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The visible face of women's invisible labour: Domestic workers in Turkey

Seyhan Erdoğan
Gülay Toksöz

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***The visible face of women's invisible labour:
Domestic workers in Turkey***

by

**Seyhan Erdoğan
and Gülay Toksöz**

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Preface

In June 2011, the International Labour Conference adopted the Domestic Workers Convention (No. 189) and Recommendation (No.201) which are the first international standards specifically dedicated to the promotion of decent work for this group of workers. Since then, the instruments have become an important source of guidance for policy-makers around the globe seeking to improve the living and working conditions of domestic workers. The ILO's follow-up activities in support of governments and employers' and workers' organizations include knowledge development and sharing, awareness raising and the promotion of social dialogue.

In this context, the ILO has supported the preparation of national study exploring the domestic work sector in Turkey. Given the need to share knowledge and research in this field across countries and regions, we are pleased to make the study, which was prepared by Prof. Dr. Gülay Toksöz and Assoc. Prof. Dr. Seyhan Erdoğan from Ankara University, available through the Conditions of Work and Employment Working Research Series. This Series is aimed at presenting the findings of policy-oriented research in the area of working conditions from multidisciplinary perspectives such as laws, economics, statistics, sociology and industrial relations.

The findings of the study were presented at a National Conference on Decent Work for Domestic Workers in Turkey organized by the ILO in February 2013, with the participation of the Ministry of Family and Social Policies and the Ministry of Labour and Social Security. The Conference was an opportunity for the ILO's tripartite constituents, as well as civil society organizations and academia to discuss the main problems facing domestic workers in Turkey and to reflect on possible ways forward.

The study highlights that informality is a predominant feature of domestic work in Turkey, a sector largely comprised of women workers. For domestic workers recruited locally, informal channels such as personal acquaintances play an important role in the quest for a job. Migrant domestic workers, on the other hand, typically rely on intermediary agencies to obtain a job. The activities of unlicensed agencies increase the workers' vulnerability to psychological, physical and sexual harassment at work. Long working hours, lack of social security coverage and casual employment are some other difficulties facing domestic workers in Turkey. Presently, domestic workers are excluded from the scope of the Labour Code, but are covered by the Law of Obligations. The authors of the study suggest that there is need but also room for improving domestic workers' access to social security and for strengthening the legal framework addressing domestic workers' needs and working conditions.

We would like to thank the authors of the study and hope that it will contribute to the promotion of decent work of domestic workers in Turkey and beyond.

Ümit Efendioglu
Director
ILO Office for Turkey

Philippe Marcadet,
Chief, Inclusive Labour Markets, Labour Relations
and Working Conditions Branch
Conditions of Work and Equality Department

Authors' Preface

The present study was undertaken to shed some light on the current situation and problems of women in domestic work and to develop solutions for these problems. Engaged in studies on various aspects of women's labour for long years now, we attach great importance to paid domestic work. In preparing for this study, we interviewed social parties and reviewed relevant literature and statistics to address and discuss all aspects of the domestic work. However, due to the short timeframe available for the preparation of the study, we had no opportunity to conduct interviews with women working in domestic services. Instead, we relied on studies conducted in this field and interviews with the representatives of EVİD-SEN Home Workers Solidarity Union and IMECE Women's Trade Union Initiative. Our thanks go to the representatives of the organizations of women in domestic work, representatives of governmental organizations and agencies, representatives of organizations of workers and employers and to the employers of domestic workers who were so kind to take part in our interviews. We are thankful to Selmin Kaşka and Aslıcan Kalfa who contributed in conducting interviews as well as to Gaye Burcu Yıldız, who provided us legal assessments. A special thank you goes to Zuhâl Sirkeciođlu Dönmez, who provided us the ruling regarding the discontinuation of EVİD-SEN Home Workers Solidarity Union's activities.

We are also indebted to the following who conveyed their comments in writing after the presentation of the report during the National Conference on Decent Work for Domestic Workers held on 20 February 2013 in Ankara: the Ministry of Family and Social Policies, the General Directorate of Women's Status; the Ministry of Labour and Social Security, the General Directorate of Labour, the General Directorate of Occupational Safety and Health, the Labour Inspection Board, the General Directorate of Turkish Employment Agency, the General Directorate of Security Contributions of the Social Security Institution; the Turkish Confederation of Employer Associations; and IMECE Women's Trade Union Initiative.

We hope the present report contributes to the solution of problems of domestic workers.

Seyhan Erdođdu,

Gölây Toksöz

Executive Summary

Household upkeep and care services are largely performed by women without any remuneration. In cases when these services are delivered professionally by wage workers, it is again women who are involved and their labour in this area is valued low. In Turkey, it is mostly women of low education and low qualification moving from rural parts of the country to cities as a result of domestic migration who work for wages in domestic work mainly for not having any chance of being employed elsewhere. However, in recent years, particularly personal care services have turned out as an area where more and more migrant women from other countries offer their services on a live-in basis. Domestic work is essentially performed under an informal employment relationship between women from low and upper-middle classes and remains largely outside the domain of legal arrangements and protection. The present Report seeks to shed light on the labour market status, working conditions, related legislative arrangements and problems of organization of local and migrant women employed in domestic work without social protection.

Studies on domestic workers in Turkey draw attention to the paternalistic nature of employment relations in this particular area and to advantages to both sides offered by imaginary “kinship relations” established in-between employers and workers. This form of relationship also functions as a “buffer” inhibiting any overt class conflict between the parties concerned. The mutual “trust” basis in domestic services leads to the persistence of the practice of recruiting workers for household works and child care through informal channels including personal acquaintances and limits the weight of intermediary agencies in this area. However, when it comes to live-in services delivered to sick and elderly family members, women from Turkey do not undertake this type of work due to their own family responsibilities and consequently the gap is filled by migrant women from other countries. In placing women from abroad to their jobs, intermediary firms are as effective as personal acquaintances. The insufficiency of institutional care services boosts the demand for migrant workers.

The İŞKUR is acting as an intermediary agency in the placement of domestic workers. Intermediation activities are also carried out by unlicensed consulting firms in addition to private employment agencies. Since the element of “trust” is absent mostly in jobs found by unlicensed firms, serious problems including psychological, physical and sexual harassment may emerge for domestic workers finding their jobs through these channels.

The problems that informally employed domestic workers encounter start with the vagueness in their job description. This vagueness derives from various factors including the absence of any occupational classification such as “domestic work”, the fact that various different occupations coded in ISCO (International Standard Classification of Occupations) 88 may fall in the scope of domestic works and also that some services by domestic workers are also performed out of the realm of domestic works. As a result of this, it is entirely left to the arbitrary decisions of employers what kinds of works should be done by domestic workers and for how long. Consequently, working hours may be too long, particularly for the live-in care workers who are expected to be available for work on 24 hours basis. As to wages, although they are not too low in all cases, intermittent nature of employment and consequent uncertainty of returns make it difficult for domestic workers to develop future expectations. The behaviour and attitude of employers may be humiliating for domestic workers in some cases and there are risks that workers may suffer psychological, physical and sexual violence.

Worker’s safety and health is a serious problem area especially for those engaged in cleaning work and there may be work accidents resulting in serious injuries or even deaths. Yet, the social security coverage of domestic workers is only exceptional. Those who work on a transitory basis in domestic services are legally left out of the coverage of social security. On the other hand, those who are employed on a continual and monthly basis in domestic services are covered by the security scheme; however many domestic workers and their employers prefer to maintain informality due to various reasons. These include high contribution rates, long premium days required for qualification for insurance benefits; low replacement rates and bureaucratic formalities required for obtaining security coverage. Furthermore there is no social security inspection for domestic workers. Hence, as far as

domestic workers are concerned, there is need for developing a social security model suiting their needs and working conditions.

The lack of organization is another important problem area. Nevertheless, there are serious initiatives taking place recently for organizing domestic workers. It must be noted in this context that legal processes are still going on in relation to suspending the activities of a trade union on the basis of a narrow interpretation of legislative arrangements presently in effect.

There are no reliable statistics giving the number of domestic workers in Turkey. The major source of data is TURKSTAT's (Turkish Statistical Institute) Household Labour Force Statistics where the branch of activity of domestic workers, NACE Rev. 2 T97 is defined as "activities of households as employers of domestic services personnel which covers butlers, servants, cooks, cleaners, waiters, gardeners, private drivers, house guards, maids, secretaries, child carers, tutors, secretaries etc. On the basis of TURKSTAT micro data EUROSTAT estimated the number of employees in Turkey under the alphabetical code "T97" of NACE Rev. 2 as 153,500 in 2012. However, it is highly debatable to what extent this figure corresponds to the reality of domestic workers in Turkey which should be much higher according to empirical research.

The two major characteristics of the legal framework relating to domestic workers in Turkey are its complicated content and ineffectiveness. The article 4 of the Labour Law No. 4857 excludes domestic service providers from the scope of this legislation. Presently, the provisions of the Law of Obligations No. 6098 on the service contracts and its general provisions are applicable to domestic services and domestic workers. With its detailed provisions, the Law of Obligations defines the rights and obligations as well as working conditions of workers it covers and in certain respects it entitles workers, rights that are comparable to those in the Labour Law. In practice, however, almost no domestic workers actually benefit from the rights recognized by the Law on Obligations in the context of individual labour relations. Neither the unqualified and overwhelmingly female domestic workers nor their also overwhelmingly female employers are even aware of this law and its provisions.

The Law of Obligations obliges employers to ensure workplace safety and health, adopt all relevant measures to prevent any psychological and sexual harassment to workers and to supply all necessary materials and tools needed by workers while obliging workers to abide by all measures and arrangements designed to ensure occupational health and safety. However, issues such as the identification of specific risks to health and safety in domestic works as well as measures to be taken against them, supervision of measures by both the employer and the public authorities, training of domestic workers in these matters, etc which are of vital importance for hundreds of thousands of domestic workers are entirely absent. This situation brings along serious risks both for workers who are deprived of safe and healthy working environments and for employers who, unless well positioned to prove their faultlessness, will be held responsible for any damage or harm to their employees. This suggests that there is need for further legislation arranging for individual employment relations of domestic workers that also includes special arrangements for ensuring occupational safety and health.

The underlying character of employment for the large majority of migrant women working in care services and whose number is continuously increasing is informality and lack of protection as is the case for domestic women. The situation of migrant women worsens in case they stay in Turkey without permit. In a legislative arrangement introduced in July-August 2012 in relation to migrants staying in the country without permit, it was envisaged to grant residence permits particularly to migrant women giving care services and work permits as well upon the application of their employers. However, in spite of a considerable increase in the number of work permits issued for domestic work in the year 2012, the total number of persons benefitting from this new arrangement is estimated to be low.

The Labour Law No. 4857 does cover residence janitors but provides for their employment relations through regulations. The hesitancy of many circles today on the issues of covering domestic workers by the Labour Code and their unionization was also an issue initially in the case of residence janitors or, to use a more correct term, for residence workers. However, these questions had been settled in the case of janitors and, in our opinion, the same is achievable for domestic workers in near future.

Workers' unions maintain that domestic workers are covered by the branch "general workers" under the Regulation Concerning Branches of Activity which was valid during the time of the interviews. Unions in this branch which organize residence workers as well, regard the issues affecting domestic workers as a part of broader problems such as lack of social security, informality and absence of unions. Stating that they are not able to unionize even workers employed by sub-contracting firms of municipalities, it appears that trade union leaders consider domestic workers to be at the bottom of their agenda.

According to the Confederation of Turkish Employers' Unions (TISK), it is necessary to make the status of domestic workers formal in order to minimize the risks they may encounter. They think arranging their employment as temporary employment through private employment agencies could be a solution.

As women's organizations emerging in this area, the EVID-SEN (Union of Solidarity of Domestic Workers), and İmece Women's Unionization Initiative essentially stand against the present state of affairs where women's labour is invisible and disvalued and domestic labour falling entirely upon the shoulders of women. They want women's unpaid domestic labour to be accorded the esteem it deserves and domestic works to be shared more justly while, at the same time, to ensure that domestic wage workers are recognized as workers accompanied by their legal rights as such.

Urgent measures are needed to improve the working conditions of domestic workers and to ensure their enjoyment of social security. For this, exchanges and discussions on all the issue involved, bringing together all social parties and women's organizations appear to be necessary. All governmental organizations and agencies concerned have their roles to play in this. Any legislative arrangements in this regard should give due weight to the circumstances specific to the domestic work sector, be concise and bring along no excessive formalities and bureaucracy.

Introduction

The welfare regime in Turkey is a family-centred one. The society expects that children and elderly people should be cared for by their families. Elderly people, on their part, expect the care of their children to a large extent. The state envisages that younger members of their families care for elderly family members; it does thus not assume institutional responsibility and develops social policies on the basis of family. The insufficiency of institutional service delivery and mistrust in institutional services lead families who want to give home-based care to their elderly members to seek services in the market and these services are mostly provided by women from the rural parts of the country or migrants from abroad. This situation should be expected to become more common parallel to changes in the demographic composition of the country and increasing share of elderly people in total population. (Rittersberger-Tılıç, Kalaycıoğlu, 2012).

As a result of family-centred welfare regime women's participation to employment is low in Turkey. There is limited demand for female labour force and its supply is also limited. Since welfare is ensured through household and care services expected from women, they socially are not approved to engage in wage work outside the home unless economic circumstances force them to do so. As a result of patriarchal control on women's labour, it is up to men's decision how women would work either at home or outside. Of course this situation varies with respect to women from different social classes and strata. Urban women of middle and upper classes have their chances of education and working in specialized professions. However, fields of work are limited for uneducated and unqualified women from lower classes; so there ought to be jobs that are "fit" for women and where they do not share the same spaces with men (Toksöz, 2012).

Even when women are engaged in income generating activities, household and care work are expected from them as a result of gender-based division of labour. The sustenance of their presence in working life depends on their transfer of household and care work to other women. In general men do not take responsibility for this work. Women who are working in specialized professions and earning relatively more, employ domestic workers. Others remain in the labour market as long as they are able to rely on the help of other females in the family. Domestic services are essentially a relation of employment that exists among women and it is one of the types of work accepted by low income families with economic difficulties because it is performed in homes during daytime. As for care services that require staying overnight, the demand for such labour is largely met by live-in migrant women.

In Turkey, women's participation to labour force is not only limited; for those who participate, irregular and unprotected forms of employment are dominant. Uneducated and unqualified women work unprotected in agriculture as unpaid family workers, as domestic workers, in service sectors, as workshop toilers in manufacturing industry and as homeworkers or self-employed. The social security system in Turkey has a structure that excludes women in atypical work. In spite of various recent arrangements to include in the social protection system part-time or temporary workers as well, this avenue is hard to access due to various reasons including low earning levels of atypical workers, high levels of social security contributions expected to be eligible for insurance benefits and long terms of compulsory contribution (Karadeniz, 2011).

The present report intends to shed light on the labour market status, working conditions, relevant legislative arrangements and organization problems of a domestic workers in Turkey, a group of workers mainly composed of -local or foreign- women without any social protection. The relevant social parties were interviewed for the purposes of the study. In this context, interviews were undertaken with the executives from three workers confederations and three unions organized in "General Works" branch of activity, representatives from the employer's confederation, representatives from organizations of domestic workers EVID-SEN and İmece Trade Union Initiative, TURKSTAT, MoLSS (Ministry of Labour and Social Security), MoFSP (Ministry of Family and Social Policy), SSI (Social Security Institution), İŞKUR (Public Employment Agency of Turkey), Ankara Bigger City Municipality, intermediation companies active in the domestic work sector and employers of domestic

workers. The total number of interviews is twenty one. We are grateful to the representatives of organizations representing women in domestic services, governmental organizations and agencies, employers' and workers' organizations and individual employers for accepting to respond to our questions. We would like to thank Selmin Kaşka and Aslıcan Kalfa who contributed by conducting the interviews, and to Gaye Burcu Yıldız who made certain evaluations from the legal point of view. We need to express our special thanks to attorney Zuhâl Sirkeciođlu Dönmez who made it possible for us to examine the court decision regarding the cessation of the activities of EVID-SEN. We would also like to thank the public authorities who read and commented on the draft report.

The subject of domestic work and domestic workers is relatively new both in the world and in Turkey from the point of view of social research and legal arrangements. The complexity as well as the newness of the subject should be noted. This research on domestic workers in Turkey is intended to be a multi-faceted discussion paper. There is a great need for creative proposals on the problems of domestic workers in Turkey to be brought up in workshops, etc. Our wish is that this study contributes to the visibility and appreciation of labour performed in a neglected area that bears great importance and to the development of policies geared to improving the situation of domestic workers.

1. Studies on domestic services in Turkey

While working in domestic services is a phenomenon existing since the Ottoman society in different forms, research on persons currently working in such services in Turkey is scarce. Available studies approach the issue from sociological and anthropological perspectives and domestic services appear to have remained outside the field of interest of social policy. It may be said that this stems from the fact that domestic work essentially constitutes a form of relationship between women and thus differs from other employment relationships. Household and care work are regarded as “women’s work” regardless of who actually delivers them and low value is attached to it. Özbay draws attention to historical transformations in domestic services by giving examples of domestic slaves in pre-capitalist Ottoman society, adopted children used in domestic services during the early years of the Republic, daily paid workers that have emerged as capitalism developed and finally foreign caregivers and domestic workers at the present stage of capitalism and underlines the role of flexible working conditions in domestic services in depreciating the value of such labour and its continuance as a largely female phenomenon (2012:118-119).

