

EU's Gender Equality Dilemma: A Human Rights or a Market Economy Instrument?

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Abstract

In the early stages of the European Integration, gender equality related policies were narrowly tackled due to the economic recovery priority of the Union. Although there was a rise of national and international women movements all around Europe, gender equality, particularly as a new paradigm, had not gained priority until the 1990s, when the EU was newly building a political presence in the world politics. Since the Copenhagen Criteria were presented in 1993, gender equality embedded titles have proven to be more promising as they are declared as a part of the EU's human rights norms and the EU's self-image towards 'Others'. In a similar vein, specifically in that period the EU has contributed several international women conventions and has undertaken responsibilities in terms of promoting equality between men and women in its external relations. However, the explanations how a gender equality norm matters in the EU are yet unsatisfied due to the continuity of gender blind policies and strategies. This paper scrutinizes the content within which the EU has constructed gender equality norm inside its borders and then exported it as a Europeanization norm in its relations with Turkey. In light of the EU's official documents and imposition of gender equality as an accession criterion, it can be argued that instead of creating an ideational change in the unequal conception of gender roles, the EU constantly instrumentalizes gender equality as a regulatory mechanism for market economy both inside the Union and throughout its enlargement process. Hence, despite its gender sensitive image, the EU falls short in internalizing and representing gender equality as a part of human rights norm.

Keywords: Turkey-EU relations, EU's gender equality conditionality, norm diffusion, social constructivism.

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AB'nin Toplumsal Cinsiyet Eşitliği İkilemi: İnsan Hakları mı Yoksa Pazar Ekonomisi Aracı mı?

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Öz

Avrupa bütünleşmesinin erken dönemlerinde toplumsal cinsiyet eşitliği ile ilgili politikalar, Birliğin II. Dünya Savaşı sonrası oluşan ekonomik iyileşme endişesinden dolayı kısmen ele alınmıştır. Her ne kadar ulusal ve uluslararası kadın hareketleri Avrupa'nın her tarafında yükselişe geçmiş olsa da özellikle yeni bir paradigma olan toplumsal cinsiyet eşitliği, AB'nin dünya siyasetinde politik bir duruş inşa ettiği 1990'lara kadar öncelik kazanmamıştır. Kopenhag Kriterlerinin tanıtıldığı 1993 yılından itibaren, toplumsal cinsiyet eşitliği içerikli başlıkların, AB'nin insan hakları normlarının bir parçası olarak ifade edilmesi ve 'öteki' karşısında AB'nin öz-imagi olarak gösterilmesi umut verici adımlar olmuştur. Benzer şekilde AB o dönemlerde birçok uluslararası kadın sözleşmelerine katkı sağlamış ve dış ilişkilerinde de kadın-erkek eşitliğini teşvik etmek adına sorumluluklar almıştır. Ne var ki, toplumsal cinsiyet eşitliğinin AB'de ne derece önemli olduğuna dair açıklamalar hala daha 'cinsiyet körü' politika ve stratejilerin devam etmesinden dolayı sorunludur. Bundan dolayı bu çalışma öncelikle AB'nin toplumsal cinsiyet eşitliği normunu hangi bağlamda kendi sınırları içinde inşa ettiğini, sonrasında ise Avrupalılaşıma normu olarak Türkiye ile ilişkilerinden nasıl aktardığını inceleyecektir. Çalışmada AB resmi dokümanları ve toplumsal cinsiyet eşitliği yükümlülüğüne değinen katılım kriterleri incelendiğinde; cinsiyet rollerinin eşitsiz olduğu algısında düşünsel değişim yaratmaktansa, AB'nin hem kendi Birliği içinde hem de genişleme sürecinde toplumsal cinsiyet eşitliğini devamlı piyasa mekanizmasını düzenleyicisi olarak araçsallaştırdığı iddia edilmektedir. Buradan da anlaşılmaktadır ki toplumsal cinsiyete duyarlı bir imaj çizen AB, bu normu hem kendi içinde tam anlamıyla içselleştirmekte hem de insan haklarının bir parçası olarak sunmakta eksik kalmıştır.

Anahtar Kelimeler: Türkiye-AB ilişkileri; AB'nin toplumsal cinsiyet eşitliği koşulluluğu, insan hakları normunun yayılması, toplumsal inşaıcılık.

Introduction

The EU's gender equality norm is declared as a part of universal human rights and equality values in several documents. Yet, since the launch of the European integration, the gender lens of the process has been neglected in many ways. The fact that in its external relations, the EU exports 'gender equality' as a norm under 'equality', 'human rights' and 'anti-discrimination' principles has made little difference. Indeed, the EU seems to offer a well-designed and significant gender equality regime inside its borders, as can be clearly seen in the Treaty of Lisbon and its definition of fundamental European values:

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail (Article 2, Treaty of Lisbon¹).

Nevertheless, despite the EU's guarantee in establishing equality for men and women, creating an equal environment is a complicated and onerous task, as it is located within the triangle formed by the welfare state, the neoliberal labour market, and the patriarchal social structure. The issue of gender (in)equality is based on an asymmetrical role division developed between woman and man in the public sphere, political life, and in labour market participation, not only in Europe but worldwide. There is no single explanation why, when, and in which geography gender inequality, women's subordination, and gender roles first occurred. However, numerous studies have examined when women's movements against these unjust and unequal roles began and to what degree those movements have contributed to women's rights. Women's rights movement, its rhetoric and legal demands have had significant influence in shaping gender equality universally. They challenge the cultural factors that shape women's status in religious, in political and economic life; they confront states' gender regimes, which re-define and re-shape this inequality through their laws and policies. Feminist movements all around the world, therefore, have contributed to definition of gender equality as a norm in international law. The EU, in particular, has taken this legal perspective as a reference (European Parliament Report, 2011) in developing and consolidating its gender equality policies, and declared it to be one of the constitutive values of the European integration.

