

Derleme

EMPLOYMENT OF PERSONS WITH DISABILITIES IN TURKEY: THE EFFECTIVENESS OF CURRENT MEASURES FOR THE PREVENTION OF DISCRIMINATION

Türkiye’de Özürlülerin İstihdamı: Ayrımcılığın Önlenmesine Yönelik Mevcut Önlemlerin Etkinliği

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ÖZET

Bu çalışma, özürlülüğe yönelik istihdamda ayrımcılığa karşı önlemler üzerinde düşünce üretmeyi ve Türkiye'nin bu alanda rasyonel politikalar benimsemesi için bir tartışma alanı açmayı amaçlamaktadır. Çalışma, kısaca istihdamda ayrımcılığı tanımlamakta ve istihdamda ayrımcılığın önlenmesine yönelik olarak yararlanılan iki yöntemi tartışmaya açmaktadır: "Eşit İstihdam Fırsatı" ve "Pozitif Ayrımcılık". Ardından, özürlü istihdamına yönelik mevcut politika ve uygulamalar çerçevesinde Türkiye örneğine odaklanılmaktadır. Çalışma bulguları, Türkiye’de ağırlıklı olarak Pozitif Ayrımcılığa dayalı olarak tasarlanan özürlü istihdam politikalarının başarısız olduğunu göstermektedir. Çalışabilecek yaştaki özürlülerin %80’i bu alandaki tüm çabaları rağmen halen işsizdir. Bununla birlikte, sadece Eşit İstihdam Fırsatına dayanan politikaların uygulanması da sorunun bütünüyle ortadan kalkacağı anlamını taşımamaktadır. Bu noktada, genel olarak istihdamda ayrımcılığa karşı mücadele amaçlı kurulacak, ancak görev alanına özürlülükle ilgili sorunları da alan, idari ve mali özerkliğe sahip özerk bir kamu kurumunun, ayrımcılığın önlenmesi sürecinde önemli katkılarının olabileceği düşünülmektedir.

Anahtar Sözcükler: Özürlülük, istihdamda ayrımcılık, özürlülere yönelik ayrımcılık, istihdamda ayrımcılığa karşı önlemler, eşit istihdam fırsatı, pozitif ayrımcılık

ABSTRACT

This study aims at producing considerations on measures against disability discrimination in employment and opening up a debate for Turkey to adopt rational policies in this field. The study briefly defines employment discrimination and discusses policies for preventing employment discrimination in two main streams, namely "Equal Employment Opportunity" (EEO) and "Affirmative

Action” (AA). Then, the study focuses on the Turkish case with prevailing policies and practices with regard to disability discrimination. Findings of the study indicate that current policies for employment of people with disabilities in Turkey which are mainly based on mandatory AA programs failed. Over 80 percent of the people with disabilities in the working ages are still unemployed despite all policies and measures carried out. Nevertheless, this does not mean that policies based on EEO would make the current situation better. At this point, an independent public body may prove highly useful in dealing with the problems with respect to disability and other forms of discrimination.

Key Words: *disability, employment discrimination, disability discrimination, measures against employment discrimination, equal employment opportunity, affirmative action*

Introduction

The definition of “disability”¹ evokes the condition of being unable to perform as a consequence of a physical or mental deficiency. The meaning may differ when considered from different perspectives of different disciplines. A physician perceives disability as an illness to be cured or prevented. A philosopher or a social scientist views disability in connection with ethical, social and political implications. Even the socially constructed truth about disability may vary in different socio-cultural contexts. In some societies, the bizarre conducts of people stemming from some kinds of disability are considered to be the

signs of heavenly spirits while in others they are accepted as the signs of malicious and evil forces. Our imagination on the meaning of disability is also influenced by arts and literature. Literature usually shapes our thoughts and attitudes about things around us, the meaning of disability as well. Remember how a disabled person is characterized as a tragic figure in the famous book of Victor Hugo, *The Hunchback of Notre Dame*. Or literature sometimes provokes our mind to think about how some characters overcome their disabilities by showing unusual performance. Consequently, our attitudes toward the context of disability are shaped by many different factors. Our attitudes are our discourses, and they are reflected in social action. In a social order, commonly shared attitudes reflect themselves as laws to enforce certain kinds of actions. For people with disabilities, the law heavily influences their social status. The law usually defines disability as a physical condition that limits a major life activity. Nevertheless, this definition is also contentious because of its relation with new concepts such as limitation, major life activity, and physical condition. When disability is asserted with various major life activities, the most important term to be associated with disability seems to be employment

¹ Since the disability is a very sensitive topic, terms used in this field must be meticulously selected and a discrimination free language should be taken into consideration. In Turkish also, there are different terms used to define disability: “özürlülük”, “engellilik”, etc...

which is crucial for the substitution of other life activities. Since employment capacities of the countries are limited in varying degrees, there is a competition for getting jobs available. Physical obstacles make it more difficult for people with disabilities to compete in a free labor market. Another obstacle, common to all members of a society, is to compete on an unequal base for the jobs available. Moreover, employment discrimination could have reflections on social, political and ethical grounds. For example, disability is among one of the factors resulting in social exclusion and poverty. A large number of disabled people are on low incomes, they are also socially excluded as a result of the barriers in social environment such as education, training, health, housing, sports and recreation (EDF, 2006). The multifaceted nature of disability entails a multidimensional perspective while requiring a focus on the problems of persons with disability in terms of employment discrimination.

