

Flexicurity and Women Unemployment

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An increasing rate of unemployment and the pursuit of becoming the most competitive economy are the main challenges of the European labour market. To reach the strategic targets a new concept, flexicurity, has been introduced. Flexicurity is believed to decrease current unemployment rates by creating more and better jobs. A considerable amount of effort has been carried out by the Commission to create common principles of this concept and to introduce flexicurity in Europe. In this article I will try to point out the main characteristic of flexicurity as well as its impact with unemployment of women and Turkish labour market. The role of flexicurity on part time agreements is also studied by a comparative method and an emphasis on Turkish law.

The European Employment Strategy

The European labour market started to face a slowdown in the overall employment rates from the late 1990's.¹ The 1998 Employment Guidelines for the European Employment Strategy addressed certain targets to tackle, youth unemployment and long-term unemployment in particular, which were becoming major problems both for social cohesion and the development of the market in the EU. The European Employment Strategy found the solution in instituting four main strategies, one of which was encouraging adaptability in business and their employees. After being written down as an employment strategy in 1998, "adaptability" became a major strategic pillar. Adaptability included "agreements to modernize the organization of work, including flexible working arrangements, with the aim of making undertakings productive and competitive and achieving the required balance between flexibility and security." A new concept called "flexicurity" arose as a tool in the pursuit of creating an adoptable and competitive economy while preserving social cohesion. After two years, the European Employment Strategy was updated by the Lisbon Strategy; this time the target became full employment in Europe. This difficult goal was part of a broader target: to create the most dynamic and competitive economy with more and better jobs as well as greater social cohesion.

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¹ See Eurostat employment rate statistics-EU15.

A new concept: Flexicurity

Flexicurity corresponds to the combination of two principles: flexibility and security. The need for flexibility in the labour market can be explained by two reasons: to create a more dynamic and competitive economy as well as reduce unemployment through creating “more and better jobs.” The demand for goods and services in the global market economy is changing rapidly; therefore producers and providers should respond to these changes as quickly as possible in order to compete with and profit from worldwide trade. A flexible labour market is required for employers to adapt to fluctuations in the demand for goods and services.² In addition to this, there are continuous technological advancements in the methods of production. This creates the need to recruit new labour capable of using new technology. Strict employment protection legislation introduced high costs that have reduced the competitive power of employers. Likewise, employers who are trying to avoid the costs of dismissing an employee, either hire fewer employees or hire their employees by way of temporary or fixed term contracts and with lower levels of security. Consequently it creates harder conditions to find a job or to stay employed in the long term and also some groups benefit from less security than others.

Flexibility and security are two different dynamics but they both need to exist together in flexicurity strategies; flexibility without security can neither sustain economic development nor bring social cohesion and prosperity for individuals. The mandatory existence of a proper balance between flexibility and security has been stressed since the European Employment Strategy was first launched. The job security, which corresponds to flexibility, is not job security in the classic sense, but employment security; in general meaning it is the security of the labour force against the risk of unemployment. In this type of security, individuals are mainly supported with training and job search services to stay employable and thereby somewhat protected against unemployment. The level of security is very important in maintaining the sensitive balance in flexicurity policies, especially for welfare and social cohesion.

According to the European Employment Strategy, a flexicure labour market can be achieved by flexible contractual agreements, active labour market policies that assist individuals in finding employment, reliable and responsive life-long learning and modern social security systems. Flexible contractual agreements can be regulated by labour laws to give diversity to the types of reliable employment circumstances.

The Actors in a Secure Labour Market

Flexibility is a dynamic of the labour market while security is a dynamic of the social state. Increasing flexibility does not unconditionally increase security at the same time simply because they are demanded by different groups. ‘Traditionally, policies aimed at enhancing security are of a reactive

² See Report of the Employment Taskforce chaired by Wim Kok, Jobs, Jobs, Jobs - Creating more employment in Europe, November 2003, p.18.

nature, i.e. they follow, usually with a significant delay, the assessment that developments in or outside the labour market are harmful to the security of certain groups'.³

In the Communication of the European Commission entitled "Towards Common Principles of Flexicurity" it is stated that all stakeholders should be included in order to take responsibility in the process, especially the active involvement of social partners is deemed to be very important, because social partners are best placed to address the needs of employers and workers.