Regarding the EU-Turkey relations, gender equality, along with other human rights and equality norms, is undoubtedly contentious. The EU-driven gender equality norm is tackled in the employment and social policy of the *acquis* and within the accession process; it is embedded in the economic criteria with reference to equal opportunities for men and women and in the political criteria with reference to women's rights as a part of human rights. In the accession process, Turkey has implicitly accepted many EU-based gender equality norms through reform packages and constitutional amendments, for a specific or more

limited period. In the configuration of the enlargement process, the criteria on human rights are considered as the touchstones of the EU's 'identity' or 'self'; hence, if an 'other' wants to be a part of this 'self' then it should adopt this identity, practice its requirements and socialize related norms. Here, it appears that the EU seems to have a structurally transformative focus on gendered policies.

Nevertheless, Turkey's situation is significantly complicated, because gender equality is pulled between the definition of Turkish women as secular and modern, derived from the foundation of the Turkish Republic, and the conservative definition of Muslim women, based on Islamic rules and cultural values. In addition, the regional differences within Turkey make the case even more complex. As a result, the definitions of 'gender' and 'equality' remain contested in Turkey and vary along its regions. Against this background, international conventions and the EU's value-driven enlargement criteria have led Turkey into a new normative vacuum, which forces it to reshape the 'normal' regarding equality for men and women.

As Turkey is a candidate country and a subject of the EU enlargement since the Helsinki Summit of 1999, the EU has made gender equality a condition for its accession and indicates this criterion both in the accession partnership documents and in Progress Reports (PRs). In this regard, with its very complex nature comprising of a secular Republic characterized by Muslim beliefs, Turkey is an interesting case to determine to what degree the EU's norm entrepreneurship regarding a human right such as gender equality becomes influential. Repeatedly, even in the EU officials' discourses or in the enlargement documents, the EU criticizes Turkey over human rights violations and backsliding from the political criteria. Hereby it appears necessary to investigate how the EU, itself, has introduced gender equality as a part of its human rights agenda in the accession process in order to assess its conditionality in Turkey-EU relations.

By taking all these processes into account, this study aims to investigate, from a constructivist approach, how the EU conceptualizes gender equality inside its borders and depicts it in the enlargement process. The EU tries to transform its normative milieu through creating a greater compliance with universally accepted values. However, it is important to reveal what the EU neglects to do in its external relations by focusing on the contextual legacy in which it presents its gender equality norm. This study abstains from unfolding the complete extent or all degrees of EU norm implementations or discussing how the member states have Europeanized the EU-driven policies or laws. It rather briefly tackles how the EU's gender equality norm is constructed inside its borders and how this norm is represented in the enlargement process. First part of the study seeks to examine the relevant EU treaties and documents and clarify which rationale the EU pursues in its agenda setting- right-based gender equality or market-based gender equality. Here, the market-based equality refers to the EU's predominant focus on the rise of female labour market participation and its regulatory role in market economy; whereas the right-

based equality stresses the EU's comprehensive or holistic approach against women's subordination by considering political and economic participation of women, women status, violence against women, women poverty, mainstreaming gender equality. Secondly, the EU's enlargement policy-documents in its relations with Turkey are investigated in order to grasp within what context the EU promotes gender equality as a condition. In order to unravel EU's self-representation towards Turkey, relevant EU documents, EU PRs between 1998 and 2018 and four accession partnership documents' short-medium- and long-term criteria are analysed.

Gender Equality: A New Paradigm of Human Rights

As human beings, men and women are not the same on biological basis, but they both obtain same rights due to their citizenship and equalitarian social agents in society. The distinction between men and women in biological terms means their sex are different due to the anatomy of their reproductive system; whereas gender difference is a social construct derived from the social roles devoted to the sex of the person. In this constructed gender roles, women's subordination or oppression has been an entrenched structural problem since humanity emerged and has been questioned by women, particularly from the eighteenth century onwards. Earlier approaches were defined and identified by the feminist movements that tried to empower women in society and enable them to participate in public sphere on the equal basis that men enjoyed. The attention was particularly paid to empowering women socio-economically by increasing their awareness of their rights and allowing them to access to resources.

This debate has been expanded and refined within the 'gender equality' paradigm by the third wave feminists while its gender mainstreaming strategy and other structured gender-based inequalities have been elaborated in contexts beyond empowering women. For instance, gender equality is then acknowledged in terms of "the social, political and economic forces that shape gender structures" (Guerrina, 2005: 19) such as the roles allocated to men and women. Here, the third wave feminists' focus was on this unequal social construction of gender roles that were also embedded with race, class, and ethnicity. It stressed the "importance of power, conflict and gender relations in understanding women's subordination" (Razavi and Miller, 1995: 12). This was a vocabulary shift towards a new paradigm and gender began to be perceived "as the product of the same structures that validate and perpetrate the division between public and private sphere" (Guerrina, 2005: 33). In a gender-sensitive constructed identity, discourse and practices are situated as the representation and constitution of the 'real' and provide a "managed space in which some statements and depictions come to have greater value than others" (Campbell, 1992: 6).