Social sensitivity to the problems of persons with disabilities tends to increase in the last few decades. However, disability continues to become an important issue in employment discrimination. In many countries, legal rules and regulations prohibit employers from discriminating against qualified employees on the basis of disability. Thus, qualified employees with disabilities have the oppor-

tunity to receive the benefits of legal protection. They are able to perform the essential functions of their jobs with reasonable accommodation provided by their employers. Despite the legal protections, there are still many victims of disability discrimination in employment along with practices. Perception, fear, and prejudice continue to artificially limit understanding and acceptance of disability as a form of human diversity, especially in workplaces around the globe (Hasse, 2005).

In this study, we focus on the status of persons with disabilities in respect to employment in general and current circumstances specifically in Turkey. We aim at producing considerations on measures against disability discrimination in employment and opening up a debate for Turkey to adopt rational policies with reference to designated regulations. This study briefly defines employment discrimination and discusses measures for preventing employment discrimination in two main streams, namely "Equal Employment Opportunity" (EEO) and "Affirmative Action" (AA). Then, the study focuses on the Turkish case with prevailing policies and practices with regard to disability discrimination.

I. Employment Discrimination and Measures in Turkey

The word "discrimination" means to make distinction or to treat less favo-

rably. Thus, if an employer selects one employee and refuses another for a job post, he or she is thought to be discriminated. However, only two types of action make it unacceptable in the legal sense: The first is "disparate treatment". In this situation an employer treats an employee differently because of his or her race, sex, religion, color, national origin or status which is undesirable to the employer. This type of discrimination is also known as intentional discrimination. The second is "adverse impact." This situation occurs when an employment practice creates an effect of excluding people of a particular group even though the employer does not intend to do so (EEOC (a), 1995). In other words, unintentional actions may also lead to discrimination.

Many developed countries have adopted a set of legal regulations against discriminatory employment practices. The domain of these legal arrangements against employment discrimination has been broadened in the course of time, and covered the cases of persons with disabilities as well. Measures against employment discrimination that different countries have developed and implemented may vary in a wide spectrum that can be handled under two main headings: EEO and AA.

EEO is the body of laws that protects the rights of an identified group or class against employment discrimination. However, it has a much broader meaning. It is a system of employment practices to prevent discrimination on the basis of individual differences such as race, color, religion, age, gender, national origin, and disability. The legal regulations are the footing of this system. The legal aspects of EEO seem to be that of "distributive justice"² which concentrates on just outcomes. EEO laws generally aims at protecting the rights of an identified group or class that is more vulnerable to employment discrimination than others as a just outcome. However, EEO does not prevent other people from competing equally for vacant jobs. In other words, it does not protect the rights of one group at the expense of another group's rights. It does not distribute justice in this sense. Thus, it aims at protecting the process rather than the outcome. In regard to justice, EEO can be best described in terms of "procedural justice"³.

AA is a group of employment practices aiming at eliminating existing and continuing discrimination through curing inherited effects of past discrimination. Woods (1997: 4) puts it as follows: AA programs aim at hiring "members of a protected group

² The term, distributive justice, connotes distribution of all kinds of resources and decision making in the society on the basis of merits and demerits. In other words, according to distributive justice doctrine, every individual must obtain what he or she deserves.

³ The term, procedural justice, concentrates on the fairness of a process in which decisions are made and resources are distributed.

to overcome past discriminatory practices." AA requires the employer to make an extra effort to hire and promote those in the protected groups (Dessler, 2003: 52-53). AA may be on either "mandatory"⁴ basis or "voluntary"⁵ basis. There are certain risks in either AA programs. For a mandatory AA program, a formal quota-based system may favor one group over another and lead to claims for reverse discrimination. For a voluntary AA program, program failure, despite employer's efforts, may discourage employers from future programs (Marino, 1980). There are arguments in favor of and in opposition to affirmative action programs⁶.

The term, employment discrimination, may not have exactly the same meaning in all countries. The degree of tolerance to it, its types, measures against it, and even perceived need to eliminate it may change from one country to another. However, the commonality across countries is that it is an unacceptable societal life style in a contemporary world. The

rest is lying on people's attitudes that are influenced by different perspectives and influencing measures in turn. Therefore, different connotations of employment discrimination and measures should be searched in where between procedural rules of measures and attitudes toward employment discrimination.

From procedural perspective, Turkey seems to implicitly ensure EEO, and explicitly emphasize AA for vulnerable groups in its Constitution. According to the Article 50 of the Turkish Constitution; "Minors, women and persons with physical or mental disabilities, shall enjoy special protection with regard to working conditions." There are other provisions against employment discrimination in two main employment-regulatory acts for employment, namely "the Civil Servants Act" (*Devlet Memurları Kanunu*) (Act No: 657) and "the Labor Act of 2003" (*İş Kanunu*) (Act No: 4857)⁷. Civil Servants Act regulates civil service employment

⁴ Mandatory AA is the charge of putting quotas for getting desirable increase in the number of employed people from protected groups through hiring and promotion restrictions. In many cases, AA programs are mandatory for employers to hire not only qualified people of protected groups but also to hire those who can be made to qualify with a reasonable amount of training (Sherman et al., 1998: 75).

⁵ Voluntary AA is to act with *bona fide* purposes for eliminating obstacles to hiring and promoting people from protected groups on the assumption that this will result in increased utilization of population from those protected groups.