Pros and Cons of a flexible labour market

There are different arguments about the advantages of flexibility for the employees. Ozaki states that the flexibilisation of the labour market is making "significant erosion of workers' rights in fundamentally important areas."⁴ In contrast, the Report of the Employment Taskforce, 2003, alleges that flexibility is not only in the interest of the employers but "it also serves the interest of workers, helping them to combine work with care and education for example or to allow them to lead their preferred lifestyles." There are different assumptions regarding the effects of flexibilisation, especially for employees, but the most realistic approach can only be seen after the implementation of flexicurity policies since the valuation of labour market policies is subject to empirical data and research.⁵

As stated by the Commission "flexibility is not limited to more freedom for companies to recruit or dismiss, and it does not imply that open-ended contracts are obsolete. It is about progress of workers into better jobs, *upward mobility* and optimal development of talent"⁶. Although creating a flexible labour market seems to answer mainly economic concerns, its expected results on greater employment rates stresses the underlying social concerns.

Its foreseen effects on Labour Market Especially on Women Employment

Denmark is singled out as the most successful countries in integrating flexicurity policies into its labour market. The reasons for this reputation are the high rate of employment, the low rate of unemployment and the unique Danish flexicurity model, the so-called the Golden Triangle. The Golden Triangle has three main angles: labour market flexibility, high level of social security, and an active employment policy. The Danish Minister of Employment, Claus Hjort Frederiksen, states that Danish employees change

³ Ton Wilthagen and Frank Tros, The Concept of "Flexicurity": A new approach to regulating employment and labour markets, p.5

⁴ M. Ozaki, Negotiating flexibility. The role of the social partners and the State, Geneva, ILO, 1999 also in Ton Wilthagen and Martijn van Velzen, The Road Towards Adaptability, Flexibility and Security, 1999, p.116.

⁵ Ton Wilthagen and Frank Tros, The Concept of "Flexicurity": A new approach to regulating employment and labour markets, p. 6.

⁶ Towards Common Principles of Flexicurity: More and better jobs through flexibility and security, COM (2007) 359 final, Brussels, 27.6.2007, p. 4-5

jobs more than 800,000 times each year, adding that being unemployed is not a disaster in Denmark due to its social security system.⁷ Indeed flexicurity models have been useful in some of the countries such as Austria, Holland and Denmark; however their performance may be attributable to their relatively small population. The successful flexicurity models from these countries may only be taken as pilot projects in countries with greater population. Also in Holland, part time contracts have a high percentage due to its reforms on making this type of work more attractive.

The data shows that employment rates for women are lower than that for men in all countries in Europe (Eurostat). In the EU-25, in 2006 employment for women was 45.2 % while employment for men was 60.6%, showing a significant difference between female and male employment rates.

In addition to this, in 2006 the number of females working in part-time jobs was nearly three times the number of males working in part-time jobs in the EU-25 (Eurostat). This demonstrates that part-time jobs are mostly attractive for women. The high demand of women for part-time jobs has been attributed “to their aim of combining family and career”⁸, or in other words, to the role of women in family life.

Where part time jobs are less advantageous than regular jobs because of their working conditions, less people are going to be interested in working in a part-time job. This result in a reduced amount of women employed because the current situation shows that women prefer part-time contracts. According to some writers, if legislation is making part-time employment unattractive, then it is discriminating based on sex.⁹ It can be argued that if part-time contracts were supported with sufficient security and benefits, it would increase the employment rate. However, in the long term, only encouraging part-time work is not capable of either eliminating unemployment for women or preserving gender equality. Specific policies should be aimed at tackling unemployment for women with the perspective of providing equality between women and men. The most common solution discussed is providing pre-school child-care services. In 2002, the European Council of Barcelona decided to provide childcare to at least 90% of children between age 3 and the mandatory school age and at least 33% of children under age 3; however this has not been achieved yet because the target date is 2010.¹⁰

Flexicurity and Turkey

In Turkey, migration from villages to cities has increased the supply of

⁷ Speech delivered by Minister of Employment, Claus Hjort Frederiksen, at the Conference on flexicurity, Thursday 16 June 2005.

⁸ Anna Turmann (2006) Getting Europe to Work, The role of Flexibility in Tapping the Unused Potential in European Labour Markets, CEPS Working Document No. 250/September 2006., p.32.

⁹ Frans Pennings ve Nurhan Süral, Türk İşgücü Piyasasının Esnekleştirilmesi ve Modernleştirilmesi, 2005, p.8.