However, internationally designed norms regarding gender equality have always been challenged and they directly compete with domestic norms (Finnemore & Sikkink, 1998), as most states are specifically not interested in promoting an egalitarian environment for men and women in the societies that

they live. Although states sign the final declarations of the related international conventions on women's rights and gender equality, in their actions or discourses, they hesitate to eliminate any entrenched gender roles in society. This could happen either because of the socially and culturally specific (maybe regional) rigid existing values or simply because of the states' unwillingness to regulate this issue.

According to Lombardo et al. (2009), while pursuing the acceptance of gender equality as a universal norm, during the implementation process it is possible to witness that "amidst different policy actors, at both institutional and non-institutional levels and across a variety of national and international organizations, the concept of gender equality is labelled differently" (p.1). This is because of the discursive construction of the concept gender equality, as it is openly contested and based on multidimensional realities. Furthermore, the borders of gender (in)equality may stretch to accommodate other inequalities, which "are not separate but independent and intersecting phenomena and it is impossible to reach gender equality as long as other inequalities still exist" (Lombardo & Verloo, 2009: 68). Thus, the shaping and the meaning of gender equality do not encompass a consensus; rather it is composed of inequalities that women are exposed to, whether directly or indirectly.

Additionally, gender equality has a dual importance: first, it is a fundamental aspect of human rights; second, it has economic significance in terms of growth and combating poverty. It follows a linkage that starts from education to having a profession, from participation in the labour market to achieving better living conditions, from job promotion or business entrepreneurship to increasing family household income, from having healthier conditions to look after a child to reducing child mortality, from socializing and experiencing equal treatment in society to involvement in the political sphere. There is a clear relation that portrays the priority of equality between men and women in every part of life.

Considering the exclusion of women from the different realms of society, some significant attempts have been made to fight against the inequality problem, which have brought the issue to the fore and made it more visible on the international stage. However, mapping the gender inequality situation across countries reveals that circumstances vary considerably. For instance, in order to constitute a gender mainstreaming strategy in developed countries, increasing women's participation in the labour market helps to improve women's social role in the society. However, the same term has different meanings in developing and underdeveloped countries in that the problem is more fragile and multi-layered, as it runs from education to health. Rather than women's economic emancipation livelihoods there are more important issues for both men and women (Carbone & Lister, 2006).

Genderedness in European Integration: Internal and External Norms

At the EU level, the notion of gender equality has been re-framed and extended from equal opportunities to positive action, and since the 1990s, the emphasis

has been laid on the gender mainstreaming. All these approaches have gradually formed the EU's gender regime, composed of norms, principles, and policies. During the widening and deepening process of European integration, gender equality among member states were issued in a narrow sense by simply concentrating on ensuring equal pay for women workers in specific sectors. According to Hoskyns (1996), Van der Vleuten (2007), and Kantola (2010), the central incentives during this period were the internal market aim of the original six states and the gender dimension of the integration occupied a place only in the ILO's Convention's recommendation on equal pay for men and women. Meanwhile, increasing claims of the women's lobby for 'equal pay for equal work' was supported by international trade unions, which played an effective role in developing Article 119 (now article 141) and the following directives. This concern (regarding Art. 119 equal pay for equal work) was declared in the Treaty of Rome, and all six founder member states had to implement this in their domestic law. It is a far-stretched argument that the integration had taken gender equality into account as a part of human rights, as human rights, itself, was not a concern during those years. Although the 1960s and 1970s were regarded as the "golden age for harmonization of the living and working conditions in the member states" (Horibayashi, 2006: 5) in European Community (EC), apart from equal treatment-based directives, this golden age did little for women's struggles and their demands of rights.

However, in the international scale, a significant achievement of the UN Decade for Women was the adoption of the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979. CEDAW intended to be influential as it "made women's rights a matter of international development" (Carbone and Lister, 2006: 4) and required the inclusion of women's needs and interests in the development planning. It has also come to be described as the 'international bill of rights for women' and provided a legal basis for realizing equality between women and men. The key aims of the Convention were to establish a bill of rights for women and guarantee and monitor it along with the antecedent rights that women possessed (CEDAW Report, 1979).

Along with CEDAW, and with the EC/EU's 'internal norms' that were composed of binding equal treatment directives in the mid-1970s, the Community intensified the equal opportunities approach for women in the labour market. However, despite the efforts of the women's movement on establishing universal women empowerment norms, until the end of the 1980s no women-oriented work had been issued, except some labour-market-based directives and action programs that promoted positive discrimination in favour of women. In the same period, the concept of gender mainstreaming as a strategy for achieving gender equality was proposed at the 1985 Third World Conference on Women in Nairobi in Kenya, discussed in Gender and Development (GAD) debates, adopted at the 1995 UN Women's conference in Beijing, and put onto the EU's agenda in 1996 in the Treaty of Amsterdam to promote gender equality in all EU policies. Hence, with the new debates and strategy, gender equality has become a norm of universal human rights.

This strategy aims to construct a “procedure for promoting gender equality instead of on a case-by-case basis” (Peto and Manners, 2006: 99) and transform malestream policies by introducing a gender equality perspective. It offers a new understanding on how to tackle gender discrimination that entails a paradigm shift from the EU’s previous equality measures (Beveridge and Velluti, 2008) by addressing greater structural change - including ideational change - such as political participation, governance, and participatory modes of democracy. However, it is also clear that this top-down process has clashed with the national policies and domestic laws. Under these circumstances, national stakeholders, including citizens and other interest groups may point out the implementation deficit, because “[w]hile in the short term national governments and bureaucracies may exert a dominant influence over implementation, in the longer run, the combination of supranational mechanisms of enforcement and powerful national actors may be decisive” (Martinsen, 2007: 548).