1.1. Local labour in domestic work

Differences in the status of those employed as domestic workers are, at the same time, reflection of differences in the specific work they undertake. Daily paid domestic work became common after the 1950s as a result of internal rural to urban migration and turned out as the main channel of access to income generating activities on the part of rural origin women with low educational status. Daily paid domestic work means work on particular days of a week or a month, in one or more households to provide various domestic services, especially cleaning. But there are also monthly paid women employed on full-time and continual basis to give care to children/sick/elderly persons while doing other household works as well.

According to studies on daily paid women, they are engaged in this type of work with low societal esteem as forced by their difficult economic circumstances and when the income of husband is not enough for sustaining the family. The fully informal nature of domestic work, while characterised by problems such as absence of social protection and low remuneration, provides flexibility for both employers and workers in terms of finding and quitting jobs. When unsatisfied with working conditions and attitude of their employers, workers cease going to that specific household and look for another job. As for the employing woman, it is easy to sever ties with an unsatisfactory woman worker just by telling her not to come any more. It is through acquaintances that employers find “trustworthy” workers and workers find “safe working environments”. An employer can easily keep control over a worker whom she has recruited upon the assurance of an acquaintance and make sure that she is “loyal”.as the worker would not want to bring this person to a difficult position. Furthermore, the social and cultural network of the employer provides various benefits for the domestic worker (Kalaycıoğlu and Rittersberger-Tılıç, 2001, Suğur et. al., 2008, Fidan and Çağlar Özdemir, 2011).¹

¹ An employer interviewed for the research, explained that she considered the reliability to be an important issue and hence she found the monthly-paid woman looking after her baby through acquaintances. She thought a personnel found through a company might be problematic in terms of confidence, at least initially. Being not too young and having experience in child care were important selection criteria. Certificates such as health certificate or criminal record certificate were not deemed necessary. The caretaker initially was only expected to deal with the baby, but in time she undertook tasks such as cooking, ironing. But at all times there was a separate daily woman who came to clean the house on a weekly basis. Another employer who had a daily worker for cleaning the house every two weeks said that this person worked for an acquaintance for many years and since they were satisfied with her services she decided to let her work in her house; she added that this reference was very important.

Women working in domestic services remedy for the low status of their job through an “imaginary kinship” between themselves and their employers. This particular relationship may entail rewards for work going beyond mere wage with the existence of an elder “sister” with whom they share their problems and ask for help, in cash and in kind forms of assistance, solution of some of the personal problems by the support of the social ties of employers, arrangement of jobs for the family members and relatives, access to health services and other conveniences (Kalaycıoğlu and Rittersberger-Tılıç, 2001).²

The paternalistic nature of this relationship established by daily workers, caregivers or janitors with their employers that personalizes employer-employee relations and gives it a familial character accords employers the opportunity of perceiving the definition of domestic services in broad terms together with practices associated with this broad definition. Especially by in cash and in kind assistance, employers may ask workers to do some additional works that are not specified earlier. This paternalistic relationship enables domestic workers and caregivers, on the other hand, to act more freely in the house and behave autonomously to a certain extent in doing the housework. It can be said that employers make domestic workers work more intensively and for longer hours not by force or any despotic ways but on the basis of consent (Suğur et.al., 2008).³

Here it must be noted that the relationship based on consent may differ in itself depending on the personal characteristics of the employers. Consent is important not always for ensuring more intense and longer work from the employee, but also comforting the employer with the thought that she has acted “fairly”.

In spite of many difficulties inherent in their working environments, women think that their jobs empower them economically, help them and their children adapt to urban life and thus support their children in their efforts to reach more qualified and better paying jobs in future. Consequently, there is a “covert” contradiction between employers and female domestic workers rather than an open class conflict (Kalaycıoğlu and Rittersberger-Tılıç, 2001). Bora (2005), arguing that middle and upper class women’s possibility of appearing as “equal” to men without challenging the prevailing gender-based division of labour depends on their transfer of household and care services to other women and addresses the field of domestic services as a realm where women from different classes experience power relations. In this realm, not only class differences among women but also gender differences between “urban, modern and equal” women of middle classes and “rural, ignorant and powerless” women of lower classes are reproduced. In the relationship between “lower and “upper” classes, it is a paradox that cleaning women regarded as “rough, common and not so neat” are expected to clean the house and provide a hygienic environment while they are, in some occasions, forbidden to use the toilet and bath they have cleaned (Erdoğan, 2000). In this process, domestic workers develop self-empowerment strategies by defining their employers with negative characteristics such as “parasitic, selfish” and by defining themselves with positive characteristics such as “productive, skilful and committed.” They find self-relief by covertly belittling their female employers (Bora, 2005, Fidan and Çağlar Özdemir, 2011).

The labour market participation experience of women in domestic services differs with respect to their status as *gecekondular*⁴ dwellers or living in the basement floor of residential buildings as wives of

² The caretaker who worked for the first employer mentioned above, continued to work on a monthly paid basis to do the household chores, after the child was grown and went to school. From the point of view of the employer, this was an employment relationship, but the domestic worker was also like “a person from the family”. “Imaginary kinship” might not only be assumed by the employees but also by the employers. The employer said that she initially offered to register the employee with the social insurance, but being in need of cash she did not accept it.

³ The disclosures of the employer we interviewed revealed that this autonomy manifested itself in the employee’s insistence in practising her own habits in child care and not taking seriously the demands of the employer as mother/father. When the employee was seen as “a member of the household”, sometimes the work was done not in the manner the employer wanted but according to the importance that the employee assigned to this work. This situation was causing a lot of arguments but did not lead to termination of the employment relationship; usually a “middle road” was found. In the case of the second employer whom the employee worked on daily basis, there seemed to be a reverse authority relation since the employer was much younger than the employee. The worker herself decided on the tasks to be done for cleaning the house and the employer did not interfere with her work; she only prepared her lunch on the days she came.

⁴ Gecekondu literally meaning “built in one night” is the squatter house of Turkish type.

janitors. According to Özyeğin (2004), while the patriarchal control of men over women's labour restricts *gecekondu* women's participation to labour force and makes their labour scarce and costly for middle class women, janitors give support to their wives' wage work by allowing them to engage in domestic services in the same building under their supervision. *Gecekondu* women who have struggled to ascertain their status as wage workers prefer having their ties with a single employer and take care of that employer's house rather than serving to several employers in different times. In this way, they can take the advantage of relatively shorter working hours and possible benefits of their employer's social networks whom they have established a close relationship. However the wives of janitors are disadvantaged relative to others in finding best employers. Since they have to work in the same building they are deprived of flexibility in choosing their employers. Even when they contribute more to household income than domestic workers living in *gecekondu* settlements, wives of janitors have less to say in household decision making processes. Women in both groups want to work with social security coverage and be entitled to retirement pensions. Kalaycıoğlu and Rittersberger-Tılıç's work also reveals that the lack of insurance is the major complaint of women domestic workers and they prefer to work in a job with social security and regular income (2001: 92-94). Women in domestic services may be formally covered by the social protection scheme by working via private cleaning firms now increasing in numbers. However, the importance of informal relationship between the worker and her employer on the basis of "trust" leads employers to find employees through acquaintances rather than applying to private companies. Domestic workers too, on their part, mostly stay away from such firms due to various reasons including the risk of low and delayed pay, absence of any chance of choosing their employers and risk of sexual harassment. Hence, the market for cleaning firms consists mostly of enterprises and organizations rather than private homes and their workers are mostly males (Kalaycıoğlu and Rittersberger-Tılıç, 2001:161-162). The follow up study of the researchers conducted in 2009-2010 draws attention to the practice of cleaning firms in employing workers informally and with low pay, in groups and on a daily basis. What has come to the fore in the process, however, is the delivery of care services more and more by private firms. Private employment agencies licensed by İŞKUR mostly mediate for women trained in care services and these women are employed on monthly basis. However, mediating firms working independently of İŞKUR are more active in the employment of female migrants from other countries and their activities are fully through informal channels. According to the researchers, within the last ten years it appears that employer-employee relations in this area evolve from "imaginary kinship" between the two parties to employment "on the basis of mutual respect and fair pay" arranged by private firms. Nevertheless, be it house or care services, informal channels, in other words finding employers/workers through "common acquaintances" still maintains its importance (Rittersberger-Tılıç and Kalaycıoğlu, 2012).

1.2. Migrant women in domestic services

The limited nature of labour supplied by female members of low income families has brought to the fore migrant women as a new source of labour supply in responding to the demand by increasing numbers of middle-upper class women working as professionals in various fields. Long working hours and frequent business travels on the part of professionals require live-in caregivers to provide full time services. However, patriarchal control over domestic female labour and their own household responsibilities do not allow local women to be available for such services with the exception of few divorced/widowed women. Consequently, the gap is filled by migrant women who can be employed at relatively lower wages compared to domestic labour to take care of elderly and disabled persons as well as children or do household works or, in certain cases, both of these (Akalin, 2007:214-215).⁵ Here,

⁵ An employer who employed a live-in migrant to care for her baby, said that she needed a live-in caretaker due to the evening meetings and out of town visits in her job and since none of the local workers she interviewed accepted the live-in arrangement, she had to employ a migrant worker. She paid the migrant worker \$800 per month, plus \$20 on leave days. She stated that she would apply for work permit for the caretaker and even though it was a laborious process, she was ready to undertake it to avoid losing an employee she got along with. The employee also wanted to have a legal status.

“lower” wage does not mean “low” in absolute but in relation to their long working hours given that they stay in houses of their employers and give their services on full-time basis.

Starting from the 90s, women in the neighbouring former socialist countries started to come and work for domestic services in Turkey, as a result of economic drawbacks that their countries were then experiencing, which made their domestic earnings fall short of family needs and especially cost of education of their children. Higher wages, possibility of easy entrance as a result of flexible visa policies and geographical proximity are the factors behind their choice of Turkey. The migrant women use the migrant networks comprising their relatives and friends in finding jobs and, in some cases, they are engaged with agencies. Full time domestic services are preferred for their various advantages including safety, no need to pay for a place to stay and daily accommodation and thus possibilities of saving some money. Nevertheless, the risk of sexual harassment, loneliness and missing children left back at home affect the psychological state of these women negatively. Cyclical migration is the common characteristic of migrant women engaged in domestic services. Here, women work for a time to save money and return back to their countries when convinced that their saving is enough. During this time, they leave and re-enter Turkey with their short-term tourist visas. In case of exceeding their visa periods, however, the fine they have to pay at the border may result in their extension of their period of stay in Turkey (Kümbetoğlu, 2005, Kaşka, 2009, Erdem and Şahin, 2009).

The Law No. 4817 on Working Permits of Foreign Nationals in Turkey, adopted in 2003, provides the opportunity to be employed regularly in domestic services. Still, due to the overall informal nature of domestic services, common practice for migrant women is to work irregularly without any work permit. Some of these women can stay in Turkey legally with tourist visas whose duration varies by countries or without any visa at all and others stay illegally after having exceeded the term of their visas. This irregular character of their stay and employment leaves women concerned unprotected. Informality in domestic services starts with the process when migrant women seek and find jobs. A study throwing light upon the role of intermediary agencies suggest that these agencies are engaged purely in informal activities despite being established as companies, their agreements are never supported by formal contracts and that women’s passports may be withheld in the process of job placement. Agencies normally receive commissions from employers for their services and offer new workers in case the latter are not satisfied with earlier workers (Atatimur, 2008).

There is linkage between the emergence of new living spaces particularly in metropolitan centres and employment of migrant domestic workers. While daily paid domestic workers are preferred by families living in regular apartment buildings, middle-upper class families with residences of “secure site” type need migrant women who can stay with them. In villa type residences migrant women have their own rooms; they are ready to provide their services whenever asked for and remain in their rooms otherwise, thus represent an employment relation in which “they are both permanently available and in disappearance when not asked for” (Akalin, 2010:131). From the side of employers, this form of employment not only responds to their service needs but also consolidates the identity and lifestyle that they want to demonstrate. Many employers justified their preference for migrant women on the basis of their “European” and “civilized” status compared to lower class, uneducated and essentially rural nature of domestic women. It is also stated that migrant women are better in performing their jobs and, in any case, it is not possible to find live-in domestic workers ready to work for the same pay (Demirdirek, 2007: 17, Keough, 2003).⁶

⁶ According to the results of a survey conducted with 53 migrant women working in domestic services in İstanbul, 47.2% of them are high school and 30% are university graduates (Erdem and Şahin 2009). According to another survey with 53 Turkish women in domestic services in Sakarya, 22% are literate and 58% are primary school graduates (Fidan and Çağlar 2011). These results clearly indicate the wide gap in terms of the educational level of migrant and domestic women in these services.

2. Statistics on domestic workers in Turkey

Domestic services constitute a large area of employment in Turkey as well as it is the case in many other countries while statistics relating to their numbers and status are limited.

The basic source of data that can be used as an indication of the number of domestic workers in Turkey is TURKSTAT's Household Labour Force Surveys. In statistical information, both those currently employed and others who have had a job earlier though not employed in the reference period are classified by economic activities, occupation, status in employment and educational level. In coding economic activities, the NACE (Nomenclature Générale des Activités Économiques dans les Communautés Europe), Rev. 1 and Rev. 2. were used together in 2009 and Rev. 2 was adopted starting from 2010. As of January 2010, economic activities according to NACE Rev. 2 were published together with Rev. 2 relating to 2009 in order to allow for comparison.

In NACE Rev. 2, activities of households as employers of domestic personnel are provided for as a branch of economic activity with code "T" alphabetically and code "97" numerically.⁷

T 97 comprises the activities of households as employers of domestic personnel including butlers, cooks, maids, drivers, gardeners, governesses, secretaries, tutors and au pairs, etc. In censuses or surveys, this classification makes it possible to express the activities of employers of domestic personnel even when they are single individuals. Goods produced by these activities are consumed by the household employing domestic personnel. Activities such as cooking, garden care etc. carried out by independent service providers (agencies or individuals) are excluded.

In TURKSTAT's 2011 Household Labour Force Statistics, all economic activities are coded as 4 digits according to NACE Rev 2 and while annual outcomes are given at the level of 18 main groups (sections) regional outcomes are presented as three major sectors. S (other service activities); T 97 (Activities of households as employers); T98 (undifferentiated production activities of households for their own use) and U (Activities of international organizations and their representative offices) are given as aggregated under "STU".

In 2011 the number of wage workers in "STU" activities is 527,000 as 319,000 males and 218,000 females.

As can be seen, T97 that is employment data relating to the activities of households as employers of domestic personnel is not included in statistics released to the public. The TURKSTAT authorities state that the release of data relating to this branch of activity in four digits would not be meaningful.

⁷ The code NACE Rev. 2 T covers both activities of households as employers of domestic personnel (T 97) and undifferentiated goods and services producing activities of private households for own use (T 98). The numerical code 98 under alphabetical code T classifies the undifferentiated production activities of households for their own use.

The EUROSTAT, on the other hand, calculates the number of persons in Turkey covered by the alphabetic code T97 according to NACE Rev. 2 on the basis of TURKSTAT micro data and gives it as follows by years:

Table 1. Workers by Branches of Economic Activity (NACE Rev. 2 T97) in Turkey (Age 15-64)

Year	Number of workers
2009	230 500
2010	243 000
2011	237 200
2012	153 500

Source: EUROSTAT Employment by sex, age and detailed economic activity (from 2008 onwards, NACE Rev. 2 two digit level) - 1 000 [lfsa_egan22d]. Activities of households as employers of domestic personel. Extracted on 30.08.2013.

Another way is trying to reach the number of domestic workers on the basis of occupations. In Household Labour Force Statistics, all occupations are coded in four digits in line with the International Standard Classification of Occupations (ISCO, 88) and results are given in 9 major groups. It can be tried to reach the number of domestic workers by adding up ISCO 5133 (Home based personal care workers), ISCO 9131 (Domestic cleaners and helpers) and ISCO 5131 (Childcare workers). However, the ILO (2011) states that ISCO 5131 also covers those who help teachers in the case of school children and undercounts the number of domestic workers by excluding cooks, gardeners, drivers and so on.

It is also possible to get the number of domestic workers on the basis of 'status in employment' in Household Labour Force Surveys. For example, the IBGE status in employment classification in Brazil defines domestic workers as "persons who worked providing domestic services paid in cash or kind in one or more housing units" (ILO, 2011a). In Turkey those presently employed or have worked earlier are classified according to International Classification by Status in Employment (ICSE, 1993) and relevant data is published. However there is no classification such as the one in Brazil which distinguishes domestic workers.

In our interview with TURKSTAT, officials said that it would be pertinent to take the number of persons with homes as their working places as the starting point in approaching the number of domestic workers. The question designed to determine the nature of the place of work of persons is asked in surveys since October 1995. In this context, when the employment status of persons working in the private sector is defined as "home-based" this includes domestic workers as well together with other home-based workers. If a person is engaged in economic activities at his/her or another person's home (knitting sweaters, sewing outfits, repair of electronic devices, childcare, etc.) he/she is included in this group. The same group also covers those who, without any regular or fixed workplace, go to homes for cleaning or childcare.

Based on this information, TURKSTAT was asked for the number of persons whose workplaces are homes and who are paid a wage or salary in the services sector disaggregated by their employment, age, education, social security registration, occupation and marital status. While it was possible to obtain the numbers of male and female workers in the services sector which are shown in the table below, no data could be obtained on employment, social security registration, occupation, education, age and marital status of these persons.⁸

⁸ On the basis of responses given to the question relating to the status of the workplace in TURKSTAT-HLFS, Karadeniz (2011) works on raw data for 2009 and finds the number of home based workers as 344,549 of whom 92% are females and about one-third works for domestic services.