⁶ For a detailed discussion on pros and cons of AA, see Plous (1996).

⁷ The Labor Act of 1971 (Act No: 1475) was rescinded by the new Labor Act of 2003 (Act No: 4857), and the prohibition of employment discrimination is explicitly emphasized in Article 5 of the Act. Until 2003, there were no explicit statements against employment discrimination. It was perceived as the responsibility of government not to make any discrimination in civil service employment.

whereas the latter regulates the rest. There are basically two systems of appeal for employment discrimination claims. One is for civil servants and the other is for the general public⁸. The scope of provisions against employment discrimination for the general public is still quite limited to certain employment practices, e.g. the Labor Act of 2003 does not cover selection process. Moreover, the enforcement of law against employment discrimination seems to be weakened by the lack of a strong enforcing authority. There are such enforcing authorities in different countries. For example, in the US, an "Equal Employment Opportunity Commission" (EEOC) was established to enforce EEO laws and regulations.

What the law permits or prohibits are actions based largely on people's attitudes. From this perspective, procedural arrangements are more of a reflection of socially accepted attitudes and their reflection on actions. In other words, actions based on attitudes are procedurally permitted or prohibited. Nevertheless, attitudes are not always on track with procedural domain, and indirectly results in actions that are in conflict with the law. Therefore, law enforcement is always necessary to keep actions in order. This law and order dilemma is

also valid for attitudes within employment discrimination. The same dilemma seems to exist in Turkey. Observable facts in employment discrimination issues are not consistent with what the law says. For example, there is a widespread acceptance of nepotism and gender discrimination, and ignorance of disability discrimination in Turkey (Emre, 2003: 438-454; Özen, 1996). Disability in the society is thought to be cured with social charity, and thus, not perceived as a discrimination problem at all. Sanctions against employment discrimination are weak, and the lack of law enforcement causes these attitudes to be prevalent in the society (Karataş, 2002). In other words, there are legal regulations and measures in respect to employment discrimination, but they might have different connotations wiping away their expected and socially desirable impacts in Turkey.

II. Common Concerns for Employment Discrimination

There are many issues regarding employment discrimination. Some of them are the most common for countries in developing policies and practices against it. These are briefly explained below.

⁸ The legal system of appeal for civil servants is not a system designed to resolve employment discrimination disputes and it is not for appeals of civil servants only. It is rather a judiciary system to resolve disputes between citizens and government. Each citizen has the right to appeal this system with a claim against an unfair government action toward him or her. The other system of appeal has been newly established and there is not enough data to evaluate its effectiveness yet.

II.1. Equal Pay for Equal Work:

This subject is generally interpreted as a measure against gender discrimination in employment. It is a remedy to prevent unfair pay practices on the basis of sex. The legal regulations on this stream might change on preferences of terms used to define "equal work". In some cases, terms such as "equal, identical, same" are preferred and in some others, "comparable worth" is used to define equal work (Mutari et al., 2001). The issue has a long history dating back to 1891 (Henderson 1992). Along with its long history there were opposite views in respect to pay decisions based on gender differences (Sunoo, 1997). At the moment, the debate on pay discrimination on the basis of sex seems to favor equal pay for equal work. Yet, seniority systems, merit considerations, or incentive pay plans may be reasonable causes for discriminatory pay practices (Sherman et al., 1998: 47).

II.2. Age Discrimination: The rapidly aging workforce makes employment of older workers a problem area. Older workers are "viewed as having less potential for development and less capacity for performance; and as being slower, less creative, less flexible, more resistant to change, disinterested in training, and more prone to illness and accidents than their younger counterparts" (Weiss and Maurer, 2004:

1551)⁹. Therefore, employers are reluctant in hiring older workers. Discriminatory practices in relation to age are generally against people over 40 years of age. Policies and measures are aiming at making it unlawful to discriminate against employees or applicants for employment who are over 40 years of age (Cole, 1997: 195; Dessler, 2003: 27-28). Age discrimination is rather an important issue in countries with older workforce.

II.3. Vocational Rehabilitation: Vocational rehabilitation is a set of services provided to enable people with disabilities to find employment or to maintain their jobs. It is part of the measure for disability discrimination in employment and sometimes combined with AA programs. The coverage of vocational rehabilitation might involve "reasonable accommodation" on the side of employers. Reasonable accommodation requires employers to arrange proper facilities in the work place to accommodate impairments of persons with disabilities without causing an undue hardship on the operation of business (EEOC (b), 1995).

II.4. Pregnancy Discrimination:

The increasing participation of women in labor market creates a new area of discussion: "pregnancy issues in the workplace." The debate is on job requirements, health con-

⁹ See Doering, Rhodes, & Schuster (1983); Rhodes (1983); Rosen & Jerdee (1976); Stagner (1985) for the details of researches on the negative age stereotypes.

cerns of a woman and her child, and a woman's economic concerns (Queneau and Marmo, 2001). Pregnancy is often considered as an obstacle for a woman to work. In today's trend, pregnant women remain active in their work life until it is medically necessary for them to leave work or deliver the baby. Using pregnancy, childbirth, or related medical conditions in the hire, promotion, suspension, or discharge, or any term or condition of employment is considered a kind of employment discrimination. The pregnant woman could be considered a person with disability for a temporary period of time¹⁰. She has legal rights of a person with disability for that period.