This externally imported norm, generally, aims to challenge the patriarchy yet due to the broad scope of the gender discrimination, mainstreaming strategy stays as a non-binding norm of the integration. It is recognized as vital to economic growth, prosperity, and competitiveness, as exemplified by the Council’s commitment to fulfil EU ambitions on gender equality through the adoption of the European Pact for Gender Equality (2011-2020) (7349/11) and the European Commission’s Strategy for Equality between Women and Men (2010-2015) (COM, 2010: 491 final). One of the EU’s committed efforts on acknowledging gender equality as a part of human rights is the Charter of Fundamental Rights represented in the Treaty of Amsterdam and enshrined in the Nice Treaty. The Charter focuses on adopting measures for combating discrimination on grounds of racial origins, sex, age, disability, religion, or sexual orientation. It was overtly introduced that EU was enthusiastic to combat discrimination on a wide range of grounds and set out in Article 13 of the Treaty of the European Community and revised the existing Gender Equality Directives.

In addition to Article 13 on anti-discrimination, the European Employment Strategy (EES) was also introduced in the Treaty of Amsterdam, again referring to gender mainstreaming. Its strategies give a specific economic role to gender equality in that “development of equal opportunities policies and gender mainstreaming has been an explicit objective” (Fagan et al., 2005: 568). With the EES, the Open Method of Coordination (OMC) emerged as a soft law tool for gender policies, actors, and institutions. Due to differing gender regimes and social policies among member states, the OMC has been used in the fields where the EU policy binding is difficult. It calls for the harmonization of national policies with the EU policies, but without the use of legally binding instruments, relying instead on dialogue, peer evaluation, best practices sharing, and naming-shaming methods.

With the Treaty of Lisbon that entered into force in 2009, gender equality has been prioritized by the implementation of mainstreaming in all policy areas. Since then, the EU has presented a more gender sensitive self-image and become a role model (Woodward & Van der Vleuten, 2014) not only for the ‘others’ but also for

its member states. In the same year with the Treaty of Lisbon, the EU demonstrated its willingness to engage in gender equality policies by more comprehensively emphasizing it in its report, *Communication on Gender Equality and Women's Empowerment in Development Cooperation*. In this report, the obstacles faced by women in developing countries were collected under specific headings, with particular concern given to women's positions in economic activities, employment, and their informal working positions in national economies. Although there were explicit references to the UN goals and the EU's statement saying 'Gender Equality is a fundamental human right', the EU has mostly emphasized gender equality within the context of economic activity (European Commission, 2007). This is because gender equality is a sector-based strategy (European Commission, 2003b), and the EU's concrete consideration was intensified on poverty reduction and sustainable development.

However, as Kantola (2010) notes, even though the Treaty of Lisbon and other official documents attach importance to gender equality, referring to it as the common value of member states by indicating that member states should promote it (Article 2, Treaty of Lisbon, 2009: 11), mainstreaming is not fully included in all parts, such as health, culture, education, foreign and security policy, and finance (p.216) areas, which remain poorly equalized. Similarly, David and Guerrina (2013) also argue that gender equality is presented as a normative value in both rhetorical and policy terms, but its definition and implementation remain uneven. Consequently, its non-binding feature makes one question the EU's credibility in promoting and consolidating equality for men and women inside its borders. Indeed, inside its borders it can be argued that, the EU's gender-equality identity is comprised of three circles, layered one above the next. The first circle is the national gender-equality identity of member states that have different welfare state typologies. The second circle is the EU's gender-acquis-based or EU-based internal norms that member states are expected to internalize, such as Article 119, Article 13 and related equal treatment directives. The third circle encompasses the previous two plus the universal gender-equality conceptualization as the EU acknowledges it as its own value.

Although the literature is scarce on the gendered welfare state typologies of member states, it is well-known that each member state possesses a different type of gender-equality regime based on its welfare system or the relationship between state and market. For instance, in social democratic welfare model or Nordic egalitarian model, Scandinavian countries had adopted gender mainstreaming as the main gender equality method even before the EU promoted the concept (Neumann, 2009). The Nordic system is based on dual worker/dual carer system that opens a broad place for men's caregiving roles and women's employability. In liberal regimes, Anglo-Saxon countries use neoliberal policies, in which public services are at minimum, and social policy is just used to uphold the market. In gender relations, women are free to choose between paid and unpaid work, which influences changes in housewifery. Alternatively, in corporatist/conservative regime countries, such as Germany, the presentation of status differences is central to social policy. Germany has a

conservative viewpoint on gender roles and “advocates a more traditional gender equality approach, which focuses more on the integration of women into the ‘male-stream’ than on to restructure social roles” (Neumann, 2009: 28). Lastly in the Rudimentary system or the Mediterranean regime in southern European countries, the central role is given to families, which provides social protections as if it’s an institution, while the “Catholic Church has upheld the centrality of nuclear family” (Kantola, 2010: 9) with a minimal role for state interventions. Hence, the welfare structures of EU member states determine the degree of the gender-equality norm internalization, but not always in its idealized gender equality form.