The following Table 2 gives the number of domestic workers with respect to sectors and status in employment by gender.⁹

Table 2. Employment of home-based workers by economic activities and status in employment, 2004-2011 (Age 15+, 000 persons)

NACE Rev. 1	2004	2005	2006	2007	2008	2009	2010	2011
TOTAL	247	276	264	236	234	345	413	446
INDUSTRY	141	144	137	117	119	174	194	192
SERVICES	106	132	128	119	114	169	213	246
Monthly and daily paid	82	99	97	94	85	74	94	121
MALE	27	23	22	21	17	26	20	33
INDUSTRY	10	8	8	8	5	9	7	9
SERVICES	17	15	14	13	13	18	13	24
Monthly and daily paid	8	5	5	4	5	3	4	8
FEMALE	220	253	242	215	216	318	393	413
INDUSTRY	131	135	128	109	115	165	187	183
SERVICES	89	117	114	106	101	152	200	222
Monthly and daily paid	74	94	93	90	80	70	90	113

Source: TURKSTAT, Household Labour Force Survey Results

The number of home-based daily or monthly wage workers in services sector was 121,000 in 2011. It can be assumed that the considerable part of these workers is in domestic services since home based work by various professional groups are not common in Turkey. Based on this assumption it can be further said that the number of domestic workers is in increase in recent years and over 90% of these workers are women. However, a TURKSTAT official drew attention to the fact that there are such varieties of wage workers in home based services as those of professional character, who are highly qualified and not engaged in simple manual works, others of semi-professional character engaged in jobs not requiring advanced skills as well as some service and sales personnel. Examples include project managers, designers and e-marketing.

⁹ The classification of economic activities is given according to NACE Rev. 2 starting from 2009.

In Table 3 below the distribution of home based workers according to their occupation groups are given. It was not possible, however, to classify these occupation groups so as to reflect the respective occupations of domestic workers.

Table 3. Employment of home-based workers by occupation groups, 2004-2011
Age 15+, 000 persons

Occupation group (ISCO 88)	2004	2005	2006	2007	2008	2009	2010	2011
Total	247	276	264	236	234	345	413	446
1	13	12	11	9	9	13	13	11
2	43	55	55	60	60	74	90	114
3	144	145	137	117	118	178	192	185
4	47	63	62	50	47	80	118	135
Male	27	23	22	21	17	26	20	33
1	7	7	5	5	3	7	6	7
2	3	3	3	4	4	5	3	10
3	11	10	9	9	6	10	8	13
4	5	3	5	3	3	5	3	4
Female	220	253	242	215	216	318	393	412
1	6	5	6	4	5	6	7	5
2	39	53	52	56	56	69	87	104
3	133	135	127	109	111	168	183	172
4	41	60	57	47	44	75	115	131

Source: TURKSTAT, Household Labour Force Survey Results

1. Jobs requiring high qualification not based on manual skills [Professional occupation groups]
2. Jobs requiring lower qualification not based on manual skills [Associate professionals + Services and salespersons]
3. Jobs requiring qualified manual skills [Skilled agriculture, animal husbandry, hunting, forestry and fishery workers + Crafts and trades workers+ Plant and machinery operators and assemblers]
4. Jobs requiring no qualification

The Table 4 below relating to the status of home-based workers exhibits the high rate of informality that prevails. It is apparent that the same holds true for domestic workers as well.

Table 4. Employment of home based workers with respect to their social security registration status, 2004-2011 (Age 15+, 000 persons)

Status	2005	2006	2007	2008	2009	2010	2011
Total	276	264	236	234	345	413	446
Unregistered	265	256	229	227	333	397	423
Registered	11	9	6	7	11	16	23
Male	23	22	21	17	26	20	33
Unregistered	18	17	18	15	21	16	27
Registered	6	5	3	3	5	4	7
Female	253	242	215	216	318	393	412
Unregistered	248	238	212	212	312	381	396
Registered	5	4	3	4	6	11	16

Source: TURKSTAT Household Labour Force Survey Results

Meanwhile, GDP data relating to the activities of households as employers of domestic workers included in National Income Accounts by production approach under the heading “Services Supplied to Households” (NACE Rev 1.1 P) is available for the period 2005-2011.¹⁰

Table 5. GDP by Production Approach, Households Employing Domestics (NACE rev 1.1 P) In 1998 Fixed Prices (1,000 TL)

Year	Value	Sector Share	Rate of Increase
2005	115,880	0.1	10.8
2006	131,482	0.1	13.5
2007	147,480	0.2	12.2
2008	155,676	0.2	5.6
2009	159,180	0.2	2.3
2010	167,832	0.2	5.4
2011	180,848	0.2	7.8

Source: TURKSTAT, National Accounts

¹⁰Estimates on services supplied to households by domestic personnel is extracted directly from Household Budget Surveys and included in the system (COICOP Code 05.6.2.1 Domestic services supplied by wage workers). The Classification of Individual Consumption by Purpose/Household Budget Surveys (COICOP/HBS) is used in classifying household spending. The definition and coverage of 05.6.2.1 are as follows: **Definition** –Domestic services provided by wage workers. Covering: butlers, cooks, maids, drivers, gardener, governesses, secretaries, tutors and au pairs. Also covered: domestics ironing household items and household services supplied by self-employed persons or agencies. In the distribution of production and value added by periods, distribution by periods of services sectors as obtained from Household Budget Surveys are used. Periodical estimates are made by using weighted average rates of services sectors K, M, N, and O in current and fixed prices. The estimation for the sector concerned on the basis of fixed prices is obtained by deflating production values and valued added at current prices with CPE (TURKSTAT, 2012: 49)

As can be seen in the Table 5 the sector maintained its share in GDP despite declining rate of growth during the crisis years of 2008 and 2009.

In the light of observations and assessments above, it can be said that the appropriate approach in gathering statistics relating to domestic workers in Turkey is to obtain employment data with respect to different variables over the NACE Rev. 2 T97 and 98 distinction in Household Labour Force Surveys.

A question may be raised here as to the extent to which statistics currently available from TURKSTAT are close to the real situation when it comes to the actual number wage workers in domestic services. Empirical surveys in the field suggest that this type of employment should actually be more common. Lower than expected figures may be explained by women not declaring their employment due to low status attached to domestic services and Turkish nationals stating their status as “housewives”. Meanwhile, migrant women employed in care services do not appear in statistics since a large majority of them are employed in fully informal terms. Nevertheless, the increase in the value generated through services to households in GDP can be taken as an indicator of increased employment in this area.

3. Problem areas

Workers in domestic services all over the world are not fully reflected in statistics; they are often not considered as workers and are usually employed without legal protections and in vulnerable states. Problems faced by domestic workers in the workplace can be listed as follows: long working hours, heavy workloads, lack of privacy, low wages, lack of social benefits; job insecurity, limited opportunities for professional advancement, lack of nutrition and housing conditions, psychological and physical harassment (Karaca and Kocabaş 2009:167). In terms of domestic service workers in Turkey these issues are important problems as well; however their precedence may vary depending on such factors as specific type of work undertaken by the domestic workers, how their jobs are found and the nature of intermediary companies and so on.¹¹ It is beyond doubt that as far as migrant women are concerned, stay and work without legal permission makes them fully dependent on their agencies and to their workplaces, leads to their isolation and further aggravates their situation. From the point of employing women, on the other hand, problems may arise due to the low levels of education and skills of employees when it comes to the delivery of regular and qualified house and care services.

Uncertainty in job description: Domestic workers tend to have no clear job description. There is uncertainty as to the scope, method and time period of the work to be done. There is no official regulation on these matters in daily work and care services. Even in janitor services, where a regulation exists, job description and expectations of employers/building managers from workers differ widely. Employers and domestic workers do have an oral agreement at the very beginning concerning what work is to be done and how they will be supervised, but these tend to be set aside later by employers (Suğur et.al., 2008:172). According to İmece Women's Union Initiative domestic services do not have occupational standards, there is a need for a clear definition of the occupation and a classification of services. "Domestic workers can perform which services, in what period of time?", "What's forced labour, what is work?", "What are the appropriate techniques for the tasks to be performed?" responses to such questions should be clear.¹² In fact, there is no occupation as domestic work in the International Standard Classification of Occupations (ISCO, 88). Many different occupations coded in ISCO 88, may come into the scope of domestic work and some of the occupations performed by the domestic workers may also be performed outside the field of domestic work.

Daily workers complain that they are assigned work other than house cleaning due to unclear job descriptions. In houses visited for full-day cleaning work, domestic workers may be asked to do such things as rinsing walls; washing, ironing and re-fixing curtains; washing woollen parts of beds and quilts etc. which should be paid as extra work and they have to work until late hours of the day. Again as a result of unclear job descriptions, women who are supposed to engage in care may be asked to do household chores as well (Suğur et.al., 2008:179). The inevitable result of this situation is long working hours.

Working hours: Since the daily and weekly working hours of domestic workers are not regulated, long working hours is the main point of complaint with respect to working conditions. As mentioned above the working day is very much lengthened by assigning works other than the daily work in houses visited for daily cleaning. Workers registered with cleaning firms may be forced to work from early in the morning until late at night with the order "it will all be finished today" (Rittersberger-Tılıç and Kalaycıoğlu, 2012). Live-in domestic workers in particular, work much longer than the legal 8 hours a day. Even the intermediary company officials interviewed believed that in such cases the introduction of a work shift or extra pay for the extra work done with the consent of the worker was necessary.

¹¹ A documentary named Daily Workers (Gündelikçiler) directed by Emel Çelebi in 2006 and produced by ZeZe Movies & ATT, tells us about the problems of domestic workers by focusing on the lives of a group of daily working women who live in a metropolis like Istanbul. The documentary reflects the portraits of domestic workers as individuals in their everyday lives, with their economic difficulties, their families and their children whom they want a good education.

¹² İmece Women's Union Initiative, "Domestic Work Is Work, Domestic Worker s Worker", 31.05.2012

Wage conditions: Wages in domestic work are determined in the market and are relatively higher than the daily wages of for example temporary agricultural workers. Women engaged in daily paid cleaning work complain that they are dependent on their employers in fixing daily wages. Although wages are determined with reference to a rate prevalent in the market, it is up to employers' initiative whether to take this as a guide and bargaining power of working women is limited. Wages are lower for women who are informally employed on daily basis by cleaning firms. One serious problem for those daily paid women is that they suffer income loss when they fall ill and thus not able to work or when there is no job assignment by their firms. Monthly paid workers, on the other hand, enjoy regular income and in this case too there is a monthly wage determined by current market rates. If job placements by firms are formal (i.e. with social security) minimum wage is paid; wages may be higher if placements are through informal ties since no security contribution is paid (Kalaycıoğlu and Rittersberger-Tılıç, 2001, Rittersberger-Tılıç and Kalaycıoğlu, 2012, Fidan and Çağlar Özdemir, 2011). Here, once more we face one of the most salient characteristics of urban labour market which is "regular but low paid jobs versus irregular but higher paid jobs" (Suğur et.al., 2008:178). In general there is a wage gap between the local and foreign labour with respect to live-in care work. In the interviews it was stated that the local women workers did not accept less than 2000 TL per month for such jobs and the foreigners drew reaction from local workers for doing the same job for 1200-1500 TL.

The attitudes and behaviour of the employers: For women in domestic services, they are hurt and frustrated most by their employers' despising behaviour and attitudes. This is the leading cause making domestic workers change employers, preferring more understanding employers even when they might be paying less (Kalaycıoğlu and Rittersberger-Tılıç, 2001, Suğur et.al., 2008). The bad behaviour of some employers towards domestic workers, may go beyond the psychological violence, and may take the form of physical and sexual violence. Women are vulnerable to such attacks as harassment and rape beyond swearing and beating.¹³

Temporary nature of jobs: For daily paid workers there are jobs so long as their employers call on them for. It could take the form of going to the same house for cleaning in regular intervals or it could be irregular such that employers invite whenever they need. This situation naturally brings along uncertainties as to the earnings of domestic workers. For monthly paid caregivers, their jobs may continue for few years until the child or children start going to kindergarten or school. As for elderly and sick care, it continues until the decease of the person concerned (Suğur et.al., 2008).

Workers' health and safety: Another important problem area for those engaged in cleaning work is dangers and hazards in their working environments due to lack of sensitivity in health and safety matters. There are, for example, many cases of falling and dying while cleaning windows in high buildings.¹⁴ Uninformed use of chemicals in cleaning work causes various occupational diseases. Cleaning women complain about pains on waist, back and joints; problems of skin and respiratory tract (Fidan and Çağlar Özdemir, 2011). Yet, domestic services are one of the fields of work left out of the coverage of the Law No. 6331 on Occupational Health and Safety by its article 2. This legislative gap further aggravates the already unprotected status of domestic workers (Karadeniz, 2012:56-57).

Absence of social security: Though having social security coverage is crucial especially in cleaning works due to inherent risks of work accident and occupational diseases, transitory workers employed on daily base are out of coverage. While continual wage employment in domestic services is covered by social security, very few are actually employed as such (Karadeniz, 2011).¹⁵ While local domestic workers can benefit from healthcare services through their husbands social security coverage if any, migrant domestic workers employed informally are totally deprived of healthcare (Etiler, Lordoğlu, 2010). This situation naturally gives rise to many problems when these women suffer any serious work accident. An assessment made in the context of Labour Law argues that according the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families which is ratified

¹³ EVID-SEN Home Workers Solidarity Union, <http://www.evid-sen.org>

¹⁴ According to data provided by EVID-SEN, 3,000 thousand domestic workers experienced accidents, 51 women died and about 400 women suffered harassment or assault in 2011.

¹⁵ As of December 2010, the number of domestic workers reported to the SGK is 3,204 (SGK 2011, cited by Karadeniz, 2011).

by Turkey, in case of any work accident or occupational disease, irregular migrant workers too are entitled to bring lawsuits for compensation (Civan and Gökcalp, 2011).

Lack of organization: It is difficult to get organized as domestic workers are scattered, working in different houses, and as organization is regarded superfluous as a result of paternalistic relations that may exist with employers. What is more, barriers are put against the unionization of domestic workers in spite of the fact that domestic workers have a constitutional and legal right to organize in trade unions. For example Governorship of Istanbul referred to the judiciary for the suspension of the activities of “EVID-SEN”, a trade union founded by women domestic workers on the ground that an organization of this type was a breach of law.

4. Definitions and legal framework

The two major characteristics of legal framework relating to domestic workers in Turkey are its complicated content and ineffectiveness. Provisions relating to employment relations and social rights of domestic workers that exist in a body of legislation - including the Labour Law No. 4857, the Law of Obligations No. 6098, Law on Social Security and General Health Insurance No. 5510 and the Law No. 6356 on Trade Unions and Collective Agreements - are not fully clear even to those in charge of enforcing the legislation. It is not realistic to expect that these arrangements built upon complicated and often vague definitions are grasped and abided by individual employers and domestic workers characterized by low levels of education.¹⁶

In Turkey, the terms domestic services and domestic service providers are used in place of “domestic work” and “domestic workers” Article 4(e) of the Labour Law No. 4857 excludes “domestic services” from the scope of this legislation. However domestic workers are covered by the minimum wages set in accordance with the Labour Law.¹⁷ The law does not define domestic services and thus domestic service providers that it excludes. Hence, the issue is left to interpretations by lawyers and the jurisdiction of the High Court of Appeals. In legal terms, there is need in Turkey for a more holistic approach regarding what domestic work is and who would be called a domestic worker. First of all, domestic workers are differentiated by the type of work they perform. Types include daytime workers working continually for a specific individual employer; live-in workers working continually for a specific individual employer; workers who provide services continually to one/more than one individual employers weekly/monthly on part-time basis; daily workers employed via cleaning firms and transitory daily workers supplying services on occasional basis. Meanwhile, although domestic services are not covered by the Labour Law, its provisions are used analogously by the decisions of the High Court of Appeals and in related teaching when it comes to clarifying the status and working conditions of domestic workers.

The Domestic Workers Convention, 2011 (No. 189) defines “domestic work” broadly as “work performed in or for a household or households” and “domestic worker” as a “person engaged in domestic work within an employment relationship.” (Article 1(a) and (b)). In addition, the Convention specifies that persons “who perform domestic work only occasionally or sporadically *and* not on an occupational basis” are not included in the Convention’s definition of “domestic workers” (Article 1(c), emphasis added). It is specifically underlined that daily workers are not excluded from the Convention definition and coverage.¹⁸ While the ILO definition regarding domestic workers is quite broad, it should be noted that this definition has been drawn up for the purpose of Convention No. 189, i.e. for the purpose of delineating who should be entitled to the rights and protections contained in the Convention.

¹⁶ The term “individual employer” is a term used by İŞKUR for the employers of domestic workers, but it has no legal basis.

¹⁷ Exceptions

Article 4. The provisions of this Act shall not apply to the activities and employment relationships mentioned below.

- a. Sea and air transport activities,
- b. In establishments and enterprises employing a minimum of 50 employees (50 included) where agricultural and forestry work is carried out.
- c. Any construction work related to agriculture which falls within the scope of family economy,
- d. In works and handicrafts performed in the home without any outside help by members of the family or close relatives up to 3rd degree (3rd degree included),
- e. Domestic services,
- f. Apprentices, without prejudice to the provisions on occupational health and safety,
- g. Sportsmen,
- h. Those undergoing rehabilitation,
- i. Establishments employing three or fewer employees and falling within the definition given in Article 2 of the Tradesmen and Small Handicrafts Act.

¹⁸ As pointed out by the ILO, the expression “and not on an occupational basis” was included in Article 1(c) of convention No 189 “to ensure that day labourer and similar precarious workers remain include in the definition of domestic workers” (ILO, 2011b:8).