II.5. Sexual Harassment. Sexual harassment is considered an unwelcome sexual advance either in the form of verbal or physical conducts. Harassment is an important part of sex-based discrimination¹¹. Because it may explicitly or implicitly affect an individual's work performance, and thus, affect decisions related to work by creating an intimidating, hostile, or offensive work environment. The current legal trend in recognizing the issue seems to consider it as a kind of discrimination, but not of a sex-based discrimination.

For example, in the US, EEOC interprets it in the following way¹²: "The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex." Nevertheless, there is still an ambiguity in this interpretation. In the UK, Equal Opportunities Commission (EOC) covers the subject under "Sex Discrimination Act of 1975." It seems that the EOC considers it as a sex-based discrimination in the UK. In any case, measures and policies on this subject aiming at making employer liable for maintaining a workplace free of sexual harassment.

II. 6. National Origin and Racial Discrimination: National origin discrimination is "discrimination because of individual's or his or her ancestor's place of origin, ... because an individual has the physical, cultural or linguistic characteristics of a national origin group, ... due to association with persons of a national origin group, ... due to the attendance at schools or places of worship used by persons of a national origin group, ... because an individual's or spouse's name is associated with a national origin group" (EEOC, 1996: A-3-A-4). Racial discrimination is defined more or less in the same manner.

¹⁰ Magid (2001) denied pregnancy to be seen as a temporary disability or a chosen condition and insists on it as being a biological reality that imbues women for a lifetime, not nine months.

¹¹ There are views arguing that harassment is not a sex-based discrimination. For details see Schultz (1998).

¹² For detail of how EEOC interprets sexual harassment, see <http://www.eeoc.gov/facts/fs-sex.html>.

Racial discrimination is to treat people differently because of their physical, cultural or religious characteristics attributed to a race. National origin and racial discrimination is one of the most complicated and controversial issue in the literature with its focus on distributive aspects of work (Vallas, 2003).

II.7. Disability Discrimination: This subject may be the most challenging issue in discussions for employment discrimination. There is not a clear and universally accepted definition of a person with disability (Bagenstos, 2005). For the purpose in this study, a disabled person has been defined as "a person who has a physical or mental impairment that substantially affects one or more major life activities such as walking, sitting, speaking, lifting, seeing, hearing, etc"¹³. This is more of a "jurisdictional" definition. There may be

other definitions in the medical sense. Nevertheless, jurisdictional definition is in need of medical definitions in identifying the substantial effect or limitation of impairment¹⁴. Substantial limitation does not necessarily mean that the person is substantially limited in workplace.

Disability discrimination in employment is human resource management practice based on the real or perceived disability of a qualified employee. "A qualified individual with a disability is an individual with a disability who meets the skill, experience, education, and other job related requirements of a position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of a job" (EEOC, 1995: 1-2). Disability discrimination may take many different forms. A person might be discriminated in the case that he or she is

¹³ According to the provisions of the Vocational Rehabilitation Act and Americans with Disabilities Act in the US, a person is considered to have a disability if he or she has either a physical or mental impairment, has a record of such impairment, and/or viewed by others having such impairment. Both acts reflect a social perspective in definition of disability whereas the Social Security Act reflect a medical perspective by defining disability as "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months" (Section 223(d) of the Social Security Act, 42 U.S.C. § 423(d)). For a detailed discussion and different conceptualization of disability also see Bagenstos (2005; 2000) and Liebman (1976).

¹⁴ For example, Americans with Disabilities Act (ADA) defines a physical impairment as "[a]ny physiological disorder, or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine." And this act defines a mental disability as "[a]ny mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities." As seen, it heavily relies on medical terms to define disability.

able to perform the essential functions of the job with reasonable accommodation, but employer refuses to accommodate him/her.

III. Measures and Policies against Disability Discrimination

Tools developed for overcoming problems of disability employment can be analyzed in three main categories, namely charity, rehabilitation and integrationism (Bagenstos, 2005). First, charity imposes the idea that disability makes people unable to take care of themselves and therefore they should be substituted. Second, rehabilitation aims at reducing dependency of people with disabilities on charity programs by improving their professional capacities. And third, the integrationism aims for full participation of people with disabilities into the community life (Bagenstos, 2005). Disability employment policies of any country are usually an amalgamation of these three.

From a different perspective, formation of the amalgamation can be interpreted in AA and EEO nexus. Charity or disability benefit programs can greatly be associated with AA, whereas rehabilitation can be considered to be in between AA and EEO. But, integrationism must definitely be linked to EEO. Nevertheless, both AA and EEO have been used as tools of integrationism. Countries trying to implement the policy of integ-

rationism have had different experiences and different practices with this policy. European countries tend to lean towards AA in the form of quota systems, whereas the US relies more on EEO. The effectiveness of both is still questionable (Waddington, 1996; Bagenstos, 2005).

Historically, charity was the first remedy used to resolve the problems of people with disabilities. In medieval and early modern times, people with disabilities were actually considered to be only legitimate beggars depending upon the charity of others. They were regarded as incompetent in taking care of themselves (TenBroek and Matson, 1966). After the Second World War, vocational rehabilitation programs began to reduce the dependency of people with disabilities on charity (O'brein 2001; Bagenstos, 2005). In the late 1960s, integrationism became a prevalent policy envisaging full participation of people with disabilities in community life (TenBroek, 1966; Bagenstos, 2005): There are, of course, many issues keeping the discussion of measures or remedies within a legal perspective such as truly disabled, substantial limitation, major life activity, and reasonable accommodation. Thus, the visible effects of measures or remedies for people with disabilities are considered to be improved through detailed interpretations of the law.