Here it can be argued that the EU’s policy implementations are based on the scope of the labour market, which might be because of the EU’s economic path dependency since the beginning of its integration process. Although intersecting inequalities are supposed to be tackled with multiple discriminations; the EU considers an expanded version of anti-discrimination laws only, rather than a comprehensive gender inequality and intersectionality analysis and positive measures. This is because “the impact of European integration has progressed and intensified within a public policy field previously regarded as a national policy domain” (Martinsen, 2007: 556). Besides, the equal treatment vision insists on symmetry between men and women and neutralizes their differences; however, this approach neglects structurally disadvantaged women and relies on short-term remedies. It is also significant to underline that the transposition process is pertinent to member states’ economic policies, political foundations, and welfare structures, all of which can be observed in the potential for women activism in the country, domestic political tendencies that are shaped by economic policies, and ideologies such as centre right or left, and state structures, whether it’s a federal or unitary state. Hence it is clear that both due to the EU’s market economy priority and member states’ differentiated welfare typology, the EU is challenged to make universal/external norms its internal norms, and falls short of the goal of creating an ideational change towards making gender equality a component of human rights.

Gender Equality as a Condition in Turkey’s Accession Process

In its external relations, by imposing normative principles on third countries the EU plays a norm-entrepreneur or a norm-promoter role, especially in the issues where it has an ability to demonstrate its own identity. In terms of gender equality, within the enlargement or development policy, third parties are expected to improve their gender equality standards in the market economy and develop women’s rights in compliance with human rights values. These norms are imported by the third country through international interactions, agents, stakeholders like NGOs and social movement actors. Each gender equality norm has encountered a certain degree of struggle in the norm-receiving country due to intersecting inequalities, country’s rigid gender regime, or government ideology.

One of the EU's priorities was to make these countries to fulfil the UN's Gender Declaration's objectives, adopting the rights listed in CEDAW, the Millennium Development Goals (MDGs), and lately the Istanbul Convention. The EU has announced its objectives in the Commission reports, designed with the aim of establishing gender equality in every sector and women's empowerment in line with the abovementioned international commitments. However, the European Commission (EC) reports indicate that adopting the MDGs as a guide and taking concrete steps in line with the targets would not be easy and gender equality construction would require considerable time, both in the EU's external relations and within the EU itself (EU Report, 2005; EP, 2009).

In Turkey's accession process, the Helsinki Summit of 1999 established the formal beginning of a new phase in the EU-Turkey relations, in which the EC as the executive body of the EU officially recognized Turkey as a candidate country for EU membership. Although Turkey had expected to join Central and Eastern European Countries (CEECs) on the Luxembourg Summit list in 1997, it was included two years later in 1999 at the Helsinki Summit. Since then, the EU-Turkey relations have been much more complicated than those for other enlargements, or as Diez (2005: 633) noted, "the EU wields its influence over Turkey and tries to construct its difference" in the accession negotiations.

Gender equality is represented in the enlargement as a fundamental right, in which Turkey committed itself to promote gender equality by eliminating all forms of discrimination against women and enabling an inclusive society for men and women. It acknowledges and promotes gender equality first as part of human rights and democratization, which reflects a gender sensitive image in its political stance. In addition, it is regarded as a necessity for a functioning market economy and growth. Although Turkey was already familiar with these norms as it is a signatory of international conventions before the candidacy, the situation has become more contentious now that gender equality is a condition for the EU membership.

Turkey's social policy, specifically gender equality, is a challenging part of the process, among other political and legal issues. Women rights, women's empowerment, and gender equality topics are stipulated by the EU under Enhanced Political Dialogue and Political Criteria (Human Rights and Protection Minorities; Democracy and the rule of law; Economic, social and cultural rights); Economic Criteria (Structure of the Turkish economy; Macro-Economic Developments); and Administrative capacity to apply the Acquis Chapter 13-later Chapter 19: Social policy and employment; and Chapter 23: Judiciary and fundamental rights, all of which clearly indicate the necessary requirements to achieve gender equality. The EU's first so-called normative justification started in 1998, when Turkey received its first PR from the EU, although it was not yet a candidate country. Regarding gender equality, in the part covering the judiciary, the report stressed the importance of amending the law concerning the civil code, which is mainly designed to eliminate discrimination between men and women. Regarding human rights, the report focused on women's status and the still-remaining discriminatory provisions concerning marital rights and

obligations, despite Turkey's ratification of CEDAW in 1985. It also emphasized Turkey's need to adopt provisions in the criminal code to counter violence against women in marriage.

In December 2004, at the summit meeting of the EU Heads of State, it was stated that Turkey has sufficiently implemented the political criteria so it could open negotiations for EU accession in 2005 and, thus, the procedural diffusion of the EU has officially started. The EU has presented its conditions through the Accession Partnership documents since 2001 under short, medium, and long-term periodical categories and all these processes have been monitored and evaluated by the EU through yearly regular PRs. As the norm importer, Turkey has been asked to remove all impediments and complete the diffusion of the core norms within the given periods. Taking these priorities into account, Turkey has prepared its own national programmes to ensure that its strategy and planned implementations are aligned with the EU conditions. But the asymmetrical relationship between the EU and third parties allows the EU to threaten any norm-breaking country that they will be excluded from the future stages of the enlargement, because it has more leverage over candidate countries as it holds the carrot in accession relations (Müftüler-Baç, 2000).