¹⁰ Presidency Conclusions, Barcelona European Council, 15 and 16 March 2002, http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/71025.pdf

labour in the cities; the population of urban areas went from 3 million in 1950 to 30 million in 1990. Unfortunately the industrial sector did not grow as much in order to absorb the increasing supply of labor. As a result, some migrants either become unemployed or stayed out of formal employment.¹¹ These conditions have affected women more than men. In villages, women were mostly unpaid family workers; in urban areas because of their lack of education or the rarity of the wage jobs in the city; generally they were not capable of finding formal employment. The inability to find formal employment, together with the economic pressure to contribute to the family income, has led women to work largely in the informal sector, such as cleaning and childcare services. Therefore the main problems of the Turkish labour market have mainly been seen as low overall employment rates and low female unemployment rates as well as segmentation of the labour market due to the large informal sector. Therefore, an important question to consider is “Do Turkish labour markets need flexibility?” Current data shows that the large informal sector is already providing a level of flexibility. The requirements of the labour law that are capable of intervening to balance supply and demand may easily be ignored in the informal sector. ¹² It has been accepted that the Turkish labour market is indeed a flexible one. However flexibility mostly exists in the informal sector; for regular formal employment, the degree of flexibility is relatively low.¹³ Therefore I am going to pay attention to flexibility in the formal sector.

Flexible Contractual Agreements in Turkish Labour Law

Atypical types of contracts have been used in practice but they were not regulated in the Labour Code until 2003 (except contracts of definite duration). The incentives to harmonise with the European Union Acquis, together with the need to regulate the flexible types of agreements in a legal code, resulted in the launch of the new labour code. Part-time contracts, on-call contracts, trial-period contracts and team agreement contracts have been regulated as atypical types of contracts.

Fixed term contracts

Under Article 11 of the Turkish Labour Code, an objective reason such as completing a particular work assignment or the emergence of a fact is needed to conclude contracts of definite duration (fixed-term contracts). In other words, if there is no objective reason arising from the nature of the job or from the needs of the employer that justifies use of a fixed term contracts, the parties may not conclude a fixed-term contract. If there is no objective reason to make or to renew the contract more than once, the contract will be deemed to be a contract of indefinite duration. The aim of the regulation is to protect individuals from the use of fixed term contracts in order to avoid complying with the legislation protecting contracts of indefinite duration.

¹¹ Varçın R. (2004) İstihdam Gücü ve İşgücü Piyasası Politikaları, Siyasal Kitabevi, p. 90.

¹² Frans Pennings ve Nurhan Süral, Türk İşgücü Piyasasının Esnekleştirilmesi ve Modernleştirilmesi , 2005, p.4)

¹³ Ibid, p. 4

The European countries used to have similar regulations regarding fixed term contracts, but these were revised and changed with the need to allow flexibility. For instance, in Holland it was possible to make a fixed term contract for any reason; however the renewal of the contract meant that the second contract might not be ended without notification or permission of the public bodies.¹⁴ The second fixed term contract had increased protection in order to enable fixed term contracts to be concluded only once. The new code made it possible to conclude three consecutive contracts without previous notification on the condition that they do not exceed a time period of three years.¹⁵ Also in Belgium, according to a 1978 Act, (with exceptions to the rule) at least two consecutive fixed term contracts were accepted as a contract of unspecified term. The code was amended to allow four consecutive fixed term contracts, each of a duration not less than three months, provided that they do not exceed 2 years time.¹⁶ The recent developments in European countries show that fixed term contracts may be concluded more than once within a certain limit of time without an objective reason. These developments are in line with the Council directive on fixed-term work. According to the directive, States may introduce one or more of the following measures to prevent abuse of fixed term contracts:

- Require objective reasons justifying the renewal of such contracts or relationships,
- Set a time limit for successive fixed-term employment contracts and relationships, or
- Limit the number of renewals.

In Turkey, the first and the third measures are applicable. More flexibility regarding fixed term work may be obtained by using different combinations of these measures such as in the example of Holland and Belgium.

In Turkey, the legislation concerning fixed term work also has non-discrimination rules; therefore the fixed-term employees cannot be subject to different treatment just because they are hired with a fixed term contract. In other words, they cannot be put into a disadvantageous position because of their atypical contract. The non-discrimination rule was introduced to provide more security to the fixed-term employees.

According to the directive, Member States should introduce rules that oblige the employers to inform “fixed-term workers about vacancies which become available in the undertaking or establishment to ensure that they have the same opportunity to secure permanent positions as other workers.” In addition to this “employers should facilitate access by fixed-term workers to appropriate training opportunities to enhance their skills, career development and occupational mobility.” These rules are aiming at making fixed time working attractive for employees and it complies with the objectives of the

¹⁴ Ibid, p. 74

¹⁵ Ibid, p. 74

¹⁶ Ibid, p.75.

European Union to increase security as well as flexibility in the labour market. These rules should also be included to the Turkish labour market policies to increase the demand for fixed term contracts in the formal sector.