In Turkey, on the other hand, both the relevant teaching and decisions of the High Court of Appeals have adopted a narrowed definition of who is a worker employed in domestic services.¹⁹

In Turkey the literature on labour legislation defines domestic services as work that responds to the daily and routine needs of household life including cleaning, cooking, laundry washing, ironing and childcare. For any work to be considered as domestic service, it is stated that it should be directly related to the house concerned and living conditions there. Domestic services workers are those engaged in daily activities of a household including butlers, servants, cleaners, cooks, child carers, gardeners, drivers, pet keepers etc. (Karaca and Kocabaş, 2009:172). However, not each and every work required by daily life in a household is included in domestic services. In this context, for example, caring for a sick household member is not included in domestic services and a nurse engaged in this kind of work is considered not as a domestic worker but a person employed under the Labour Law No. 4857. In such cases as where a domestic worker performs other works which cannot be considered as domestic or when he/she renders services to other employers as well apart from domestic services, which denote an increase in the number works and employers, the status of this person in regard to whether he/she can be considered as domestic worker is determined by looking at which of these works is in weight or dominant (Karaca and Kocabaş, 2009:174).

4.1. Law of Obligations

In Turkey, individual employment relations are mainly regulated by the Labour Law No. 4857, Maritime Labour Law No. 854 and Press Labour Law No. 5953. As for work that remains outside the scope of labour laws and work of temporary nature which lasts for less than 30 days due to its nature, the general and employment contract related provisions of the Law of Obligations are applicable. With “domestic services” excluded from the Labour Law No. 4857 by virtue of its article 4(e), the law applicable to domestic work and domestic workers in Turkey is the Law of Obligations. The provisions of the former Law of Obligations No. 818 dated 22 April 1926 relating to “Service Contract” and of the new Law of Obligations No. 6098 dated 11 January 2011 relating to “General Service Contract” are applicable to domestic workers as well.²⁰ The Law of Obligations No. 6098 contains 55 detailed articles related to a wide spectrum of issues from sexual harassment to work health and safety and from overtime work to part-time work regulating general service contracts including those pertaining to domestic services (i.e. articles 393 to 447). In some of these provisions it can be said in a sense that arrangements in the Labour Law are reproduced in the Law of Obligations. And as such, the new Law of Obligations drifted farther away from being a general law (Caniklioğlu, 2011).

The definition of “service contract” in the Law of Obligations (article 393) is parallel to the definition of “work contract” in the Labour Law and to “service contract” in the Law on Social Security and General Health Insurance (Centel, 2011:8). Here, under the employment relationship between the worker and his/her employer, there is a service contract by which the former agrees to perform some works for the employer for some definite or indefinite period and the latter undertakes to pay the former on the basis of a time period or work performed. This service contract needs not to be in writing or in any specific form (article 394). In this context, the domestic worker renders a payable domestic service for a period of time and a service contract is deemed to be acted between the two if the employer accepts this performance.

The Law of Obligations also allows for part-time service contract between a domestic worker and his/her employer (article 393). While what is meant by “part-time” is not clarified in the text, it is

¹⁹It should be stated first of all that apartment janitors in Turkey are not considered as domestic workers and are covered by the Labour Law. Still, the scope and nature of services delivered by janitors as well as rules related to their working conditions are laid down in a separate regulation issued by the MoLSS. (Regulation on Janitor Services, Ministry of Labour and Social Security, Official Gazette No. 25391, dated 3 March 2003.)

²⁰ As many provisions in the Law on Obligations, those relating to service contracts are also taken from the Swiss Law of Obligations as source legislation.

interpreted as work for shorter than normal working hours. Since there is no provision in the Law of Obligations on normal weekly working hours, it can be inferred that it would be at most 45 hours a week as stated in the article 63 of Labour Law (Caniklioğlu, 2011). According to the General Directorate of Labour of the MoLSS part-time work for domestic workers can be evaluated within the framework of Article 13 of Labour Law,

A domestic worker and employer may enter into a fixed term service contract where the contract automatically expires at the end of this term period without any need for giving notice (article 430). For example, such a contract may be concluded in cases of childcare by considering the age at which the child will start going to a crèche. While there is no need to indicate a substantial reason when a fixed term contract is concluded for the first time, such substantial reason is required in case the contract is to be renewed.

Parties may also enter into a contract with a trial period (article 433). This trial period is for two months at most. Within this period, the parties may annul the contract without any compensation and without giving prior notice.²¹ In case the contract does not provide for a trial period, it can be dissolved only by observing notice period.

Domestic workers have some obligations arising from the contract (Section C articles 395-400). In this context, the primary obligations of a domestic worker under the legislation include the following: performing services as required while maintaining loyalty in protecting the interests of the employer; informing the employer about events and possibilities that may be harmful to his/her interests; avoiding behaviour that may be detrimental to the dignity and prestige of the employer; adopting a conduct that will maintain trust in-between and sowing care to materials submitted for his/her use (article 396). The worker shall be liable for any damage that the employer suffers as a result of the workers misconduct. In determining this liability, factors that need to be taken into account include whether the work is hazardous or not, whether it requires any expertise and training and skills and qualifications of the worker that are assumed to be known by the employer (article 400).

Further, the Law of Obligations charges the worker the obligation to work overtime in cases of necessity and when the worker is capable of doing so, given that this overtime work is accordingly remunerated. Any failure to fulfil this obligation is considered as justified cause for terminating a contract (article 398).

The domestic worker is also obliged to abide by overall arrangements made and instruction given by the employer in relation to the performance of the work concerned and behaviour at the work place (article 399). These arrangements and instructions need not to be in written form. Of course, such arrangements and instructions cannot be in contrary to relevant laws and, if any, collective agreements.

The Law of Obligations also contains detailed provisions concerning the obligations of the employer (Section D, articles 401-426). The most important obligation of the employer in a service contract with a domestic worker is worker's remuneration for services supplied. First of all, the employer is obliged to pay his/her employee the wage specified in the contract or collective agreement. If the contract specifies no exact amount, the employer has to pay an precedent wage which is not to be less than minimum wage (madde 401). However, the legislation gives no definition as to "equivalent wage." It is an improvement for domestic workers that the provision "boarding and meals constitute a part of the wage in case the worker is living in the same place with the employer given that there is no agreement or local custom otherwise" which existed in the former Law of Obligations No. 818 is not repeated in the new legislation. According to the law, if the worker undertakes the cleaning of the whole house for the employer on specific days of the week and if the employer is in no position to provide this work for some reasons, then he/she has to pay the worker an amount equivalent to the average wage the worker used to receive (article 411).

The employer is obliged to pay for overtime work by adding at least 50% to normal wage rate (article 402). As stated earlier, overtime work is work performed over and above normal working hours and

²¹ In the former Law of Obligations No. 818, trial period which was two months in general was for two weeks in the case of domestic workers and it was stated that the parties could annul the contract within this period mutually by notification.

with the consent of the worker concerned. Considering that the Labour Law No. 4857 would be taken as the relevant legislation, it can be said that the normal weekly hours limit will be 45 and, unless decided otherwise, these hours would be divided equally into working days. The law also envisages that the employer, upon the consent of the worker, may give leave instead of paying for overtime work proportional to the length of that time (article 402). According to the law and unless there is a custom to the contrary, the worker is paid at the end of each month. However, either service contracts or collective agreements may specify shorter intervals for payment (article 406). As apparent from this provision, a worker may be entitled to pay only after having performed his/her work. Meanwhile, the employer is also obliged to make advance payment to the worker proportional to services expected from him/her in case any necessity arises on the part of the worker and the employer can be reasonably expected to make this payment (article 406). If deemed appropriate, the relevant ministries may hold it compulsory that payments are made through bank deposits. Further the worker is to be given a wages statement for each payment period; but the law does not specify what should be included in this statement (article 407). This option is important in terms of introducing a new system where domestic workers are covered by social security scheme through a cheque/coupon system.

Under the contract between the domestic worker and his/her employer, the latter pays the former upon the performance of work or services required. However, in some cases, the worker is entitled to pay even when he/she has not actually worked. Firstly, the worker is entitled to pay in cases where his/her employer fails to give/assign any work although he/she is ready for it (article 407). Secondly, although stated in vague terms, when the worker in a long-term employment relationship fails to work for a relatively short time due to such reasons as sickness, military service or others without his own fault or negligence and when he is not paid in some other way during this period, the employer is obliged to pay him some equitable amount (article 409). For example, in an employment relationship lasting for one year or longer, it can be said that the worker falling ill may ask for payment for the first two days of his/her temporary absence (Caniklioglu, 2011).

Provisions in the Law of Obligations concerning the “Protection of the Dignity of Worker” contain arrangements for worker’s health and safety and for preventing psychological and sexual harassment generally and in the context of domestic works (articles 417-419). These provisions which bear specific importance for domestic workers go beyond those in the former Law of Obligations and adopt the approach underlying the Labour Law No. 4857. According to these provisions, employers are obliged to take all necessary measures to ensure health and safety in their workplaces and make all relevant equipment and other means available for this purpose while workers are obliged to abide by and observe these measures. The obligations of the employer also include, protecting and respecting the dignity of workers, providing for working relations on the basis of honesty and taking necessary measures to safeguard workers against psychological and sexual harassment and to mitigate the damage and harm when such events occur. Redress for fatal events, violations of personal rights and integrity and breach of contract is subject to the Law of Obligations. In other words, in case the worker suffers any damage or harm while performing his/her job or as a result of an event attributable to employment, the employer will be held responsible unless he/she can prove faultlessness. The burden of proof rests with the employer (article 417).

In cases where the employer and employees live together in the same space, the former is also obliged to provide sufficient accommodation and shelter to the latter. When, in such cases, the worker cannot perform for reasons such as accident or illness which cannot be attributed to his/her fault or negligence, the employer has to provide for worker’s care and treatment for a period of two weeks for the worker who worked up to a year, given that the worker concerned does not benefit from the social security assistance. For every additional year over the first year of service, the duration of this obligation to provide care and treatment is increased by two days subject to the maximum period of 4 weeks. The employer is obliged to provide the same in cases of pregnancy and birth-giving of his/her employee (article 418).

The Law of Obligations contains detailed provisions on the rights to rest and vacation of workers (articles 421-425). Under the law, the employer has to give one full day of rest to the worker preferably

on Sundays and if this is not possible on some other day of the week. The law has no provision on rest breaks during work. The absence of any provision on rest breaks in the law does not mean that workers subject to the Law of Obligations are deprived of this right which has constitutional character. The Labour Law establishes that the rest period is 15 minutes in works lasting up to 4 hours, 30 minutes in works longer than 4 but shorter than 7.5 hours and 60 minutes in works longer than 7.5 hours. So employers of domestic workers are expected to do the same (Güneş and Mutlay, 2011). In case of termination of a service contract of an indefinite period, the employer is obliged to provide 2 hours of leave a day for the worker to seek a new job during the notice period and without any cut in worker's wage. In determining days and hours of this leave, just interests of both the workplace and worker are considered. In case the worker concerned has worked for at least one year, the employer is obliged to grant annual paid leave of at least two weeks which is for at least 3 weeks in case of minors under age 18 and elderly persons over age 50. In case a worker cannot perform services for a period longer than a month within a year due to his/her fault or negligence, the employer is entitled to reduce the annual paid leave by one day for each month not worked. The employer is not entitled to do the same if the worker is not in service for at most 3 months for reasons such as illness, accident, fulfilment of a legal obligation or public service which cannot be attributed to his/her choice or fault. Nor can the employer reduce the period of annual paid leave in case of a female worker who could not perform for a period of at most 3 months for pregnancy and birth related reasons. In principle, annual paid leaves are used once for a whole period; however it can be divided into two and used as such upon the agreement of the parties concerned. The employer determines the time of annual paid leave by taking due account of the preference of the worker given that this is reconcilable with the interests of the workplace or house order. The employer is obliged to pay the amount corresponding to the period of leave in full or as an advance payment before the worker starts exercising this right. As long as service relations continue, the worker cannot waive her right to leave in return for cash or other benefits offered by the employer. In case the service contract is terminated for any reason, wage corresponding to leave periods that the worker was entitled to but did not use is paid at the rate valid at the date of termination to the worker or other beneficiaries.

According to the law, the employer is obliged, upon the request of the worker, to supply a service document describing the type of work done and its duration. Upon the explicit request of the worker, this document also includes information about the skills, attitude and behaviour of the worker in his/her job. In case of any worker or his/her new employer incurring damage due to failure to submit the service document in time or inclusion of incorrect information in it, the former employer may be sued for damages (article 426).

Under the Law of Obligations, it is possible to transfer the service contract to another employer permanently upon the written consent of the worker. In this case, the date of starting work with the transferring employer is taken as basis in relation to rights and benefits deriving from service duration (article 429).

The termination of the service contract between a domestic worker and employer is also subject to some detailed rules (articles 430-443). If the contract is for an indefinite time period, any party has to notify the other before terminating the contract. This notice period is two weeks for an employment relation up to one year, four weeks if from one to five years and six weeks in case the relation has been going on for more than five years. An employer may terminate the contract by summarily paying the wage corresponding to notice period. In cases where a contract is terminated by the employer by abusing the right to terminate, the employer is obliged to pay the worker three times the amount of wage corresponding to notice period. Each of the parties may summarily terminate the contract upon justified causes. Any party terminating the contract has to state the reason for this act in writing. For the party terminating the contract, all situations and circumstances which make it impossible to maintain service relations in accordance with the good faith rules are deemed as justified cause. In case justified causes for termination arise from the breach of one of the parties, that party is obliged to fully redress the damage it caused by observing all rights on the basis of service delivery. In other cases, the judge assesses freely the material consequences of just termination by taking due account of all situations and circumstances. In case the employer summarily terminates the service contract without justified cause, the worker may ask for redress. The amount to be payable as redress is what the worker could have

earned in case the period of notification were observed in contracts of indefinite time period and earnings corresponding to the period between termination and legal expiry dates in contracts with definite time period. In case the worker does not start working or suddenly ceases working without any justified cause, the employer is entitled to seek redress equal to one-fourth of worker's monthly wage. Any contract naturally ends with the demise of the worker. In this case, the employer is obliged to pay his/her survivors an amount equal to the monthly wage of the deceased worker. In case the employment relation has been longer than 5 years, the amount to be paid is two times the monthly wage. If the service contract is established mainly on the personal characteristics of the employer, it automatically ends upon employer's demise. However, the worker may ask employer's survivors and inheritors for a just redress for the loss he/she incurred due to premature termination of the contract.

Within the framework of employment relations mentioned above, the Law of Obligations does not provide any supervisory mechanism when it comes to the delivery of services as well as occupational health and safety. In workplaces covered by the Labour Law, Maritime Labour Law and Press Labour Law supervision and inspection is conducted by the MoLSS whereas the provisions of the Labour Law and penalty clauses of the same law are applicable in the context of inspection and supervision. As far as domestic services are concerned, the MoLSS is also authorized to oversee whether foreigners and their employers covered by the Law No. 4817 on Working Permits of Foreigners fulfil their obligations or not. However, there is no supervision or inspection in the context of the Law of Obligations. Under this legislation, workers may bring cases to Basic Civil Courts to seek their rights. Yet, article 2 in Law No. 3146, dated 9.1.1985 on the Organization and Duties of the MoLSS defines the duties of the Ministry so as to cover working life as a whole and all workers. Among these duties, there is "overseeing measures to ensure occupational health and safety" and "supervising working life" which should cover domestic workers as well. In this respect, MoLSS's responsibility for supervision in relation to those articles of the Law of Obligations related to occupational safety and health should be accepted. In practice the Ministry has assumed responsibilities in this area when it assigned a labour inspector to investigate a work accident in the case of Fatima Aldal who died after falling down while cleaning windows in a high floor flat (see below). In fact, General Directorate of Labour of the MoLSS, states in its comments on the Draft Report that inspectors can make inspections and prepare reports concerning domestic workers, but the rights of domestic workers should be defined according to the Law on Obligations. Also the Chairmanship of the Labour Inspection Board in its assessment on the draft Report states that the workplaces of domestic workers and places where domestic work is carried out can be inspected by the labour inspectors of the Ministry. However, while this inspection may provide evidence for civil proceedings, it would not be subject to administrative fines and criminal justice since Law of Obligations does not foresee any penalties. According to the Chairmanship, inviolability of the domicile which is defined in the Constitution and Turkish Civil Law is a fundamental human right and violation of the inviolability of the domicile is an offense according to the Turkish Criminal Code. However a domicile subject to inspection, notification or complaint as the place where domestic worker is employed is also a workplace. Labour inspectors are authorized to enter workplaces or places where workers are employed during the day or the night. In this case inviolability of the domicile and the public authority to inspect the workplace seems to be in conflict. If the domicile is also a workplace where a domestic worker is employed, the labour inspector has the authority to enter this workplace in accordance with the principle of legality. However, to eliminate any hesitation on this issue, the regulations on domestic workers should include a statement to the effect that inspections made in the context of labour and social security law should not be considered within the scope of violation of domicile.

The new Law of Obligations (Law No 6098) describes the rights and obligations and working conditions of workers it covers in a much more detailed manner and with new provisions than the former one. In fact, it entitles workers certain rights which are in some respects comparable to the provisions of the Labour Law. It is beyond doubt that the new Law of Obligations has its gaps and ambiguities whose examination goes beyond the limits of this study.²² In this part of our study, we

²² At the National Conference on "Decent Work for Home Workers" (20.02.2013) organized by the ILO, Associate Professor Oğuz Karadeniz, comparing the Law of Obligations with the Labour Law explained in detail the sections of the Law of Obligations which are lagging behind the Labour Law with respect to workers' rights.

sufficed with presenting a framework to reflect the major characteristics of individual employment relations that domestic workers will be subject to under the Law of Obligations. Even this framework by itself is important in the sense that it demonstrates almost all domestic workers in individual employment relations do not and cannot exercise their rights recognized by the new Law of Obligations. As stated above, it can be said that neither domestic workers a majority of whom are unqualified women nor their employers are even aware of the provisions of this law let aside exercising them.