IV. Prevailing Policies and Practices on Disability Discrimination in Turkey

It is useful first to refer to the legal context to understand the nature of disability discrimination in Turkey. As mentioned above, there are two main acts regulating overall employment in Turkey: The Labor Act (No: 4857) and the Civil Servants Act (No: 657)¹⁵. Both mandate employers to employ people with disabilities in a certain percentage and involve some regulatory provisions for employment of people with disabilities. Nevertheless, they do not define disability and leave it up to lower ranked regulatory provisions. The Article 30 of the Labor Act simply states "Employers employing more than 50 employees are responsible to employ disabled,, in conformity with their physical and mental capacities, in the ratios determined by the Council of Ministers at the beginning of January for each year. The ratio of workers employed in this category is 6 percent. However, the share of disabled cannot be less than 3 percent in the specified ratio." As can be understood, the concept of disability is not defined in the Labor Act. Instead, AA for persons with disabilities is emphasized strongly by the Act. A similar provision is stated in article 53 of the Civil Servants Act.

The Government Communiqué on "Employment of Disabled and Sentenced People" (Özürlü ve Hükümlülerin İstihdamına İlişkin Tebliğ) (Communiqué No: 7/3600) defines disability in the terms of the eligibility in mandatory AA, but not in medical terms. International Labor Organization (ILO) also defines it in relation to employment. ILO's "Vocational Rehabilitation and Employment (Disabled Persons) Convention of 1983" (No.159), recognized by Turkey, describes a disabled person as "an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognized physical or mental impairment." It seems logical to link the definition of disability with employment since our concern is disability discrimination in employment. However, this approach would narrow the definition of disability in discrimination context¹⁶.

The Article 2 of the Government Communiqué on "Employment of Disabled and Sentenced People" states that "a disabled person is a person who has proof of a health commission that he or she lost his/her physical or mental capability to a certain extent, and who has difficulties in finding a job, and who can do so-

¹⁵ Labor Act regulates contractual employment for both the private and public sectors, whereas the Civil Servants Act mainly regulates the employment of civil servants in government offices.

¹⁶ Although Turkey has recognized United Nations' "Declaration of Rights for Disabled Individuals" (No.3447, dated 1975) that described disability in broader terms, the definition is narrowed for employment purposes.

me jobs immediately or can do with a short training practice in spite of his/her disability." The same provision also exists in the Article 3 of the Government Communiqué on "Hiring Conditions and Jobs for Disabled in Public Service Employment". With this provision, it is clear that only "qualified" persons with disabilities are considered to be eligible for AA enforced by the Article 30 of the Labor Act and the Article 53 of Civil Servants Act. Thus, the regulation narrows eligibility further for that specific AA of the law. It seems reasonable when considering discussion about reverse discrimination caused by AA programs, especially for those who are not qualified. However, by narrowing eligibility, the law restricts the population benefited from AA. The ratio of disabled population eligible for mandatory AA is much more narrowed by the Article 3 of the Government Communiqué on Employment of Disabled and Sentenced People. According to the Article 3, only those who have lost at least 40 percent and at most 70 percent of their working ability are considered eligible. Thus, disabilities that do not confirm the rule of 40 to 70 percent loss of working ability are excluded.

These limits are open to question since there might be some job opportunities that are not consistent with such limitations.

Government policies in Turkey on disability discrimination have never gone beyond AA that is mainly based on a quota system, and policies developed along with this legal context could have been regarded to be ineffective (see Table 2). This is confirmed by the following analysis and findings. In spite of the lack of reliable data regarding the employment of people with disabilities (ADP, 2003: 13), it is possible to highlight some of the facts on employment of people with disabilities: There are approximately 8 million people with disabilities in Turkey¹⁷. This is about 11.4 percent of the total population of Turkey (projected for 2002). The data from the Turkish Statistics Institute (TSI) (*Türkiye İstatistik Kurumu*) increased the approximation to 8.4 million¹⁸. According to an OECD survey, the ratio for people in 20-64 age group is around 10 to 20 percent in many countries (Table 1). The UN estimation for population with disability in the world is about 10 percent (Mont, 2004). Real figures can only

¹⁷ This number was accepted officially by Government Direction of 2002/58 dated Dec.2002. It was reported as only 1.37 percent in the OECD statistics for 1985. This and other statistical facts for other countries support the view that the real figures start to be appeared with refined demographical statistics.

¹⁸ See the web site of TSI for details http://www.die.gov.tr/villik/05_Saglik.pdf. (access date 14.07.2006). This number is calculated in respect to 2000 census data. When it is reflected for 2002, it becomes 68,4 million. The disability ratio for whole population is 12,29 percent.

Table: 1 Disability Prevalence with Age in Selected Countries†

Countries	% of Population with Disability (Age 20-64)
Australia	12.8
Belgium	13.0
Canada	16.1
France	15.8
Germany	18.1
Italy	7.1
OECD	14.0
Sweden	20.6
United Kingdom	18.2
United States	10.7††

† Adopted from OECD (2003: 25).

†† This ratio is about 17.6 percent for the whole population in year 2000 in the US (Furrie, 2003).