The Contextual Legitimacy of the Gender Equality Norm Promotion

The EU's gender equality norm is represented within two contexts. Firstly, internal norms based on hard law that comprise specific articles and several directives to eliminate gender-based discrimination in the labour market. Secondly, external norms based on soft laws that aim to mainstream gender equality in every sphere of life, where gender equality is considered as part of human rights. These norms are presented in PRs between 1998 and 2018 (except 2017) that were prepared by the EU Commission; and in the Association Partnership Documents (APDs) of 2001, 2003, 2006, and 2008 that are prepared by the European Council, composed of ministers from member states. Through this conditionality, the EU presents its normative justification under short- and medium-term priorities. Equal treatment directives, which are regulatory for the market economy, are examined in the short- and medium-term goals; amendment in civil and penal codes are stressed in the short term together with the goal combating with violence against women. These norms are noteworthy for establishing an equal basis for men and women in labour market and society, but they do not necessarily stress a significant shift towards a more human-rights based equality which can clearly be seen in APD's. The APDs' gender equality conditionality for Turkey is as follows:

In the APD of 2001, the women's rights issue was mentioned under the medium-term priorities of the Employment and Social Affairs heading. This part sets the conditions for the transition of anti-discrimination amendments in the labour law, equal treatment of men and women, occupational health and safety, and public health directives, and reinforcement of administrative structures for social security. These have been the directives and internal norms in use in the EU since the 1970s.

The APD of 2003 tackled the same priorities as the 2001 APD in the Social Policy and Employment Chapter as short and medium-term priorities. Conditions for short-term priorities included adoption of the *acquis* in the areas of labour law, equal treatment of women and men, health and safety at work, the fight against discrimination, and public health. Medium-term priorities highlighted conditions for the transposition of the EU legislation in the same fields but also included strengthening related administrative and enforcement structures, including labour inspectorates. The APD of 2006 set conditions for the gender equality norm under Economic and Social Rights Title in Terms of Women Rights in its short-term priorities. Turkey was asked to implement legislation relating to women's rights, particularly the civil code, the new penal code, and the law on the protection of the family. In addition, it was expected that judges and prosecutors should receive specialized training while municipalities and other responsible institutions should strengthen their capacity to establish shelters for women at risk of violence. To eliminate violence against women, the document addresses a need for further awareness-raising in the public and among men in particular. It is crucial to promote the role of women in society, through ensuring equal access to education and participation in the labour market, and in political and social life, as well as supporting the development of women's organizations to fulfil these goals.

The APD of 2008 listed the same conditions as the 2006 APD while gender equality conditions were discussed in the Human Rights and the Protection of Minorities' Economic and Social Rights sections as a short-term goal. Turkey was asked to implement legislation relating to women's rights and against all forms of violence against women, including crimes committed in the name of honour. The EU also highlighted the importance of the NGO and state cooperation in the solution-seeking process. Although the first two APDs conditioned the transition of labour market-oriented directives, after the accession negotiations started in 2005, more comprehensive topics, such as violence against women and the role of women in society, were added in the two latter documents. It can be seen in the APDs that gender equality -in terms of creating an ideational change in the structural codes- did not initially occupy a significant place in EU conditionality for Turkey. Instead, the EU imposed some certain priorities through APDs and PRs regarding women's status in Turkey's penal and civil codes. These judicial amendments, which were also the part of the CEDAW, aimed to eliminate gender discrimination and transpose the EU's market economy directives into equal treatment under Turkish Law. As a norm receiver country, Turkey accepted these norms through judicial amendments and harmonization packages, and reported its plans in national programmes, which were prepared as commitments to the EU's short and medium-term APD priorities.

Progress Reports' Gender Equality Dimension

Following Turkey's national programmes' assurances, many reforms and constitutional amendments were adopted to achieve the EU standards. These

efforts enabled the start of accession negotiations in 2005 under the 35 chapters of the *acquis*. Once Turkey started accession negotiation, the EU continued its conditionality on the same specific cases, under four titles; judicial-institutional improvements for elimination of violence against women, ameliorating women status before law and in the society, increasing female participation into labour market and political sphere. Among these titles, violence against women and women employment were the major concerns, and the status of women was also emphasized in the first years of the accession process.

Violence against women (VAW) is an entrenched and structural global problem that needs awareness rising across the world, as well as in Turkey. In the accession process, it is mostly treated in Chapter 23: Judiciary and Fundamental Rights of the *Acquis* and strongly emphasized in all PRs. The 2001 and 2004 reports indicated the need to abolish Article 462 of the penal code, which allowed reduced sentences for honour killings, and Article 51, concerning crimes committed under 'extreme provocation,' which was applied to offences traditionally viewed as being about women's 'virtue'. In the same reports, the EU constantly referred to the limited scope of Turkey's Law on the Protection of the Family of 1998. The 2005 Report, for example, focused on the security forces' failures to investigate women's complaints of violence. The EU considered this as a major problem that required urgent retraining of the security forces. Furthermore, it also emphasized the lack of the statistical data on gender-based violence and effective victim-monitoring mechanisms as well as the urgent need to further increase the provision of women's shelters.

In contrast to the previous approaches, in the PRs of 2006 and 2007, violence was associated with 'women's economic insecurity,' as it further reinforced violence. According to the Reports, because victims of domestic violence had severe difficulties in accessing employment, an equality agency should be created. Nevertheless, despite the efforts of the Turkish governments in judicial amendments, the implementation continued to be insufficient and domestic violence against women in Turkey was still widespread. More specifically, in all Reports the EU indicated that crimes in the name of honour or suicides, and early and forced marriages continued to occur, and women's suicides were not always properly investigated. The EU remarked that the Law on Protection of the Family, also called Law No. 4320, and now- extended version-Law no. 6284 was only partially implemented. Drawing on Reports by women's organizations, the EU stressed the importance of the family courts' attitude on restraining orders to protect women facing the threat of violence as well as preventing further victimization of women.