Part-time Contracts

Under Article 13 of the Turkish Labour Code, contracts in which regular weekly working time for the worker is substantially lower than the normal employee working time are called part-time contracts. A normal or reference employee is a full-time employee working in the same or similar job. Part-time employee cannot be treated differently just because he/she has a part-time contract unless there is a compelling (and legal) business reason, which justifies the discrimination. In addition to this, part-time workers should be paid in proportion with their working time, taking into account the wage of the reference employee. The non-discrimination and wage protection rules are very important to the security of part-time workers.

The last paragraph of Article 13 regulates the duty of the employer to notify the employee of any available positions suitable for the qualifications of that employee; the employer has to do the notifications timely. The request of the employee to pass from part-time to full-time or full-time to part-time, has to be reasonably considered by the employer. The employer's duty of notification is also regulated in Holland, but a provision also regulates the time in which the employer has to respond to the request of the employee and that the employer has to give the reasoning for a rejected request. Finally employers have an obligation to meet the employee requests in adjusting their working time.¹⁷ In contrast, Turkish law in Article 13 remains silent about these issues.

Unlike the older version, the new Turkish Labour Code regulates atypical forms of contracts and it reflects the flexibility that partly existed in practice. With its security norms and non-discrimination rules, the new code is more compatible with the European Union Acquis.

There are different opinions on the necessity for flexicurity policies in Turkey. According to some writers, flexibility is more advantageous for developed countries where social state and unions are both very strong, thus more flexibility would cause lower wages and weaker unionisation in Turkey due to its labour market problems.¹⁸ According to others, flexibility is advantageous for the Turkish labour market on the condition that flexibility is followed with sufficient security.¹⁹

Both arguments have merits. It is a known fact that the large informal labour sector is one of the main problems in Turkey; therefore flexicurity policies should concentrate more on eliminating the informal sector than on creating

¹⁷ Ibid, p. 82.

¹⁸ Ülkü HATMAN, *Esneklik Kavramı Neyi İfade Ediyor?*, p.4

¹⁹ Frans Pennings ve Nurhan Süral, *Türk İşgücü Piyasasının Esnekleştirilmesi ve Modernleştirilmesi*, 2005, p.8

flexibility in the formal sector. This is also supported by the approach of the European Commission that there is no single type of flexicurity policy and that the national circumstances will determine which combination of policies should be applied. From my point of view, flexicurity policies should mainly aim at transforming the informal sector into the formal sector; this could be achieved by measures in both the formal and informal sectors. Injecting flexibility into the formal sector would not have negative effects if a basic level of security with life-long learning and active labour market policies were integrated into the system.

The Relationship between Flexicurity Policies and Unemployment of Women in Turkey

The Turkish labour market statistics show that by August 2007 the employment rate for women was 23.4 % while employment for men was 66.5 % in comparison to the EU-25 where employment for women in 2006 was 45.2%. The employment rate for women in Turkey is nearly one-third of the rate of employment for men in Turkey and half of the rate of employment for women in Europe.

The low employment rate and the large participation in the informal sector have both an economic and socio-cultural basis. The traditional family ideology and gender division of labour assigns the caregiver and domestic roles to women and the bread-winner roles to men.²⁰ Therefore the gender gap remains significant in employment and access to education. Women who cannot find formal employment because of their low level of education can easily find an acceptable job in the informal sector.²¹ The employment problems of women in Turkey are largely related to the informal sector, because the informal sector accommodates a large proportion of the women workers. It is important to point out the fact that women are working in highly-flexible conditions in the informal sector without any security being provided for them.

Another study, while not disregarding the reasons for high unemployment rates for women, stresses that the current figures are natural for a country “transiting from a primarily agriculture society to an economy led by industry and services” since the first step is usually a decline in female participation – a dynamic observed all over Southern Europe in recent decades.²²

The structure of the Turkish labour market shows that the level of education, the duties of women in the family and the large informal sector are the factors that cause the low employment rates for women. The policies, which aim at converting the informal sector into the formal sector, would definitely be in benefit of women.

²⁰ G. Healy, M. Özbilgin, H. Aliefendiođlu, Academic Employment and Gender: A Turkish Challenge to Vertical Sex Segregation, *European Journal of Industrial Relations*, 2005, p.256.

²¹ Frans Pennings ve Nurhan Süral, *Türk İşgücü Piyasasının Esnekleştirilmesi ve Modernleştirilmesi* 2005, p.22.

²² European Stability Initiative, 2007, p.28.

Flexicurity policies may be used to increase the number of available part-time positions by making part-time work attractive both for employees and employers. This may decrease informal employment and unemployment for women. In addition, life-long learning policies should be implemented for women in order for them to gain qualifications and to better integrate into the labour market. Also a childcare service is an important tool to increase the active participation of women in working life.