Table: 2 Detailed Composition of People with disabilities in Turkey in respect to Employment (2002)†

	General Population	%	Disabled Population	%
Population	68,393,000 (a)	100,00	8,405,499 (d)	12,29 (d/a)
Population aged between 15-64	46,248,000 (b)	67,60 (b/a)	5,938,600 †† (e)	70,65 (e/d) ~
Labor Force	23,078,000 (c)	49,90 (LFPR) (c/b)	1,289,270 (f)	21,71 (LFPR) (f/e)*
Unemployed	2,464,000 (g)	10,68 (g/c)	1,037,733 (h) †††	80,49 (h/f)
Total Employed	20,614.000 (l)	100,00	371.052 (k)	1,80 (k/l)
Public	2.200.000†††† (l)	10,68 (l/i)	17.000 (m)	0,77 (m/l)
Private	18.414.000 (n)	89,32 (n/i)	354.052 (o)	1,92 (o/n)

* Labor Force Participation Ratio (LFPR) equals the "labor force" divided by "population aged between 15-64" (f/e). LFPR for the disabled was obtained from the ADP Research for Disabled in Turkey in 2002 (ADP, 2002). Although the report gives LFPR for the disabled in Turkey, it does not include any information on figures like "labor force" and "population aged between 15-64" for the disabled.

† Figures on disability belong to 2002; therefore the year 2002 was taken as a basis for the compatibility of the data for general population and that of disabled population.

†† Adopted from Turkish Association for Persons with Disabilities/TADP (Türkiye Sakatlar Derneği) web site (TADP, 2003).

††† There is no specific data for the number of employed people with disabilities in Turkey. The number of unemployed people with disabilities is calculated with generalization of the ratio of employed people with disabilities in work places unionized under The Confederation of Turkish Trade Unions (Türkiye İşçi Sendikaları Konfederasyonu). Total number of employed people in these work places is 122,488 and only 2,217 are people with disabilities (the ratio is 1,8 %). When this "1,8 %" ratio is applied to whole employed population (20,614,000), the number of employed disabled will be 371,052.

†††† Adopted from OECD (2004: 4).

be handled through improved statistical techniques. There are much of unreliable data for many countries due to some reasons¹⁹.

Detailed employment situation of people with disabilities in Turkey is given below in Table 2. In this table, the total number of people with disabilities is assumed to be 8.6 million. The calculations are approximations rather than exact figures.

The percentage of employed people with disabilities has been calculated based on the available data obtained from the ADP (Administration for Disabled People-Özürlüler İdaresi Başkanlığı)²⁰ (ADP, 2003). Data from ADP figured out that there are 9,730 workplaces (both public and private) that employ more than 50 employees in 2002. These workplaces have legal liability of employing people with disabilities in certain percentages. They have employed 45,621 people with disabilities. 3,315 of those have been employed over obligatory quota of the Labor Act. There are still 13,912²¹ positions to be filled in respect to the Labor Act

(ADP, 2003: 1). If we take this point of view, unemployment rate for the disabled would go up to 87.61 percent. A more realistic approach is to accept that the rate of unemployment for them has been 80.49 to 87.61 percent. This clearly means that the effectiveness of 70 years of mandatory AA by the Labor Act should be reevaluated.

We can re-examine the given AA from two perspectives. Firstly, it has not produced expected results of employment for the disabled. It remains as a *desideratum* of increasing the utilization of disabled labor force in the workplace. Secondly, the legal sanctions of the quota system do not intend to provide full participation of persons with disabilities into the social life, and thus, it remains in a very limited domain. One can conclude that it does not encourage people with disabilities to acquire necessary skills and qualifications to be employed.

Mandatory AA remains as a *desideratum* because it has not created additional number of jobs. It restricts the employment opportunity of per-

19 Unreliable data may be due to the intentional concealment policies of countries to show that their regime or their policies are better, or it might be due to inefficient infrastructure to collect statistical data. As Mont (2004) pointed out, one reason for low rates of reported disability in some countries is the intense stigma having a family member with a disability can entail.

20 It is not possible to obtain the exact figures related to disabled population and the employment of disabled people in Turkey, therefore further research might prove even a higher percentage of unemployment among the disabled people by worsening the scenario.

21 In fact, this number is assumed to be higher, since in the public sector alone, 30.000 positions are reported in the Seminar on Employment of People with disabilities in 2004. See also (ADP, 2003: 12).

sons with disabilities into a narrowed quota system. There are reasons for its restricting characteristics. Sanctions in the form of pecuniary punishment lead employers to develop negative attitudes against the quota system, because the Labor Act and Civil Servants Act force employers to employ people with disabilities despite the fact that there are not enough qualified people with disabilities. Thus, employers may prefer to pay a fine imposed by the law instead of employing unqualified people with disabilities. It also technically restricts employment opportunity in rural areas because many of the workplaces employing more than 50 employees are located in economically developed areas (ADP, 2003: 12). There are other technical difficulties narrowing the scope of mandatory AA including the lack of clear job descriptions in public and private organizations.

Legal sanctions of the quota system do not seem to encourage those with disabilities to acquire skills and qualifications. Thus, mandatory AA becomes no more than a charity program. The quota system has been considered a main tool for including those with disabilities into work environment. However, it only provides jobs to a limited number of people with disabilities.