In the face of the disadvantages caused by the inclusion of domestic workers within the scope of the Law of Obligations, different opinions emerged regarding how the legal framework for domestic workers should be. According to the assessment of the General Directorate of Labour of the MoLSS the group in question may be included in the Labour Law, a separate law is not needed. If they are covered by the Labour Law, secondary legislation can be arranged for domestic workers, but the problems arising from the application may still continue. Therefore, a more comprehensive study should be conducted. The Ministry of Family and Social Policies is also of the view that inclusion of domestic workers within the scope of the Labour Law would be an important step even though it would not solve all the problems in this area. According to Chairmanship of the Board of Inspectors it would be more suitable to regulate unique areas such as domestic work by a law.

4.2. Law on Social Security and General Health Insurance

Another part of the legal framework concerning domestic workers is the Law No. 5510 on Social Security and General Health Insurance. Domestic services are defined in the literature on social security law similar to definitions that appear in the literature on labour law. As such, domestic services are those daily services performed by persons other than family members such as butlers, servants, cooks, drivers, gardeners etc. (Okur, 2004:10).

The Social Security Law No. 506 was adopted on 17 July 1964. In its Article 3/I/D headed “Those not covered by social security” the Law excluded all domestic workers. Under the Law No. 2100 dated 11.08.1977 amending this law persons continually employed in domestic works for wage were covered. Furthermore, the Annex Article 9 in the law states that the enforcement will be governed by a Regulation Ministry of Social Security is to issue within a year and the Circular issued by the same Ministry will guide enforcement until the taking effect of the relevant Regulation. Under this amendment, persons continually working in houses in return for monthly wage and on the basis of a service contract would be deemed as under security coverage. Hence, those who receive no wage though working continually and others not working continually but rendering domestic services on specific days of the month or week would be excluded. In the circular issued later, definitions of continual/transitory work as given in the Labour Law were taken as basis and the following was stated: “since working in domestic services for a period shorter than a month cannot be considered as continual employment, persons who visit houses on some days of the week or month to do such works as cleaning, dishwashing and engaged in other household services shall not be considered under social security.” (Karadeniz, 2008:187). As a result of this narrow interpretation of the concept “continual work”, those who do not render domestic services everyday but continually on specific days of the week were excluded. This interpretation closed the doors of social security to domestic workers other than those who worked full day in return for monthly wage.

Behind this approach we observe an erroneous interpretation of the concept “transitory job” in the Labour Law and seeing it as identical to “temporary employment” under the Law No. 506. According to the Labour Law, works which by their nature last for less than 30 days are regarded as transitory and works lasting longer than that as continual. Here, the continuity of any work is related to its nature rather than temporality. Some works are transitory by their very nature that is, they last shorter than a month. From the point of social security, on the other hand, the continuity of work is not related to the

nature of the work but to its permanency in the sense that it is not temporary. According to Labour Law any continual work can be full or part-time. If domestic work is performed in undefined intervals and on temporary basis, it will be deemed as transitory. Yet, if taking place regularly and for a specific employer any domestic work should be regarded as continual even when performed fortnightly (Okur, 2004; Çenberci, 1985).

In the period referred to and in relation to the nature of domestic works, the High Court of Appeals did not adopt the approach of “deeming work lasting longer than a month as continual” as set forth by the Circular on the enforcement of the Law No. 506. The High Court of Appeals addressed the issue on the basis of weekly working days and considered it as employment with social security coverage if work takes place on 4 or 5 days of a week and on a continual basis. In another decision, the High Court of Appeals did not consider working on 2 days of a week for a period of 4 years as continual (Okur, 2004:14). It is therefore observed that the High Court of Appeals did not adopt an approach based on the continuity of work and excluded from security coverage those domestic workers delivering services to same employers on same days of the week unless the number of days worked did not reach to half of days in a week.

Under the Law No. 5510 (dated 31 May 2006) on Social Security and General Health Insurance (Article 6/c), those who work on a transitory basis in domestic services and although continuously employed in domestic services on the basis of service contracts, whose monthly earnings are more than thirty times smaller than the lowest limit of daily earning taken as basis for security contribution, as a result of their weekly working hours being shorter than periods specified in the Labour Law No. 4857 are excluded from the scope of short and long term security provisions. Hence, there emerged retrogression from the coverage of the Law No. 506 with respect to domestic workers and a large majority of domestic workers were excluded from security coverage.

The situation was rectified with the Law No. 5754, dated 17 April 2008 and Article 6(c) was modified again to adopt the provision in the Law No. 506 stating “domestic workers (except those continually employed for wage) are not considered within security coverage.” Furthermore, the Law No. 5510 brought a correct interpretation to the term “continual employment” and accepted that this could be for shorter than 30 days a month. On the basis of this approach, it was made compulsory for those working in domestic services for shorter than 30 days a month to complete 30 days in terms of their social security contributions.²³ With the additional clause 13 introduced by the Omnibus Law No. 6111 dated 13 February 2011 it was set forth that the obligation of those working for less than 30 days a month to complete their security contributions for full 30 days would start on 1 January 2012. Together with these developments, it became clear that continuity in service delivery is established even when the domestic worker is employed by the same employer not on all but some days of the week. This approach is also confirmed by decisions given by the High Court of Appeals. In spite of all these, the tendency to perceive the element of “continuity” in domestic works as full day monthly employment for indefinite period of time still persists not only among domestic workers and their employers but also among Provincial Social Security Directorates. Many employers are not aware that “daily workers” are covered when they go to the same employer on specific days and this is the case for all employers if there is more than one employer and that informal employment is subject to sanctions when spotted.

It is possible for part-time domestic workers to cover the remaining period of time by paying optional social security contributions. In this case, even if contributions are paid on the basis of optional security scheme, the status of domestic workers will be defined with reference to Article 4/a of Law No. 5510, on Social Security and General Health Insurance (Law No 5510 Article 51, Annex Clause: 17/4/2008-5754/31). For these periods, domestic workers may optionally pay unemployment insurance contributions as well (3%). As stated above, since it is obligatory for those working for shorter than 30 days a month to complete their health insurance contributions to 30 days, in case general health insurance contributions are completed, the amount of social security contributions corresponding to the remaining periods will be calculated over the rate of 20 per cent by deducing general health insurance

²³ Workers in this status are entitled to health assistance and benefits given that their contributions are paid by the State or themselves at a rate determined as a result of income test.

contribution²⁴. For example, if a worker rendering services for 10 days a month wants to go in debt for the remaining 20 days, this worker has to pay at least 101.40 TL excluding the general health insurance contribution. Although it is stated that this arrangement introduced by the Law No. 6011 is applicable to those employed on the basis of part-time work contracts under the Law No. 4857, the Circular No. 2011/36, dated 5 April 2011 issued by the SGK made it clear that it is also applicable to part-time domestic workers subject to the Law of Obligations.

The Law No. 5510 defines as employers those persons employing others covered by 4-a security scheme, including continually employed and paid domestic workers and their place of work as enterprise with respect to social security matters.

Domestic workers may lodge complaints through the telephone hotline “hello 170 SGK” in case they are employed informally²⁵. In our interview with officials from the Social Security Institution (SGK) they stated that in response to such complaints SGK inspectors would conduct investigation and confirm the status of informality by collecting necessary data. In such a case, the employer concerned has to face the sanctions of employing workers informally²⁶.

In practice, there is a multi-stage procedure for social security coverage of a domestic worker. The employer will firstly submit a Workplace Declaration to the relevant office of the Social Security Institution. He then gets an e-declaration code, arrange a Job Recruitment Declaration under Article 9 of the law and send it to the relevant Social Security Directorate. The employer will also arrange “Monthly Contribution and Service Document” and send it to the same Office until the end of the next month following the month it belongs to. The employer is also supposed to pay social security contributions calculated on full or part-time basis over at least the minimum wage within the same time period. For a worker having more than one employer, these procedures must be completed by each employer. Considering that many of them are individual female employers, it will be quite difficult for them to start and proceed with this complicated and detailed process. Other employers have professionals working at the enterprise or independent firms to proceed with social security formalities. An individual employer too may seek services of a private firm for these procedures. But this will mean an additional cost to the employer.

Under article 23 of the Income Tax Law No. 193, persons employed by private persons as servants, nursemaids, nannies, gardeners and janitors in houses, gardens, apartments and other places of non-commercial nature are exempt from income tax. In this context, domestic workers do not pay income tax.

²⁴ Optional insurance: it is the scheme by which individuals are covered by long-term security branches and health insurance by paying their contributions. The optional contribution is an amount between the lower and upper limit of base income which corresponds to 32% of monthly income declared as the basis of contribution. Of this, 20% is for old age and demise and 12% is for health insurance.

²⁵ As of 05 January 2013 ALO 170 received 499 840 notices and complaints related to undeclared work in various sectors. As a result of the investigations based on the complaints, 50 thousand people and five thousand workplaces were found to be unregistered.

²⁶ Officials from the Social Security Institution state that there are deterring penalties such as fine amounting to two times minimum wage for each month and collection of unpaid contributions by applying default interest.

The table below shows, for the period 1 July 2012-31 December 2012, net monthly wage of an adult, full-time and formal domestic worker over minimum wage as well as its cost to the employer.

Table 6: Calculation of net minimum wage for a domestic worker and cost to the employer (01.07.2012 - 31.12.2012)

Calculation of Net Minimum Wage		Cost to Employer	
Minimum Wage	940.50	Minimum Wage	940.50
Ssk Contribution 14%	131.67	Ssk Employer Contribution 14.5%	136.37
Unemployment Insurance Fund 1%	9.41	Unemployment Insurance Fund 2%	18.81
Sum of Deductions	141.08		
Net Minimum Wage	799.42	Cost To Employer	1.095,68

Source: MoLSS

The Table 6 shows that the cost to the employer is around 1,100 TL while the worker gets 800 TL; the total social security contribution by the worker and employer add up to 300 TL.²⁷

Within the same period, the minimum daily contribution required for optional security coverage, over the minimum level of daily earnings of 31,35 TL is $31,35 \times 0,32 = 10.0$ TL. The amount that a domestic worker working 10 days a month has to pay for bringing it up to 30 days is 200 TL apart from unemployment insurance contribution that is to be paid as well.

Domestic workers working intermittently and not within the coverage of compulsory insurance may subscribe with optional security system in which case their monthly contribution is 300 TL including contribution for general health insurance.

Meanwhile, the period of time that a domestic worker working on specific days of the month has to work in order to be entitled to social security benefits is almost three times as long as that a full-time worker has to. According to Karadeniz (2011: 96-99), while the period required for a domestic worker working 20 hours a month to be entitled to partial old-age pension is 41 years, it is 15 years for a full-time worker. As a result of reduced rate of pensions introduced by the Law No. 5510, the amount of pension to be accorded will be insufficient.

It is clear that domestic workers will have security coverage given that they continually work for the same employer even fortnightly. There are serious sanctions for employing domestic workers informally. However, the number of domestic workers with security coverage is only 5,079 as of April 2012. 38% of these persons are employed by dwellings which employ two or more domestic workers. Since, according to TURKSTAT/EUROSTAT data, the number of domestic workers was 150,000 in 2011, it appears that 97% of domestic workers are informally employed even according to official statistics.

Reasons for the prevalence of informal employment of domestic workers are summarized as follows in TISK's evaluation on the draft Report:

- Full-time permanent domestic workers are required to pay a social insurance premium at least over the minimum wage level, despite their low level of average income.

²⁷ According to the Article 81, paragraph 1 of the Law No. 5510, five percentage points of insurance premium to be paid by employers in the private sector are covered by the Treasury on certain conditions. The example in Table 6 is calculated by assuming this coverage by the Treasury.

- The rate of premium to be paid by the employers is also high, thus pulling up the cost of domestic labour.
- Domestic workers employed less than 30 days in a month are required to complete the general health insurance premiums to 30 days.
- The rate of voluntary insurance premium is 32% for those who are not covered by the mandatory scheme.
- Part-time domestic workers need to work much longer as compared to full time employees in order to qualify for old age pension.
- Individual employer of the domestic worker is treated like a regular employer making commercial gain and is subjected to the same obligations (reporting obligations, delivery of monthly premium and service documents, record keeping of the work place, payment of premiums etc.)

High rates and long periods of contribution required for entitlement, low replacement rates and bureaucratic formalities and difficulties involved are among factors leading many workers and employers engage in informal relations. This tendency to work informally on the part of domestic workers is also fed by the fact that many such workers are women and their husbands are already entitled to social security benefits. Further research is needed to explore the views and needs of women domestic workers with regard to social insurance and appropriate insurance models.²⁸ Finally, low level of awareness and insufficient information are also factors feeding informal employment.

4.3. Law on Occupational Health and Safety

In the context of individual employment relations, lastly we shall mention the Law No. 6331 on Occupational Health and Safety taking effect upon its publication in the Official Gazette No. 28339, dated 20 June 2012. According to the MoLSS, this legislation is intended to incorporate the EU Directive No. 89/391/EEC dated 12 June 1989 and as a response to the ILO Conventions Nos. 155 and 161, both ratified by Turkey, by enacting a separate legislation in this field. Article 2 delineates the scope of the legislation: “*The present legislation is applicable to all public and private workplaces; employers, their representatives and all workers including apprentices and interns of these workplaces regardless of their respective fields of activity.*” Hence, workers employed in enterprises not covered by the Labour Law are also covered by occupational health and safety provisions (Karadeniz, 2012:56). Under Article 2(c) of the Law 6331 it is stated that domestic services are not included in the scope of the legislation and these services are excluded from the coverage of OHS arrangements under the Law. It can be presumed that the reason behind this approach is that workplaces of domestic workers are private homes and thus not considered as a part of inspection work. Yet, work accidents and occupational diseases are quite common among domestic workers. Indeed, besides falling, various injuries and electric shocks, domestic workers are also exposed to other risks of occupational disease due to cleaning materials containing harmful chemicals and lifting heavy objects. (Karadeniz, 2012; Etiler and Lordoğlu, 2010). Since the social security system which is supposed to remedy for accidents or occupational diseases in terms of income loss or incurred extra expenses does not cover transiently employed domestic workers, daily workers of this type in particular are left completely unprotected.

In the context of occupational health and safety, legal obligations of the employer that he must fulfil in his workplace regardless of the number of employees can be grouped under three headings. The first is the obligation of the employer to take measures. He is supposed to take all relevant measures and make all necessary equipment and tools ready to ensure workplace health and safety. The second is the obligation of the employer to oversee whether measures taken are observed or not. In this context, the employer has to check whether protective equipment is used and safety measures are observed by

²⁸ In the opinion of the SSI, in the formation of these models actuarial balances should be considered.

workers. The third obligation is that the employer has to inform and train workers about risks involved and measures adopted. Besides risks and measures, the employer is also obliged to inform and train workers about their legal rights and responsibilities.

It is a fundamental human right of workers to be employed in workplaces where occupational health and safety measures are in place and improved. Articles 50 and 56 in the Constitution guarantee this right. Accordingly, no one can be employed in works not fit for his/her age, gender and capabilities and minors and women as well as persons with physical and mental impairments should be specially protected in respect to their working conditions (Article 50). Everybody has the right to live in a healthy and balanced environment (Article 56). It should also be underlined that special worker groups at enterprises have some special rights in terms of worker's health and work safety. As far as health and safety is concerned, workers not only have rights but obligations as well. The major obligation of workers is to abide by all measures taken for health and safety and receive training in occupational risks they face, measures to be taken, their legal rights and obligations.

Arrangements reflecting legal obligations in the field of occupational health and safety are given effect, besides legislation, through regulations and directives issued by public authorities. A significant part of these arrangements is related to the prevention of work accidents and occupational diseases which may emerge from machinery, equipment, instruments, devices and substances used. A part of these arrangements are for workers that need to be protected due to their special position including minors under age 18, pregnant and nursing women, temporary workers or others engaged in specific types of work. Apart from these, there is also need for arrangements to provide for training in occupational health and safety and overall health check-ups etc. It is the mandate of public authorities to conduct inspections and impose and enforce sanctions in related matters.

Legal arrangements related to occupational health and safety of domestic workers under the Law of Obligations are far from what we have given above as an overall framework in this area. The Law of Obligations introduces no other arrangement beyond obliging employers to take all relevant measures to ensure workplace health and safety and prevent incidences of psychological and sexual harassment and obliging workers to abide by all measures taken for health and safety. Consequently, while bearing utmost importance for hundreds and thousands of domestic workers, issues such as the following were entirely omitted: Identifying health and safety risks in domestic works; identifying measures that can be taken against these risks; supervision by both employers and public authorities of relevant practices; training of domestic workers in these issues, etc. This omission brings along significant risks for both workers who are deprived of healthy and safe working environments and for employers who, unless proving their faultlessness, will be responsible for any harm or damage that workers suffer. Meanwhile, providing healthy and safe domestic working environments and health check-ups of workers both at recruitment and periodically afterwards are factors extremely important as far as the quality of services are concerned. MoLSS Directorate General for Health and Safety at Work states that, domestic services are excluded from the scope of the Occupational Health and Safety Law because of some ambiguities in the establishment of the employment relationship and in the definition of the workplace and the employer; possible difficulties of inspection and the non-existence of commercial gain purposes in the employment relation in the majority of cases. However, the Directorate believes that the adoption of simple, understandable and practical legal arrangements for the health and safety of domestic workers as well as for the other groups excluded from the scope of the current Law would benefit all of these workers

The health and safety problems of domestic workers in Turkey rose to the public's attention only upon tragic events experienced as a result of fatal accidents as in cases of Fatıma Aldal in Istanbul on 5 May 2011 and Pakize Akçam in Adana on 7 July 2012, both of whom died by falling down while cleaning windows, or cases of sexual harassment and even murder in their working places.