The PRs constantly noted the insufficient implementation of Law No. 6284 by giving specific examples, as there was still a need to further increase the provision of shelters for women subjected to domestic violence. According to each Report, victims remained at risk because this provision had not been fully implemented and the number of shelters and other protective and preventive mechanisms fell short regarding needs and social services, while greater local coordination among the actors was necessary. In the subsequent Reports, the EU underlined the

importance of the civil society's role in gender mainstreaming and combatting violence against women and the lack of sufficient human and financial resources, reliable data and measurable targets. In addition, there was also a lack of awareness among law enforcement forces and public administrators about the Ministry of Interior's circular on violence against women and children.

Since 2014, the gender equality and violence against women contents have occupied a small place in the Reports, and the EU has continued to emphasize its position with the sentence saying "[d]omestic violence, occasional 'honour' killings and the issue of early and forced marriages remain a serious concern" (PR, 2015: 4), and the lack of government concern on taking measures to address the issue of early and forced marriages has persisted. Government officials are asked to uphold gender equality principles enshrined in law and to refrain from making derogatory statements against women.

Regarding the 'women's status', in the first years, the EU focused on some specific issues. The first was the absence of comprehensive civil and administrative laws to prohibit discrimination, which was supposed to be transposed and implemented in line with Article 13 of the EC Treaty. The second was the portrayal of women in school text books, which reinforced gender discrimination, while the third concern was the lack of amendments on legal and practical initiatives to tackle the problem of discrimination. This anti-discrimination conditionality also engaged in the female participation in the labour market and was elaborated in each PR by indicating the legislative barriers preventing women from entering certain types of employment. The EU, therefore, obliged Turkey to promote gender equality in employment and pay, as well as to prioritize the elimination of gender gaps in employment in terms of ameliorating women's status. To do so, Turkey was required to accept Article 8 of the European Social Charter on the right of employed women to protection of maternity, to adopt legislation aimed at guaranteeing the effective prohibition of discrimination in employment or under-employment, and to transfer EU directives for parental leave, equal pay, and access to employment, burden of proof, and occupational social security. Although it is stated that there was no significant change in the gender balance in the judiciary and women being particularly underrepresented in prosecutorial and managerial positions, equal opportunities mostly focused on unequal basis in the labour market under the Social Policy and Employment chapter. As previously mentioned in the elimination of violence strategy, it was also indicated that there was no Gender Equality Agency and Parliamentary Committee on Gender Equality in Turkey for equal opportunities for women and men, as required by the *acquis*.

Another aspect of the gender equality norm mentioned in the Reports is concerned with women's political participation, although its degree is much less when compared with the other gender equality policies. Despite success in some elections, in which the number of women elected to parliament almost was doubled in 2007, the women quotas are still the obstacle in the women's political participation. Indeed, during the constitutional reforms and harmonization packages, Turkey did not necessarily implement concrete reforms on gender

quotas; neither did the EU directly pressure Turkey about it. However, the EU PRs reflected its discontent on the underrepresentation of women in decision-making institutions and in the municipal elections, with criticisms linked to the EU's general stance on women's political representation, especially since the Amsterdam Treaty of 1997 (Marshall, 2010). Indeed, political participation is crucial, because while socializing the gender equality norm, there is a specific need for social and political forces, such as the central authorities, municipalities, and local women's NGOs to form actor constellations that take the local context into account. According to Vargas and Wieringa (1998), these forces should be composed of "triangles of empowerment, which referred to the interplay between three sets of actors - the women's movement, feminist politicians and feminist civil servants (femocrats) at the national level" (p.3). Female forces would better introduce and internalize the norm into the agenda of society and politics; hence number of women rights advocates MPs in the Parliament means a significant step for the basis of gender equality.

Apart from the EU's criticisms of shortcomings in the elimination of VAW, the other gender equality issues, which are the segments of the norm's internalization, have not been tackled as much as the female labour market participation. In all Reports, the EU puts emphasis on women unemployment or low participation into the labour market both in the *acquis* Chapter 13 of Social Policy and Employment's 'Employment', 'Social Inclusion and Protection', and 'Equality between Women and Men' subtitles and the Economic Criteria's the 'Existing of Functioning Market Economy' and 'Functioning of the Labour Market' subtitles. All PRs noted that little systematic effort was taken to reduce the substantial employment in the informal economy and improve the legal framework to narrow the gap between men and women's economic participation and opportunity. During the accession negotiations, the female labour market participation and high women's unemployment rates have been a major concern of the EU because, according to the Reports, ending gender inequality - including violence - rests on the economic independence. In other words, the EU acknowledges that female labour market participation would both positively affect Turkey's market economy and empower women. To increase the number of women in the labour market, the state should provide facilities for women, particularly for maternal leave. The PRs have focused on women's unpaid work in subsistence agriculture and the informal sector, which means they earned less than men for work of equal value. Turkey, therefore, is conditioned to broaden the content of the national action plan for gender equality for 2008-2013 by including information on human or financial resources because the funds for encouraging women to become self-employed are inadequate. Flexible working arrangements are asked to be considered regarding the potential for women's precarious and informal working conditions. Dedeoğlu (2009; 2013) indicated that the link between women's informal work and inactivity, with most women registered as housewives in official statistics despite being engaged in informal market activities, must be assessed. Either way, such home-based, domestic service, or unpaid family work and traditional