There are acts and government communiqués for vocational rehabili-

tation of people with disabilities which aim at providing persons with disabilities with the necessary skills and abilities, guiding them in employment stage, and providing them with reasonable accommodation during employment (ADP, 2003: 13-14). However, there is no mechanism to enforce provisions of these acts and communiqués. Therefore, they do not provide a strong and concrete support for those with disability to acquire skills and abilities that will increase their chances to be employed. At present, there is no given data on the contribution of these programs for the employment of people with disabilities. There is only one study conducted by a group of ADP specialists (Aktaş et al., 2004) on "sheltered employment workshops" which are the workplaces providing employment through vocational rehabilitation for the disabled having difficulties in finding jobs. Although researchers' aim is not to specify how many people are employed in these workshops, they found 153 people with disabilities employed in a total of 13 sheltered workshops. This is a very limited number when the total number of persons with disabilities in Turkey is taken into consideration.

Finally, there are other indirect policies and practices in respect to people with disabilities like tax exemption²² and additional employment opportunities. Nevertheless, these do

²² Income Taxation Act (Act No.173) and relevant government direction (no.8/2620) provide opportunity for income tax reduction for those disabled.

not aim at increasing the number of employed people with disabilities²³.

In summary, prevailing policies and practices for the employment of people with disabilities in Turkey are basically guided by government directives including mandatory affirmative action, vocational rehabilitation programs, and other forms of protection. However, there are no positive findings about the successes of those policies and practices. On the contrary, there is enough evidence that they failed (see Table 2). Then one could ask the question: Is the employment protection of people with disabilities an effective way of preventing disability discrimination? There is enough evidence that it is not. Some have argued (Acemoglu and Angrist, 2001; DeLeire, 2000) that it has reverse effects on employment of people with disabilities through the outcomes of American with Disabilities Act for the US²⁴. Findings from Turkey support this conclusion. Although the enforcement mechanisms are stronger in the US, outcomes show that any form of protection does not have an important effect in increasing the number of employed people with disabilities. There are similar findings from some European countries. Malo and Muñoz-Bullón (2005) reported that

employment promotion measures for people with disabilities did not make any improvement in job matching quality of them in Spain. Mont (2004) also emphasized some questionable aspects of these programs in some European countries.

Conclusions

The approach to the concept of “disability” has gradually evolved over the last three decades from a “paternalistic, medical perception” which focused on the actual disability to a “social perception” which appreciates that people are disabled due to attitude, prejudices and barriers created by society and that prevent them from enjoying opportunities equal to those of non-disabled people. In another words “*Action is shifting from an emphasis on rehabilitating the individual so they may “fit in” to society towards a global philosophy of modifying society to include and accommodate the needs of all persons, including people with disabilities*” (EP, 2003: 6). Disability is now seen as an issue of human rights. However discrimination on grounds of disability is still a significant problem area. This is mostly because of the multi dimensional aspects of measures against disability. Sociological, political, psychological

²³ The Act of Struggle with Terrorism (Terörle Mücadele Kanunu) (Act No: 3713) provides additional AA quotas for the employment of those heavily injured in fighting with terrorism and relatives of those died in fighting with terrorism.

²⁴ Nevertheless, there is evidence that there are technical problems with the measurement of outcomes of the Americans with Disabilities Act (Kruse and Schur, 2003).

and legal issues emerge as fields of importance in every attempt to overcome the problems of the persons with disability. This paper especially focused on the political policy and legal aspects of disability discrimination in the employment, because "employment is a key factor in the fight against social exclusion and poverty. Work is generally regarded as one of the most important ways for people with disabilities to integrate and participate in society" (EP, 2003: 8). Therefore, political and legal measures have also sociological and psychological effects on disability issue.

As for the situation in Turkey in terms of political and legal measures, one can see many legal rules, principles, procedures aiming at preventing disability discrimination, on the other hand, in time, some of them may become confusing, conflicting, or at least give a disorganized picture of what and how things should be, e.g. the Constitution Article No. 42 and 50, Act No. 657, 2908, 2928, 506, 2022, 1475, 3146, and so on (Havuş, 1998: 43). And, unparallel to this picture, sanctions are not always in place, for example, fine for not employing a person with disability is not discouraging. It is hard to defend and gain law-given rights even if a person with disability is himself a lawyer! (Havuş, 1998: 46). Until recently, a teacher with disability would not be allowed to work. "The right to live is much related to the right to work". Hence, there is an

urgent need to use public and private means by getting support of pedagogical and psychological expertise to promote, present, and express problems of people with disabilities and their employment in order to provide them opportunities either to find a job; to fight against negative externalities of privatization since it may mean higher rates of unemployment and moreover private companies are more reluctant to obey regulations on employment of people with disabilities (İçli, 1998: 155-157) or to start a new business (by some sort of financial, organizational or legal specific protections and measurements) (Durmuş, 1998: 147). For example, those credits (given by Halk Bankası etc.) to young and female entrepreneurs (Kora, 1998: 158-161) would be developed to cover other groups of people with disabilities.

The consequences of the employment discrimination towards people with disabilities are rather serious. For example individuals with disabilities who are actively working in an organization in Turkey would face several difficulties such as 'tough job competition with peers and having to handle the prejudices of managers. Objective and written entry (provided that it has been conducted in accordance with the basic necessary accessing/enabling tools) and/or promotion exams are all right since they have at least been based on some specific criteria. However, during interviews, it may become a nightmare to overcome personal prejudices.

