish ones.

In general it might be said that there are direct discrimination factors in Turkish job advertisements but in UK it looks like legal framework is effective to prevent direct dicrimination in the language of the ads at least. Although there is difference between the percentages of indirect discrimination factors, laws do not look like enough to prevent it both newspapers ads. Because working term and unmeasured personal criterias are the conditions that were asked in the ads of the both of them.

Although it is not a legal obligation, employers stated that they support the equality of opportunity with the expressions like “as an Equal Opportunities employer welcomes applications regardless of race, colour, gender, nationality, ethnic origin, sexual orientation, religion or belief, marital status, disability or age” in the English ads. Aim of this voluntary practice might be a wish for having a prestigious and reliable image in the estimation for candidates. But of course it should be consired that such a statement does not mean that each candidate will be treated equally during the interview or other stages of the recruitment.

CONCLUSION

Discrimination in working life is the extension of the discrimination that penetrated to the general ideas, norms and behaviors in the society. Personnel selection that may prevent participation of some groups to the working life by asking for qualifications which are impossible to meet for some of the people is the first and one of the most important stage of discriminatory practices in working life. Equal employment opportunity for all is an economic issue as well as a social problem. Therefore it should be discussed more in public opinion. Equal opportunity for all might be provided with the harmony of social, cultural, economic and legal conditions that effect each other successively.

Results of this study which examined the job advertisements, one of most common ways in personnel selection, indicated that there was difference between the languages of the ads which were published in the newspapers in Turkey and UK. There was not direct discrimination statement in the English ads and the percentages of indirect discrimination factors were lower than the Turkish ads. One of the most important reason for the difference between the countries might be the legal frameworks of them. But it should be forgotten that laws are not free from the social conditions. Most of the time rules are constituted in accordance with the general socio-cultural demands and needs of the societies.

In the adaptation process of Turkey to EU we hope that socio-cultural conditions and also legal framework on discrimination of Turkey will change positively. Non-governmental organizations and media have important roles in this changing process. In this process, NGO's may play a vital role as a pressure group on government for changing of the laws as soon as possible. Media may take the first step to inform the all of the people who look for work about their rights.

This study includes a comparison of a member state and candidate of EU. Although language limitation of the researcher prevent the repetition of the study in different countries, it is worth saying that advanced researches which compare Turkey and other members of the European Union will be helpful.

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