handicraft activities are prevalent forms of women's informal employment and consolidate gender segregation. Apart from gender segregation, unequal pay was also tackled in the 2013 PR in that the Turkish labour law was criticized of not decreasing the risk of discrimination during recruitment and in labour contracts. In the latest Reports (PR, 2014; 2015; 2016; 2018), it is again constantly expressed that the female employment rate is remained very low, at 31.8% in 2013; 31.6% in 2015 and approximately at the same rate in 2018. The lack of commitment on the institutional level and the fact that only partial measures have been taken to create more flexible working conditions in the public sector are scrutinized in the last four Reports.

In the APDs and the PRs, the EU puts women's financial emancipation forward as a method of constructing the equality idea in its enlargement relations. The EU relies on the soft policy instruments in its gender equality self-image, whereas mainstreaming equality is supposed to be elaborated within the hard law context that depends on a comprehensive structural transformation in policies, law, discourse and institutions in all areas where women and men equally enjoy. The EU negates gender equality "transformation over time to a 'weak' policy area" (Aybars et al, 2018: 3), although an ideational change happens within strong emphasis by the state practices as well as by the help of non-state actors' aware raising activities or advocacy. It is a long-running process, as new transmitted gender equality norm is diffused with a normative will but might encounter political outcomes different than the expected. Hence it needs a long-term broad strategy and should grasp all areas, where the women subordination exists. For instance, although political participation of women in any decision-making process is less manifested than the economic participation in the labour market, in both the member and candidate states, conditionality over gender quotas could be a catalyser not only for consolidating democracy but also constructing an equal representation of men and women.

The EU refrains in using gender as a part of human rights or overly declaring it as the sine quo non part of the accession process; instead it constantly highlights the importance of the female labour market participation as a remedy in dispelling the unequal environment. Since ideational change occurs after norm diffusion is completed, it is then important to understand within what context this 'idea' is diffused by the EU, because gender equality is an area "rests on the circulation of ideas and persuasion more than compliance" (Aybars et al, 2018: 3). In the EU's enlargement documents it can be inferred that the rational basis of the equality is constructed on women empowerment in the economic realm paradigm, which enables us to explain the intricate gender equality problems, and far beyond to cause an ideational change within the context of mainstreaming gender in every sphere.

Conclusion

The EU's gender equality policy went through three phases or historical periods with specific paradigms. The first period was the equal treatment perspective

that focused on equal rights for men and women for economic inclusion. The purpose of this stage was to achieve equality between the sexes in employment and this starting point for the policy spilled over from economic into political action. The second stage was more concerned with the women's perspective (from the 1960s to 1990s) and promoted positive action on the equality of outcome and separate institutional provision. The difference of this approach from the former is its non-binding nature. Positive action was only designed to ameliorate the status of women in particular cases, which again did not explicitly touch on the roots of the patriarchal problems. The third one is the gender mainstreaming based on equal valuing of difference and deconstruction of the gender-based roles. This approach has appeared more promising for tackling the gender inequality problems; however, it still includes the non-binding methods, and neither the EU nor the member states are enthusiastic about properly implementing this strategy. It is certain that gender equality needs a right-based ideational change and there is uneven integration in terms of this change for three reasons. First, gender equality directives and articles (Articles 141 and 13) focus more on the limited areas and do not offer promising solutions or benchmarks to eliminate gender inequalities and solve the structural problems. The second reason is the hardships of adopting gender equality policies on the national level as the member states' gender regimes are based on the diverse welfare state practices. The third reason is that the EU does not grasp the gender equality paradigm within the human rights context and expects the equal treatment directives and women empowerment discourse (or paradigm) to pave the way for an ideational change. However, soft law's persuasion domain comprises of policy documents, recommendations, and declarations and throughout integration, the EU's primary focus on gender equality is based on the market, whereas it is hard law directives that are concerned with equality opportunities in employment. In addition, in the case of sexual and gender-based violence and gender mainstreaming, the EU uses soft laws that are recommendations rather than judicially binding. This is why unbinding measures become the policies that pose counterproductive ambiguities and do not produce direct solution-oriented methods. On the other hand, the EU emerges as a gender equality norm promoter in the external relations; yet right-based gender equality occupies a semi-privileged position in the enlargement. Both in its gender-equality norm construction and during norm diffusion, the contextual legitimacy through normative justification is narrowly defined and eliminating gender inequalities are again linked with labour market participation. However, while economic independence is a significant part of gender equality, it is not the whole story, because economically independent women still have to cope with violence or exclusion from decision-making mechanisms.

The EU has overtly conditioned Turkey over specific issues. Especially in the negotiation process, the implementation of the EU's conditionality through reform packages has been a priority for successive Turkish governments. However, while the EU has exerted specific normative influence in some areas, it has not conceptualized gender equality as a part of its human right requisites.

For instance, the abolition of death penalty was strongly conditioned and indicated in the pre-accession process as an entry ticket for the EU membership. Gender equality, nevertheless, has not been granted the same value. This is also because of the difficulty to reach a consensus on the matter among the member states due to the culturally inherent welfare structures.

Notes

¹ More information can be found in URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2007:306:FULL&from=EN>.

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