Unfortunately, people with disabilities are placed in a secondary position both in the eyes of management and in practice (Şenturan, 1998: 37-38). Moreover some managers' and peers' degrading attitude towards disabilities would be the most difficult thing to deal with; one can even face limitations in order to exercise fully the rights regulating working conditions by legal procedures (Ermiş, 1998: 39-40). Outside the working life, people with disabilities would face a number of different problems, such as 'being only considered as consumers in the society, not deserving a proper job, having limitations to hinder finding a job in a country where unemployment rate is high, etc.' On the contrary, they are fully aware that they have the rights as citizens, and eager to be someone productive and utilizing his/her full capacity in order to contribute to the society, and able to have economic independence instead of being a burden to their families and to the society. What does it mean "being unemployed" for a person with disability? It means 'having to maintain a hard life; disabled and at the same time dependent on others, living isolated from the society, and by the way, losing one's self-confidence, having some psychological problems, for the reasons based on prejudices and artificial grounds' (Sevil, 1998: 41).

When it comes to the policies in hand, specifically, as we discussed in this paper, there are two main streams of measures against emp-

loyment discrimination, namely AA and EEO. AA, unlike EEO, is more protective in nature. Nevertheless, both kinds of measures with regard to disability discrimination do not seem to produce desired outcomes. One may conclude that persons with disabilities in Turkey do not usually have an opportunity to acquire the necessary qualifications that will increase their chances to be employed. Moreover they suffer from the lack of reasonable accommodation in work places. As a result, they have been employed in limited numbers. In order to eliminate the effects of past inadequacies or discriminatory practices, AA could be considered as a temporary curing mechanism for disability discrimination. They even seem to be more applicable since reasonable accommodation problems can be overcome with the current technological settings. Nevertheless, it is clear from our discussion that mandatory AA has not produced desired results for people with disabilities in Turkey. Another point is that it might be perceived as a humiliating practice for those qualified with disability since unintentionally it degrades their achievements. It may also trigger the demands of other disadvantaged groups for extra protection, and thus, may provoke social reaction against reverse discrimination.

In conclusion, the results of this paper suggest improving the life quality of persons with disabilities in employment by "reasonable accommo-

dation.” Although, the study does support EEO, it accepts the necessity of AA for persons with disabilities to some extent. Moreover, it calls for further government action in order to transform disability into ability, such as constituting an “independent public body” to deal with the problems with respect to disability and other forms of discrimination. The UK and the US currently have similar bodies in order to effectively fight against discrimination in employment. For example in the UK, Disability Rights Commission was established in April 2000 by Act of Parliament and serves as an independent body to stop discrimination and promote equality of opportunity for persons with disabilities (DRC, 2006). In the US, EEOC has a much broader range in dealing with discrimination of any kind including sex, age and disability (EEOC, 2006). The proposed body for Turkey is similar to the example of the US, since Turkey is in need of a strong enforcement body in the other fields of employment discrimination as well. This new body could play three main roles in disability discrimination:

1. To monitor disability employment discrimination in practice and ensure the compliance with the laws and regulations.
2. To issue guidelines for disability employment.

3. To collect and administer data about disability employment in order to help improve disability employment policies and practices.

In addition to these general duties, this enforcement body shall attach particular importance to the following issues in detail so as to prevent discrimination in personal and group levels by adapting a macro perspective by envisaging the whole picture²⁵:

1. to reinforce the cooperation between all parties concerned with people with disabilities, namely government, the social partners, non-governmental organizations, the social services, the private sector, voluntary sector groups, people with disabilities and their families;
2. to promote the full integration and participation of people with disabilities in all aspects of society, recognizing that they have equal rights with other citizens;
3. to improve communication regarding disability and promote a positive image of people with disabilities;
4. to continue efforts to remove barriers to the integration and participation of people with disabilities in the labor market, by enforcing

²⁵ Some of those issues are enumerated in the European Parliament’s report on Disability Policy (for more information, please see EP, 2003: 5, 39-40).

equal treatment measures and improving integration and participation at all levels of the educational and training system;

5. to pursue efforts to make lifelong learning more accessible to people with disabilities and, within this context, give particular attention to the barrier-free use of new information and communication technologies and the Internet to improve the quality of learning, vocational training and access to employment;
6. to remove barriers impeding the participation of people with disabilities in social life and, in particular, in working life, and prevent the setting up of new barriers through the promotion of design for all;
7. to reflect on the need for further measures to promote the employment and social integration of people with disabilities into society;
8. to mainstream disability issues when drafting future national action plans relating to social exclusion and poverty;
9. to promote the exchange of experience of good practice and effective strategies devised at local, national and European level;
10. to collect statistical material on the situation of people with disabilities, paying particular attention to gender specific data, including

on the development of services and benefits for this group;

11. to reinforce the mainstreaming of the disability perspective into all relevant policies at the stages of policy formulation, implementation, monitoring and evaluation;
12. to pay due attention to issues of concern to women with disabilities when adopting, designing and evaluating policies for people with disabilities so as to secure equal treatment for women;
13. to pay special attention to awareness of the right of children and young people with disabilities to equality in education, so as to encourage and support their full integration in society and to promote the development of cooperation between those professionally involved in the education of children and young people with disabilities, in order to improve the integration of pupils and students with special needs in ordinary or specialized establishments.

With the specified enforcement structure, we would hope that Turkey will have an effective tool for anticipating and dealing with both the intended and unintended legal and ethical consequences of current laws and regulations in disability discrimination, and it will also help promote a more civilized employment milieu for the persons with disabilities.

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