On May 5th 2011, while cleaning windows of the flat she was working in Maltepe, İstanbul, Fatima Aldal, a cleaning woman fell down from the 4th floor together with the window case and lost her life. This was her workplace...Now this “labour murder” is regarded as an ordinary accident on the ground that domestic services are not included in the scope of the Labour Law. At present, a law suit is brought before Kartal 4th basic criminal court.

Source: İmece Women’s Union

The event took place at 18:00 hours in Sevenler Complex on street No. 78148 in Toros Neighbourhood of Çukurova, Adana. Pakize Akçam and Aysel Solunay, two women working for a private cleaning firm went to Elif Keskin’s flat at the 8th floor of the building for cleaning. While Aysel Solunay was busy cleaning the rooms, Pakize Akçam was up cleaning the windows. Shortly after, Akçam lost her balance and fell down. Hearing her shriek, Aysel Solunay looked down and saw her dead body lying down below. She rushed down in nervous breakdown, while other people around called the police and health teams. The health team found Akçam already dead.

Source: İmece Women’s Union

The court process on the case of Fatima Aldal is still ongoing in Kartal Basic Criminal Court No. 4. In this case, upon the initiative of the İmece Association, the MoLSS paved the way by assigning a labour inspector to investigate the event for the first time. The labour inspector investigated the case and came up with an Investigation (Work Accident) Report. The Report states that the event was a work accident under article 13 of the General Health Insurance Law and that even if no contribution was made to the social security institution for the deceased, the person should be considered as insured under Article 5510/6/c. However, what is actually needed was not to classify the event as a work accident after it happened, but earlier assessment of risks in cleaning windows in high floors, identification of preventive measures and training of workers in such risks.

4.4. Occupational competency in domestic services

Another point worth mentioning in relation to domestic workers is the nature of their work which embodies more than one profession. A domestic worker is a cleaner, ironer, driver, laundry washer, gardener, care giver, etc. In this context, domestic services cannot be defined under a single task and different occupational categories in International Standard Classification of Occupations (ISCO-88 and ISCO-08) may include tasks under the heading “domestic services”. Nevertheless, it still seems possible to separate care services from other domestic services and to have the Occupational Competency Institution give priority to the measurement, assessment, documentation and certification of care services.

4.5. Trade union rights and freedoms

An important problem area in legal terms for domestic workers is restrictions on trade union rights and freedoms. In purely constitutional and legal terms, there is no doubt that domestic workers have the right to organize and engage in trade union activities. According to Article 51 in the Constitution²⁹

²⁹ Article 51 of the Turkish Constitution provides as follows:

workers have the right to establish associations. According to Article 90 of the Constitution as amended in 2004: “International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements on the grounds that they are unconstitutional. In the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.” The European Convention on Human Rights, ILO Conventions Nos. 87 and 98 and the two UN Covenants of 1966, safeguarding the right to organize as a fundamental human right, are all ratified by the Turkish Grand National Assembly and domestic workers’ right to organize is recognized by law in this sense.

Moreover, neither the former Trade Union Law No. 2821 nor the new Law No. 6356 on Trade Unions and Collective Agreements which went into force on 7.11.2012 have any provision compromising the right to organize in the case of domestic workers. As far as the enforcement of the Law No. 6356 is concerned, the concepts worker, employer and workplace are defined as stated in the Labour Law No. 4857. Article 2 in the Law No. 4857 reads as follows: “The employee is a real person working under an employment contract; the employer is a real or corporate person or a non-corporate institution or organisation employing employees; and the relationship established between the employee and employer shall be referred to as the employment relationship. The unit wherein the employees and material and immaterial elements are organised with a view to ensure the production of goods and services by the employer is called the establishment.” It appears that these definitions cover domestic workers and employers of domestic workers.

Since the condition of being a citizen of Turkey to be a founding member of a trade union which existed in the Law No. 2821 was lifted in the Law No. 6356, migrant domestic workers too are entitled to establish unions. It can be further stated that informally employed domestic workers (in our opinion, migrant domestic workers too) can establish and become members of trade unions since being an active worker is sufficient without necessarily being covered by the social security scheme. The task falling upon public authorities is to investigate the status of trade union members/founders who are reported to be informally employed and ensure their registration. The General Directorate of Labour of the MoLSS states that in accordance with Article 17 titled “union membership and the acquisition of membership” of the Law No. 6356, membership to a union shall be effected through the system of e-government. When the employee enters the system with his identity card number, his/her workplace and the trade unions organized in the branch of activity that his/her work place belongs shall appear in the system and the employee will be able to choose the union he wants to join. In this system, an employee working informally can report his/her situation to the authorities.

As in the case of former law No. 2821, the new Law No. 6356 too establishes that trade unions are to be established on trade basis and trades are specified in an annexed table. One of these trades is “General Works”, having the code number 28 in the old law and 20 in the new one. It was the Regulation on Branches of Activity which was issued in 1983 on the basis of international norms and standards on the classification of economic activities which determines which works should be enlisted under each trade in the scope of the Law No. 2821. The Regulation defined “General Works” coded 28 as “with the exception of those works of municipalities which are enlisted under “Health” coded 24, others works that are performed by persons classified as workers under the Law on Trade Unions.” Hence, according to the International Standard Industrial Classification of All Economic Activities (ISIC) then in effect, it

“Employees and employers have the right to form labour unions employers’ associations and higher organizations, without obtaining permission, and they also possess the right to become a member of a union and to freely withdraw from membership, in order to safeguard and develop their economic and social rights and the interests of their members in their labour relations. No one shall be forced to become a member of a union or to withdraw from membership. The right to form a union shall be solely be restricted by law and with the purposes of safeguarding national security and public order and to prevention of crime commitment, protection of public health and public morals and the rights and freedoms of others.

The formalities, conditions and procedures to be applied in exercising the right to form union shall be prescribed by law.

The scope, exceptions and limits of the rights of civil servants who do not have a worker status are prescribed by law in line with the characteristics of their job.

The regulations, administration and functioning of labour unions and their higher bodies should not be inconsistent with the fundamental characteristics of the Republic and principles of democracy.”

can be said that Code 95.00 private household services could be considered as listed under “General Works.”

In order to determine which works are to be included in trades listed in the new Law No. 6356, a new Directive on Branches of Activity was adopted on 19 December 2012. The new Directive identifies activities under trades according to the NACE Rev. 2 Six-Digit Classification of Economic Activities. However, the Part T 97.00 in NACE Rev. 2 enlists the activities of households as employers of domestic workers not under “General Works” No. 20 but under “Commerce, Office, Education and Fine Arts” No. 10. Consequently domestic workers are included among workers who are to be organized in the trade “Commerce, Office, Education and Fine Arts.”

The Bakırköy Labour Court No. 3, in our view erroneously, ruled for the suspension of the activities of EVID-SEN, Domestic Workers Solidarity Union on the following grounds: trade unions can be established only on the basis of trades; trades are exclusively listed according to article 60 of the Law No. 2821; domestic works are not included as a trade in this Article; and therefore no trade union can be established on the basis of domestic works. Considering all these, it can be said that the new Directive on Branches of Activity will invalidate any action to prohibit the organization of domestic workers on the basis of non-existence of any relevant trade.

4.6. Legislative arrangements on the employment of foreigners/migrants in domestic services

Although the Law No. 4817 (2003) on Working Permits of Foreigners was adopted in order to regulate the employment of expatriates in some qualified jobs where domestic labour supply was insufficient, it also makes legal employment in domestic services possible. However, due to the overall informal nature of domestic services, a large majority of migrant women are employed informally in these services. Out of 16,890 persons who were employed with work permits in 2011, only 598 were in domestic services. (MoLSS 2012: 162).

Given the demand for labour force and widespread informal employment, the problem was tried to be solved by two arrangements introduced in 2011 and 2012. The first one is the Council of Ministers decision of 10 October 2011 which makes it possible, starting from 1 February 1st 2012, for tourists who legally enter and intend to stay in Turkey longer than 90 days within 180 days, to apply for 6 months residence permit from the expatriates divisions of Security Directorates in provinces where they presently are. The important point in this arrangement is the facilitation of getting permits for foreigners who want to work in Turkey in such areas as sick care and household services. Following this first step, the General Directorate of Security issued a Circular on June 7th 2012. According to this Circular, all foreigners in Turkey are to be granted residence permits valid for a period of 6 months given that they pay fines due to past violations in regard to visa and residence formalities. The period for application terminated on 15 August 2012. This arrangement can be regarded essentially as a short-term pardon covering foreign women working informally in household and care services. As a result, in 2012, the number of applications by employers who wish to employ migrants in domestic work increased to 11,639 and MoLSS issued work permits for 8878 migrants. This number constitutes 31.2% of all work permits issued in 2012 (MoLSS, Department of Work Permits for Foreigners.) These arrangements are of course important for migrants who stay in the country illicitly and work informally. Nevertheless, it can be said that there is need for wider public information activities and longer period for application in order to further enlarge the scope of this legalization.

4.7. An assessment concerning janitors and domestic workers

Upon an amendment in the Labour Law No. 931 on 3 April 1970, janitors in buildings with central heating system and janitors who devote their labour to the same employer or building were included in the scope of the Labour Law. This provision was later maintained in the Labour Law No. 1475. And finally with the Labour Law No. 4857 all janitors were included. Janitors waged struggle for this inclusion and kept the issue in the agenda of working life. The inclusion of domestic workers in Labour Law and their unionization, which is approached with some reservations today by some circles used to be a problem for janitors as well. Today, however, the debate has been long left behind in the case of janitors and we believe that it will be so for domestic workers as well in near future.

The Labour Law No. 4857 covers residence janitors, but details their employment relations through a regulation. Article 110 in this Law states that a regulation to be drafted by the Ministry of Labour and Social Security will provide for such details as the scope and nature of services expected from janitors; their working hours; vacations including weekends, national and religious holidays, annual paid leave, etc. The short and concise regulation consisting of 15 articles issued on 3 April 2004 brings the following definitions: The term “Residence janitor” is defined as “Person in charge of care, maintenance, protection, cleaning, small-scale restoration, and upkeep of the main building and its spaces of common use; shopping for and protection of residents in the building; operating the central heating system and gardening works.” The “employer” is defined as “Owner of the building or his/her partners; building or site manager; employer’s representative.” Finally, the “Workplace” is defined as “The building where the janitor works and the whole complex including annex building, separate spaces, spaces of common use and other facilities in the same area.”

In this context, main duties, authorities and responsibilities of the employer are defined as concluding a contract with the janitor; investigating the competence of the janitor and asking for a health report while the janitor is recruited and ensuring that he has his annual health checkups; paying wages and other benefits to the janitor; paying the employer’s part in his social security contributions; informing the janitor about the use of equipment and installations existing in the building and its vicinity; ensuring that the living space of the janitor is in conformity with health and decent living conditions; posting a document specifying the duties and working conditions of the janitor in a visible place to inform all residents; and acting collective agreement if the janitor is a union member. The regulation also introduces fundamental arrangements regarding the duty, responsibilities and working conditions of janitors and gives the task of enforcing its provision to the MoLSS.

The regulation on residence janitors is of significance since it can serve as a model if domestic workers were to be included in the Labour Law. Both janitors and domestic workers deliver services responding to the needs of households. Both have to possess some qualifications specific to their jobs while delivering their services. However, while janitors are required to have certificates if they operate central heating systems, for example, domestic workers are not required to have special certificates for, let’s say, child, sick and elderly care. While janitors are required to have their health check-ups upon recruitment and periodically afterwards, there is no such requirement for domestic workers who share the same environments with children, elderly and sick family members and who are engaged in such risky works as cleaning windows of high buildings or lifting heavy objects. The trade of residence janitors is classified under “General Works” and they can join unions established in this branch of activity. Also, trade unions which are authorized for collective bargaining engage in collective agreements for their members working as janitors. The unionization of domestic workers, on the other hand, was blocked until the adoption of the new Directive on Branches of Activity. In spite of remarkable similarities between the two occupations, while janitors were included in the Labour Law back in 1970 and granted the right to union membership, domestic workers were covered by the Law of Obligations and their trade union rights were denied until the adoption of the new Directive on Branches of Activity. This difference can be explained by the economic and socio-political variables related to the fact that the overwhelming majority of janitors are males while the opposite is true in the case of domestic workers.

5. Different types of labour and intermediation services in household and care services

In delivery of household and care services, there are different practices with respect to different social classes and strata and hence different types of labour. Referring to markets for recruiting and employing national or foreign women for such work is more for families in middle and upper income groups. Going over the literature comprising studies made in Turkey, we have seen that this employment is essentially informal. While it is true that some families use care services provided by private institutions, the number of such families is extremely limited since services by private institutions are quite expensive. Public old-age centres deliver care services to people older than age 60. Although these facilities give services free to poor people and charge some fee to better off, their number is very limited and capacity is low.³⁰ Persons employed at such centres, whether public or private, can be considered as formal workers.

For elderly people from low income groups, various municipalities extend support in household chores and care. For example, in an interview with the Elderly Services Centre of Ankara Greater Municipality, they stated that upon their request they send cleaning and repair workers to houses of low income persons over age 60 living alone. No fee is charged for these services if the person concerned has a monthly income less than 850 TL and 25 TL is charged if their monthly income is in the income range of 850-1250 TL. Also, municipal personnel are assigned to visit completely unaccompanied elderly people once a week to cook meals for them and help in bathing. This service is delivered through a sub-contracting firm selected each year after a tender process and the selected firm employs 113 persons as cleaning and care personnel. The undertaking firm is obliged to form teams of 4 (2 males and 2 females) for cleaning houses and teams of 5 for such works as cooking, dishwashing, bathing, personal hygiene and ironing. Here, the workers of sub-contracting firms are regular employees with social security coverage. Working hours are between 08:00 and 17:00. It is also stated that the same personnel remain even when the sub-contracting firm changes after tendering.

In low income families, children, elderly and disabled family members are given care by a female family member without any remuneration. A recent development taking place in home-based care is the financial support extended by the SHÇEK (Social Services and Child Protection Agency) since 2007. On the basis of Law No. 2828 (annex, article 7), in cases where disabled persons of poor background are given home-based care, any family member or relative giving care to these persons is paid monthly minimum wage. To be eligible for this scheme, the condition is that “per capita income in the household where the disabled person is living is less than 2/3 of monthly minimum wage and the person is to be 50% + severely disabled as confirmed by a health report.” As of the year 2012, there are 389,571 persons benefitting from this scheme. 91% of these home-based caregivers are females (KSGM-General Directorate of Women’s Status, information note). Through this scheme, the state avoids institutional service delivery which is costlier and saves from costs by extending services over other family members. While it is considered as a contribution to women’s employment, it is missed that the scheme is a kind of informal employment by the state. It is reported recently that the Ministry of Family and Social Policies (MoFSP) and MoLSS are working on a draft legislation to provide social security coverage to these caregivers. One suggestion to this end is to have the family member giving home-based care to another needy family member included in optional social security coverage by making contribution on the basis of fewer days. However, it may not be possible for families to assign a part of their income, which is so important for their subsistence, for the payment of social security contributions and consequently they may prefer to continue to work informally.

³⁰ As of the end of 2011, there are 106 rest homes under the ÖYHGM (General Directorate of Services for Disabled and Elderly) serving to 10,590 elderly people. There are also private rest homes and old age centres active under the General Directorate. The total capacity of 165 private rest homes is 9,391. There are 22 rest homes with total capacity of 2,573 operating under other ministries and municipalities. (Ministry of Development, 2012:64-65)

5.1. Intermediation services in job placement

While informal channels such as acquaintances and friends are quite important in finding persons to work for both care and household services, institutional services too are in increase. Since 2007, the İŞKUR is acting as intermediary for persons who want to work in domestic services and individual employers who look for such persons. In domestic services, private employment agencies (PEA) or counselling firms operating under İŞKUR license mainly intermediate for women who will work as caregivers and agencies supplying national or foreign domestic workers seem to be separated. It is reported that unlicensed firms that place migrant women to their jobs exploit these women and abuse their clients since they are operating entirely on informal grounds.³¹ Those who work on daily-basis as cleaners are mainly employed by cleaning firms and they are sent to offices rather than private houses for cleaning works. These findings from our interviews are consistent with those found by Kalaycıoğlu and Rittersberger-Tılıç (2012). The common tendency of these private agencies otherwise different from each other is that they regard women's employment without security only "normal."

5.1.1. İŞKUR (Public Employment Agency of Turkey)

As a public agency extending free intermediary services to the private sector, employers and job seekers can apply directly to the İŞKUR or since 2008 use internet application for workers or jobs they seek. When employers find workers they need, they are expected to report the situation to İŞKUR to have the advertisement removed. However, an İŞKUR official interviewed says that things do not work this way all the time: Since İŞKUR and SGK work in coordination, some employers think that their reporting to İŞKUR would force them to employ the worker found formally and for this reason do not report. The official added that this practice is as high as 50% of all cases in their region. Although workplaces registered with the Agency are frequently contacted to ask whether they have found workers they were looking for and the data on persons who are placed to a job is shared online with SSI, İŞKUR cannot trace through the online system whether the employer registers the employee to the social insurance. Certainly with the improvement of technical infrastructure, whether the employee is insured or not can be monitored through the online system between İŞKUR and SSI. Yet, this may also cause private sector employer to be less eager to use the services of the Agency and weaken the effectiveness of the Agency in placing unemployed persons in jobs.

The internet may be used by both individual employers who are looking for domestic workers, including caregivers, and those who want to work in these jobs. However, since women who want to do domestic work have no internet access in most cases, they apply to the Agency personally. There, they can take part in courses in elderly and child care and get their certificates. Though people who have found workers and jobs in domestic services through the Agency think this way is more secure and reliable, the official interviewed says this thinking has no objective basis. The Agency personnel try to make correct matching and placements by using their initiative after interviews. A relationship similar to trust which is established between employers and job seekers when intermediaries are acquaintances is observed here between the two parties via personnel's experience in doing correct matching and placements. In Agency services, for example, an individual employer may apply to the same personnel

³¹ Representatives from the unions EVID-SEN and İmece report that among complaints reaching them, events taking place in workplaces where workers are directed by private counselling agencies are more frequent and cases such as harassment, assault or abuse happen mostly in these places. These agencies get their commissions by acting as intermediaries but almost never take into account the characteristics of workplaces where they are directing workers. According to EVID-SEN President Gülhan Benli, there are standard interviewing sessions held by intermediary firms with their applicants: "You wait to see whether they will open your mouth to examine your teeth. They investigate even our grand grandparents, but do not bother checking whether there are swindlers or perverts among them when it comes to employers and they just send you there whoever may they be by giving you the address. Being an employer means being unquestionable. You just go without any idea of who you are going to work for. When you are in and the door is closed, your fate is left to heavens" (Radikal, 19 October 2012)

and want him/her to find the worker he is looking for, judge the candidate on his/her behalf and refer if considered as “correct one”. The employer may declare to the Agency the amount he is going to pay, but this amount is later re-discussed between the employer and worker. The issue of social security is considered as an issue that must be settled personally between the two.

In the period 2007-2012, 164 individual employers applied to the agency looking for child, sick and elderly care workers. Of these applications, 28 were responded to, 84 could not be and 47 were recorded as “uncertain”. The last category may be interpreted as those who found workers but not reported in to the agency.

Within the year 2012, 5,278 persons participated to training courses in child, elderly and sick care. Of these trainees, 4,626 were females and 662 were males.³² Given that the number of persons employed in these areas by individual employers is limited, it can be considered that these trainees took part in training programmes mostly for employment by firms and agencies providing care services.

5.1.2. Private intermediation agencies

According to a private employment agency manager interviewed, persons applying to their agencies are asked for documents such as health report, judicial record, detailed registration and residence documents. They are further given tests to assess their “emotional intelligence”. In case they are placed in jobs, a bill is sent to their employers amounting to one monthly wage they are going to pay to their employees. According to the same person interviewed, the İŞKUR monitors whether social security contributions of newly recruited workers are paid. However, interviews with İŞKUR reveal that there is no such monitoring. Some employers, thinking that social security contributions must be paid in case the placement service is billed, ask the agency not to bill the service. The private employment agency mentioned says they do not mediate for the employment of foreigners since it is illicit. According to this agency, other firms recruiting women from Georgia let them stay in houses they rent in return for a commission amounting to 500 US dollars. In responding to a question concerning social security, this person says social security status of women they place in jobs is a matter to be settled by the employer and employee and it can be presumed that “it will never happen”. There may be some firms that want the social security payments to be made to the firm on the ground that they will complete security registration. However, while they may may deduction from the worker’s salary, they may do so without start the procedures for social security. When an employer is not satisfied with services of an employee and informs the agency 15 days in advance, the agency itself provides these services free for three times within three months. The rate for care services varies in the range 1,000 TL-1,400 TL and depending on whether it is live-in or not. The employment agency we are talking about also arranges for daily cleaning work and gets 30 TL as intermediation fee out of 120 TL that the employer pays to the worker.

Another intermediary firm which works only with local caregivers says the monthly pay is 1000 TL plus transportation costs for a work of 5 days a week. In relation to social security, the following statement was made: “If you want to go ahead with it, then you have to deduce it from the salary. In any case, if you don’t have your enterprise, how in the world can you do it? It could be optional security which requires deducing 200-250 TL which workers do not want. So they don’t want security coverage.” This firm does not require its applicants to submit any document thinking that in case any health report is supplied this may lose its validity until the time that the person is actually placed in a job. So applicants who want to have health reports can get it by their own initiative and means. In return for intermediation, the firm takes from the employer 75% of the first monthly wage paid. If there is any need to change the worker within the first three months, no fee is charged for the second try.

Still another firm operating in the field of cleaning work say they arrange workers for big companies rather than private households and do not work for private persons. In rare cases where private households ask for workers, the location of the household is taken as criterion and a team of two is sent

³² Calculated by using tables supplied by the General Directorate of İŞKUR.

for the safety of workers. The fee asked for a team of two is 180 TL. Although it is said that social security procedures are undertaken by the firm itself and this is included in the fee, this information does not seem reliable.

The Istanbul Association of Private Employment Agencies states that in case they would be authorized to place foreign workers in jobs in domestic services, they could prevent the exploitation of foreign workers by intermediary firms which are engaged in illicit activities without even having their offices and provide better and decent services to employers. As a matter of fact, in a document containing their suggestions presented to the MoLSS, this association asked for a legislative arrangement that will allow them to get in contact with private employment agencies abroad, obtain work permit for the employee they have found on behalf of employing family and to directly charge the household concerned for services rendered, which will mean more active struggle against unauthorized firms.³³

Formal channels are used more and more in the placement of domestic workers to jobs. Of these channels, services delivered by the İŞKUR are preferable for being more reliable and bringing no additional cost to employers. However, given the limited number of service beneficiaries, it seems that it is necessary to further improve these services and build awareness about their availability. It is desirable to stop the activities of firms operating without İŞKUR license and to more closely scrutinize the job placement activities of private employment agencies.

³³ Interview with President Vural Şeker on 7 August 2012.

6. Social parties and women's organizations

This part of the study addresses the approaches of workers' and employers' unions and organizations of domestic workers to domestic work. In this context, interviews were held with leaders of unions affiliated with three large confederations organized in the trade of general works, residence workers' branches of these unions and confederations themselves. The Turkish Confederation of Employer Associations (TİSK) was also interviewed. This part also reflects the views of EVID-SEN and İmece Women's Union Initiative which stand for defending the rights of domestic workers.

6.1. Trade Unions

Workers' unions organized in the trade of general works are aware of the reality of domestic workers, consider their specific problems and stress the need for organizing these workers. However, with the exception of Genel-İş (General Service Workers Union of Turkey), İstanbul Branch of Residence Workers headed by a woman unionist, this awareness has so far not been a motive for taking action to organize domestic workers. In general, workers' unions have no publications focusing on domestic workers and the issue is not discussed in their gatherings and general assembly meetings. The problems of domestic workers are regarded as a part of the general problem of lack of security and organization as well as informal employment. Organizing domestic workers is not a priority presently for the trade unions, which pointed out that they even faced obstacles in organizing workers employed by sub-contractors of municipalities. According to trade union leaders even formally and regularly employed workers face grave problems when it comes to unionization and there are even more serious obstacles to the organization of domestic workers. Nevertheless, in spite of these serious difficulties, they think it is not altogether impossible given the situation of residence workers.³⁴

Trade union representatives are of the opinion that domestic workers are included in the trade "General Works". When trade unions in this trade organize residence workers they come across their wives who are domestic workers. The individual employers of residence workers are also the employers of domestic workers. Indeed, the main difference between residence workers and domestic workers is that residence workers work in shared locations attached to the residences and do outdoor work while domestic workers perform their services mostly inside individual households. The workplace of both residence and domestic workers is related to buildings/houses.

As far as the organization of domestic workers is concerned, it appears that outcomes will be better if unions organizing residence workers would try to organize domestic workers as well. One trade union leader thinks that organizing domestic workers is not as hard as it is assumed. According to this unionist, methods used in organizing residence workers are applicable to domestic workers as well. Reaching few domestic workers with an ad or declaration will be a means for reaching many more. This method worked when working with residence workers and steps were taken forward in organizing them through a chain of information. Meanwhile residence workers also get together in their associations and news about union activities are spread through these associations. These approaches may be applicable to domestic workers as well. Also, while organizing residence workers, it will be easier to reach domestic workers employed in the same apartment or building complex.

The problems faced by residence workers are similar to those of domestic workers. Overtime work, not being entitled to leave on religious and national vacation days and being held responsible in cases of theft etc. are among their common problems. While residence workers are mostly males, the opposite is true for domestic workers. Among residence workers too there are persons working for more than one employer. They can organize in unions and are entitled to the benefits of collective agreements. The same can be applied to domestic workers also working for more than one employer.

³⁴ Although the Labour Law and relevant legislation uses the term "building janitor", trade unions find the term "janitor" inappropriate for the person working and instead use the term "residence worker." There are also terms such as "building personnel" that are used.

Another point worth mentioning is that for residence workers, unionization is important not only in terms of rights gained through collective agreements but also entitlement to rights deriving from the Labour Law even when there is no collective agreement and that legal support extended by unions to residence workers constitutes an important instrument for organizing. Unionized residence workers are referred to union lawyers when they are in need of legal counselling and others not unionized yet want to join the union after hearing about this legal support. By the same token, it can be said that legal support provided by unions will play an important role in organizing domestic workers as well.

It is easier to organize residence workers when they work in residential sites employing more than one worker. Others in individual buildings are less daring in union membership since they work alone and hide their union membership from their employers. In this respect, domestic workers stand closer to residence workers in single buildings. The relative success achieved in organizing residence workers working for individual employers could not be repeated in the case of workers employed in residential sites through cleaning firms. These workers cannot benefit from income tax exemption that residence workers enjoy. Employing residence workers via cleaning firms as a strategy of “outsourcing” is preferred by individual employers to evade their responsibilities as employers. Analogously, it can be said that the formalization and unionization of domestic workers will lead individual employers to apply more to cleaning firms.

6.1.1. DİSK (Confederation of Progressive Trade Unions of Turkey) - Genel-İş (General Service Workers Union of Turkey)

In 2009 the president of Residence Workers Branch of Genel-İş in İstanbul took some initiatives for organizing domestic workers. While summarizing the experience with domestic workers, she said the process had some similarities with the case of residence workers. As in the case of residence workers, when it comes to communicating with employers in the process of organizing domestic workers, the majority of employers want it to take place at weekends or evenings during the week since they are busy in their business during working hours.

According to her, the present interest of the union in organizing domestic workers first started when the president of the EVID-SEN approached the DİSK President, expressing their desire to get organized. Contact were maintained over some time through the İstanbul Branch of Residence Workers. As a strategy geared to including domestic workers in the Labour Law and organizing them, she suggested the following path: holding meetings with domestic workers; sending membership documents of a group of domestic workers to the MoLSS; in case these documents are returned by the Ministry on the ground that these workers have no social security and workplace registration, continuing with public opinion building efforts, resorting to the judiciary and keeping the issue in agenda. She was not in favour of having EVID-SEN established as a separate union. In 2009, she applied to the Organization Department of Genel-İş in writing saying domestic workers wanted to get organized and they would proceed with organization work if the headquarters of the union gave its green light to it. She further suggested de facto enlisting women in domestic services as union members and sharing this with the public and preparing draft legislation on amending the Law No. 4857 so as to cover domestic workers and a regulation on the working conditions of domestic workers to be sent to political parties having their groups in the parliament. However, the headquarters of the union thought they would confront legal obstacles in organizing domestic workers. As a matter of fact, while filling out membership forms social security registration and workplace numbers of workers are to be entered. Since this kind of information does not exist in the case of an informal worker, the MoLSS rejects membership. According to the headquarters of the union, it is first necessary to have the law amended and domestic workers included in the Labour Law.

It should be mentioned here that since social security coverage is not a must for union membership, it appears possible to enlist domestic workers informally employed and send their membership forms to the MoLSS by leaving social security and workplace registration numbers blank. In such a case, the

MoLSS should normally consider these forms as notification of unregistered work, conduct necessary inspection and apply sanctions accordingly. However, according to the the Genel-İş official we interviewed, membership forms submitted to MoLSS with social security and workplace registration numbers left blank, were sent back by the MoLSS, on the grounds that this information is missing.

The president of İstanbul Residence Workers Branch, on the other hand, is convinced that a joint work waged together with trade unions, academics and women's organizations could bring success as in the case of residence workers which are now included in the Labour Law. She also thinks that unions organizing residence workers in the General Works branch are in more advantageous position when it comes to organizing domestic workers. This advantageous position derives from the existing trade union structures, ties with residence workers whose wives are domestic workers and spatial connections between the workplaces of residence and domestic workers. If making use of these advantages and organizing domestic workers is adopted as trade union policy, she thinks, a stronger movement can be created by collaborating with EVID-SEN and İMECE.

6.1.2. TÜRK-İŞ (Confederation of Turkish Trade Unions) - Belediye-İş (Municipality and General Service Workers Union of Turkey)

There is no information about any effort by the TÜRK-İŞ, at confederation level, related to domestic workers. In an interview with union leaders from Belediye-İş affiliated to TÜRK-İŞ, it was said that the union is active in organizing residence workers but not domestic workers. Their members among residence workers are few in numbers and they are mostly those working in large residential sites. They say problems faced in any trade are valid for this specific area as well. The fear of losing existing jobs as a result of union membership keeps workers away from unions.

They say at the stage of organizing they reach residence workers by visiting their respective buildings or residential sites. As a union with competence to sign collective agreements in this branch of activity, they don't face the problem of workplace threshold (50%) when acting collective agreement for a single residence worker. In large residential sites, on the other hand, they can enter into collective bargaining with site manager when they enlist half of workers plus one in the site concerned.

Organizing residence workers and domestic workers employed via cleaning firms appear to be more problematic. When workers are registered over the firm, unionization must take place on firm basis too and signing a collective agreement would require the union membership of more than half of workers there. However, these workers are scattered as two in one place, three in another and so on and this distribution frequently changes. In this context, it is virtually impossible to organize workers dispatched by firms. Whereas, in the case of apartment buildings or sites where counterparts are individual employers, organizing workers is not impossible though difficult.

The Belediye-İş thinks that problems that domestic workers face in both working conditions and organization emanate not only from poor legislation but also from violations of trade union rights and barriers to getting organized in practice.

6.1.3. HAK-İŞ Confederation - Hizmet-İş (Union for Entire Municipal and General Service Workers)

The views of Hizmet-İş, affiliated to HAK-İŞ Confederation, on the issue are no different from those of the other two unions interviewed for this study. An official from the HAK-İŞ Confederation says they are concerned with the problems of domestic workers at confederation level and particularly in the context of the activities of their women's committee. In 2006, during a meeting held in İstanbul on women employed informally, the issue of domestic workers was also addressed. Following adoption of the ILO Convention No. 189 and also with the contribution of international organizations, the Confederation brought its ratification on the agenda and this issue was taken up during a widely

attended meeting held on the occasion of March 8th International Women's Day 2012. There were also contacts with EVİD-SEN and İMECE. In this context, it appears that the issue of domestic workers is addressed at the policy level and discussed in the context of women's committees and international relations.

The HAK-İŞ says that Turkey should first ratify the ILO Convention No. 189. The Confederation also thinks that the rights of domestic workers in the context of individual employment relations should be clarified. According to HAK-İŞ, it will be better if working conditions of domestic workers are arranged by a separate legislation instead of having it together with other workers covered by the Labour Law. It will be useful if an easily understandable and feasible arrangement is introduced by taking into account the concerns of employers and workers majority of whom are women. Such arrangement will enjoy higher chance of success if it makes it possible to find out about practices and rules by applying to a single source. This arrangement should be attractive to domestic workers who stay away from formal employment since their husbands are already covered by social security as well as to employers most of whom are working women themselves.

There is no activity for organizing domestic workers either at union or confederation level in HAK-İŞ. Nevertheless, trade union leaders think that it is possible to organize domestic workers as was the case with residence workers. It is also stated that it is the policy adopted by the Confederation to have a trade union in each and every trade and consequently doing this in the field of domestic workers is not out of agenda. Finally it is said that this kind of organization should pursue the objective of not competing with existing unions but providing a roof for domestic workers who are looking for one.

6.2. TİSK (Turkish Confederation of Employer Associations)

According to TİSK representatives interviewed, it is not possible to apply the Labour Law No. 4857 which mainly contains provisions regulating the industry on the basis of full time work, to domestic workers. The Law of Obligations introduced very detailed arrangements relating to domestic workers which, in some matters, go beyond the Labour Law. Under the Law of Obligations, whether relevant legislation is abided by or not can be overseen by labour inspectors from the Ministry. TİSK's further comments in its evaluation text on the draft Report are as follows:

"The inclusion of employees working in the domestic services in the scope of the Labour Law is not suitable due to various reasons such as the nature of this type of work, working conditions, the lack of complete dependence to the employer, the uncertainty of the job description, the presence of a large number of individual employers, often the lack of regularity and continuity of the work and the difference in the concept of workplace. Unless undeclared work in the field of domestic services is prevented, insurance awareness is secured and employees and individual employers are informed on rights, obligations and sanctions, inclusion of domestic workers within the scope of the Labour Law shall not result in a different situation than it is today. Over all, even though they are within the scope of the Labour Law, one in every five wage earner is working informally in Turkey. Therefore, information and awareness-raising activities for domestic service employees are of primary importance."

The TİSK states that even those who voted for adoption of the ILO Convention No. 189 expressed their doubts about its actual implementation. Countries ratifying to this Convention are mostly those who send abroad their own citizens to work in domestic services. The EU countries have not yet acceded to the Convention. Turkey should avoid acting too hastily. She should first secure the implementation of the provisions of its domestic legislation.

"Social insurance programs cover the regular paid employees while irregular, low-income groups are excluded from the system. Therefore appropriate programs should be developed that allows these types of workers pay lower premiums suitable to their income levels. Accordingly,

- Insurance premium rates, both for the employee and the employer can be lowered or these premiums can be paid by the state for a certain period of time. Low premium payment will result in a lower replacement rate but such low pensions may be supported by social assistance.
- Individual notifications by employers to the Social Security Institution and the procedures of payment of the premiums can be facilitated."

TİSK suggests that in developing its own system, Turkey can benefit from best practices of other countries.

TİSK believes that for the solution of the existing problems, institutionalization in domestic services is extremely important and suggests the employment of domestic workers through private employment agencies within a framework of temporary employment. TİSK considers this to be a form of flexible employment which will secure the inclusion of domestic workers within the scope of the Labour Law, the Occupational Health and Safety Law and the Social Security and General Health Insurance Law. According to TİSK legislative action on this issue will close the gap. General Directorate of Labour of the MoLSS also considers that employment of domestic workers through the Private Employment Agencies in accordance with the EU Directive will be appropriate.

6.3. Women's Organizations: EVID-SEN and İmece Women's Union Initiative

The leading women's organizations in this field, the EVID-SEN and İmece Women's Union Initiative essentially oppose practices and mentality making women's labour invisible and disvalued and placing the full burden of domestic work upon the shoulders of women. They work for instituting social respect for women's unpaid domestic labour, fairer sharing of household work among household members and recognition of the status of paid domestic workers as workers in proper and their legal rights. The common demand of both organizations is the ratification of ILO Convention No. 189 by Turkey and the realization of necessary amendments in domestic legislation.

6.3.1. EVID-SEN

A group of domestic workers started to gather in meetings in İstanbul Genel-İş building in 2009 and at the end of their discussions initially focusing on establishing an association, participants eventually decided that establishing a trade union instead would be better in protecting the rights of their members and improving the working conditions of domestic workers. Upon this decision, the "Domestic Workers Solidarity Union" (EVID-SEN) officially applied to İstanbul Governorate on 15 June 2011. The Governorate returned the submitted documents with an official notification dated 23 June 2011 on the ground that the foundation of the union was contrary to the legislation in force, that domestic workers are not entitled to organize in trade unions and any organization of domestic workers could only be an association. However, personnel from Beyoğlu Police Security Office who were in charge of returning the documents could not find anybody in the address specified and the documents were returned back to the Governorate. Hence, the EVID-SEN gained judicial identity as of 23 June 2011 according to article 6/4 of the Law No. 2821. On this event, since the trade union was de facto established, the Governorate applied to Bakırköy Labour Court on 19 September 2011 requesting the activities of the union to be

suspended. The court considered the application of the Governorate as a legal case under Article 54/1 of the Law No. 2821 and decided on 22 September 2011 to suspend the activities of the union on the ground that unions can be established only on the basis of branches of activity and that Article 60 of the Law No. 2821 defined branches of activities excluding domestic works and that there was no need to listen to the counter opinion of the union. In our interview, EVID-SEN president Gülhan Benli said they brought the case to the Court of Appeals, giving us a copy of their appeal. During our search of information on the state of the case in the Court of Appeals, however, we found out that the decision of the Bakırköy Court could not be delivered to the union and consequently the file was not sent to the Court of Appeals and kept by the Secretariat of the Labour Court in Bakırköy. The President of the union was finally informed about the court decision and the process in the Court of Appeals could be started after more than a year from the Labour Court's decision.³⁵ The 9th Legal Department of the Court of Appeals overturned the case on 27.12.2012 (decision 2012/39406, No. 201 244 479) in terms of subject matter jurisdiction and assigned the case to the Courts of First Instance. In this context, the case is still in progress. Since the Trade Union Law No. 2821 as the basis of the Labour Court's decision is no more in effect and since the activities of domestic workers are listed under trade No. 10 in the new Regulation on Branches of Activity, it can be said that now there is no legal barrier for the union to start its activities.

EVID-SEN emphasizes the importance of legal recognition of domestic works and workers mainly in the sense that this would help domestic workers to build self-respect. The union wants domestic works to be recognized as an occupation and domestic workers to enjoy the same rights as other workers in terms of their working hours, rest, overtime work, annual leave and wage rates. The union is carrying out its activities to ensure social security coverage, collective bargaining and job placement through the union. The union expects the Government to include domestic workers in social security coverage as specified by the ILO Convention No. 189, bring rules in regard to health and safety at work, adopt measures of protection from sexual abuse and violence, prevent abuse by private employment agencies and introduce additional arrangements for migrant domestic workers.³⁶

During its two years of organization and campaign efforts, EVID-SEN states its major lines of activity as follows: Extending material, legal and psychological support to victims of employer abuse and violence; creating an informal "pool" to provide job opportunities; press releases and protest marches to build awareness on the problems of domestic worker; ensuring media coverage through news and interviews; organizing meetings in several neighbourhoods of İstanbul and participating in platforms waging struggle against informal employment and violence against women. The union concentrates its activities in İstanbul. The material and human resources of the union are extremely limited to respond to the needs in other provinces of the country. EVID-SEN is also trying to learn from the international experience in this area by its contacts with International Domestic Workers Research Network, International Domestic Workers Network and Network for the Organization of Women in Informal Sector.

According to EVID-SEN, even in the existence of legislative and regulatory arrangements, their effective implementation still requires a strong organization of domestic workers. The organization asserts that there is need for professional, technical and financial support in many areas including expanding efforts for unionization, training leaders, building public opinion for necessary legislative changes, extending legal support to domestic workers in urgent matters and maintaining international links.

³⁵ Trade Union Law No. 2821: Statutes and documents contrary to law.

ARTICLE 54. If the constitution of a trade union or a confederation is contrary to the law or is incomplete during the founding process, at the request of the Ministry of Labour and Social Security, the Ministry of the Interior or the governor, the local competent court of law after hearing the founding members if deemed necessary, may within three working days, order the said organisation to discontinue its activity as provided in the seventh paragraph of section 6. The court shall grant the organisation a time-limit not exceeding 60 days to amend its rules or to complete the procedure in order to bring them into conformity with the law. The court shall lift the decision to bar the activities after the organisation has amended its rules and completed the documents, bringing them into conformity with the law. The court shall order the trade union or confederation to go into liquidation if the organisation's rules and documents have not been brought into conformity with the law within the time-limit imposed. This decision of the court shall be final.

³⁶ The text presented to the meeting of Global Trade Union Federations (8-9 September 2011), EVID-SEN's website, 15.9.2011

6.3.2. *İmece Women's Solidarity Association's Initiative for a Union*

Before the foundation of the İmece Women's Solidarity Association, the "Women Studies and Solidarity Centre" (KADMER) established in İstanbul Esenyurt in 2001 was active in the struggle for economic and democratic rights of women. Beginning 2006, activities focused particularly on the problems of domestic workers and at present efforts are directed to the establishment of a women's union. Although İmece organizes many activities for domestic workers, its priority is to secure the participation of domestic workers in the activities of the association rather than enrolling them as association members. The Association has limited number of members. The İmece team is considering establishing a union structure. They assume that under the new Trade Union Law they can go on with a trade union, but cannot enlist members since this requires active workers and social security coverage. As in the case of Fatima Aldal mentioned above, the İmece defended the rights of domestic workers by creating public sensitivity about fatal work accidents, bringing law suits in such cases and following them up and, for the first time in the case of death of a domestic worker, mobilizing the MoLSS to assign a labour inspector to examine the case. The association also organized meetings to discuss relevant issues, carried out a campaign under the slogan "Decent Work for Domestic Workers" for the ratification of ILO Convention No. 189, established contact with the International Network of Domestic Workers, made public statements concerning the rights of domestic workers, participated to meetings and demonstrations and conveyed its demands concerning legal arrangements to political parties and MoLSS officials. In essence, the İmece Initiative suggests the inclusion of domestic workers in the Labour Law No. 4857. They formulated their suggestions as follows:

- The exception clause in paragraph (e) of Article 4 in the Law No. 857 must be deleted. On the basis of this, the article in the Law No. 5510 relating to those not considered as under social security coverage must be revised. As in the case of building janitors, there must be a separate regulation and policy guidelines regulating the working conditions of domestic workers.
- In the Law on Occupational Safety and Health, articles contradictory to the specific characteristics of domestic services such as the issue of inspection of private sphere, may be held as exception for domestic work. In other words, principles related to domestic services may be incorporated by a separate directive entitled "inspection of domestic works".
- The procedures of inspection could be different; for example, in the legislation concerning the work of labour inspectors, the procedures could be based on the statements of the domestic workers and employers might be obliged to notify the authorities. Further, in the Regulation on the Construction of Workplaces and Residential Buildings, it would be appropriate to make it obligatory to have windows and balcony doors open inward. Health and safety training of domestic workers may be undertaken by trade unions.
- In regard to the implementation of the social security system, state-employer cooperation is necessary for the solution of the problem. The UYAP (National Judicial Network Information System) and e-state practices, which are presently on the agenda, may be adjusted so as to be in line with social security arrangements for domestic workers. Until full establishment of the system or for a period of at least 5 years, social security contributions of domestic workers should be paid from the general budget.
- There are no occupational standards on domestic services. There is need for a clear definition of the occupation and classification of related services. These standards should be set and courses for building occupational qualifications in domestic works should be deliverable by local governments, organizations of domestic workers and women's organizations.
- The TURKSTAT should introduce specific statistical arrangements in relation to the number and status of domestic workers, related work accidents and occupational diseases.

Both of EVID-SEN and İmece have their reservations on the practice of placing domestic workers to their jobs by private employment agencies or by intermediary firms operating as consulting firms. Influential in this reservation is negative experiences in this field including the deeds of fully informal firms mostly conducting their intermediary work for national and migrant women as “human brokerage” which ends up in severe cases of harassment, assault and abuse. The TİSK, on the other hand, is of the opinion that supervised activities of private employment agencies can contribute to the solution of the problem.

7. Political Parties

The issue of domestic workers is gradually finding wider space on the agenda of political parties as well. In 2012, for example, there was one proposal for a parliamentary investigation and two parliamentary questions were raised in the Grand National Assembly (TBMM) concerning domestic workers. Some political parties organized meetings to discuss the problems of domestic workers and possible solutions, with the participation of different actors and academics.

The Women's Branch of the Republican People's Party (CHP) organized a "Domestic Workers Workshop" on 6 April 2012 with the participation of academics, representatives from trade union and women members. The workshop discussed the overall state of domestic works and workers in Turkey as well international examples and models related to the organization of domestic workers. Major policy lines were identified as follows: Including domestic workers in the scope of the Labour Law accompanied by specific regulations or, as an alternative, drafting a separate legislation for domestic workers; introducing necessary sector-specific arrangements including the cheque system to materialize the right to social security; including domestic workers in the coverage of legislative arrangements and inspection system related to occupational health and safety; and ratification of the ILO Convention No. 189. As for removing barriers to the organization of domestic workers, suggestions were of more specific nature including: removal of branch of activity based thresholds for union membership; legalizing enterprise based organization; enhancing the cooperation of the organizations of domestic workers with other women's organizations; working particularly with women's commissions in bar associations; facilitating the granting of work permits to migrant women engaged in domestic services; organizing campaigns to encourage employers working with domestic workers to formal employment relations; inclusion of the rights of domestic workers in women's organizations' CEDAW Shadow Report; eliminating those elements that run counter to human rights in visual supervision of domestic workers; organizing trainings to enhance the level of awareness of domestic workers; having social security contributions of domestic workers paid by the state for a period of time and sound collection and publication of statistical data relating to domestic workers.

On 18 October 2012, the Women's Branch of the Justice and Development Party (AKP) organized a workshop on "Improving the Working Conditions of Women in Domestic Services and Search for a Social Model" with participation of by academics, government authorities and representatives of social parties, and presented a preliminary outcome report containing suggestions made in the workshop. Development of social policies for domestic workers and setting of standards through job definitions were the main issues discussed during the workshop and there was also focus on measures to be adopted to include these services in the social security system. Emerging suggestions for solutions include the following: Simplification of bureaucratic formalities in social security procedures; ensuring inter-agency coordination; introducing improvements/flexibility in contribution and age requirements for retirement and application of cheque system for social protection purposes. Other suggestions include stricter control of the activities of private employment agencies and adoption of relevant occupational health and safety measures with due account of the specific circumstances of domestic workers.

Conclusion

Urgent measures are needed to improve the working conditions of domestic workers and ensure their social security coverage. This requires meetings with the participation of all relevant social partners and women's organizations to discuss the issue from various dimensions and perspectives. Starting with the MoLSS in the first place, all governmental organizations and agencies should play their roles in this regard.

The first step to be taken is the ratification of the ILO Convention No. 189 concerning decent work for domestic workers and bringing domestic legislation in alignment with its provisions. The following point must be borne in mind while amending domestic legislation accordingly: informality, which is the dominant character of domestic services, means employment without legal protection for workers while it nevertheless brings along some advantages for both employers and workers. This form of employment based on "trust" has the dimension of both material and pecuniary support in favour of the worker going far beyond sheer wage. From the point of the employer, it is a matter of finding an honest and loyal worker to whom he can safely leave her home, child or an elderly family member. Hence, it may be inferred that the preservation of this informality is desired by both sides. It will therefore be useful if any new legislative arrangement takes due account of the peculiarities of this form of employment.

The central demand of the organizations of domestic workers is the recognition of domestic workers as workers in the proper sense, covered by the Labour Law. The fact that they are covered by the Law of Obligations is perceived in a way that they are not recognized as workers and thus deprived of rights that others are entitled to. Even though their status in the context of the Law of Obligations is no barrier to their social security coverage and organization, it is thought that domestic workers are not entitled to the right to social security and unionization since these are considered as rights granted in the context of Labour Law. Thus, domestic workers' coverage by the Labour Law will have a significant psychological effect as well. Furthermore, the fact that residence workers with some common characteristics are covered by the Labour Law and subject to separate regulations suggests that the same could be valid for domestic workers as well. Hence, provisions specific to domestic work may be provided through regulations. One important point to be taken into account in legislative arrangements is that they should be clear, concise and devoid of formalities in practical implementation.

Public institutions and organizations and the social partners have different views on whether to include domestic work within the scope of Labour Law or make it subject to a separate legal regulation. This issue should be discussed comprehensively for its advantages and disadvantages taking into consideration examples from other countries and including academia in the discussions. Another point to be noted here are the views by some that the problems would be resolved if legislative arrangements are adopted allowing employment of domestic workers by private employment agencies through temporary employment relationship. The problems that would entail this kind of employment in general have been expressed by labour organizations and by various academic circles. In addition, since informal relationship networks outweigh in the employment of domestic workers due to socio-cultural factors, it is not difficult to predict that the share of private employment agencies would remain very low. Therefore, prioritization of temporary employment through private agencies as a solution to the issue does not seem realistic.

Women in domestic services attach importance to being covered by social security schemes. It will be appropriate to introduce flexible and facilitating arrangements with respect to contribution and age requirements that will encourage security coverage for women continually employed on the basis of a monthly wage. Some special models must be developed considering the special difficulties in including in security coverage of women working on a daily-basis for more than one employer. International practices may be of use in this respect.

Considering that there is no single occupational standard applicable to all domestic workers, occupational competencies should be identified firstly in the field of child, sick and elderly care services and made subject to standards and certification. The Occupational Competencies Institution and İŞKUR should take on responsibility in this regard.

Domestic workers need training. This training should focus on pedagogy, nutrition, hygiene and health for those in child, elderly and sick care services and on overall hygiene rules and use of machinery and equipment for those in cleaning services. In this context, it would be useful if women participate in vocational certificate courses delivered by İŞKUR or other trainings to be organized by municipalities.

Presently, in legal and constitutional terms, domestic workers have the right and freedom to organize, but until recently the exercise of this right was impeded in practice on the ground that they have no specific branch of activity. Domestic work is now included under the branch No. 10 in the new Regulation on Branches of Activity. Given this, legal venues must be urgently pursued to remove the injustice done to the EVİD-SEN whose operation is threatened by suspension on the ground that there is no specific branch of activity for domestic work.

Under the new law on trade unions, trade union membership is obtained by applying for membership through the e-government gate, an electronic system to be provided by MoLSS, and the acceptance of this membership application by the authorized trade union body specified by the bylaw of the union concerned. Membership shall be deemed as accepted unless this application is rejected by the union within 30 days. This new system of application must be arranged so as to avoid any objection by MoLSS on the basis of lack of social security registration which is used as a practical barrier to the organization of domestic workers.

In the face of these facts, it should be considered that MoLSS's choosing the way of recognizing the trade union membership of workers without security coverage and taking necessary actions against their employers would be important in both translating trade union rights and freedoms into life and preventing informality.

The trade union movement has its important tasks in organizing domestic workers. It would be perfectly in line with the core mission of trade unions if confederations accord the issue the weight it deserves and enter into solidarity with individual unions trying to organize domestic workers.

Given the increasing number of those working without security coverage including domestic workers as brought under the common concept "precariat", it is also important to encourage and support academic studies and research in this area including studies on real world examples.

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Annex: Opening Remarks by domestic worker Hoşgül Mehmet at "The National Conference on Decent Work for Domestic Workers" (20/02/2013)

"Director of the ILO Office in Turkey, confederation representatives, representatives of public institutions, academics, members of the press, distinguished guests. My name is Hoşgül Mehmet. I have been working as a domestic worker for 8 years. I would like to thank you for giving me this opportunity to address you at the opening session of this conference on "Decent Work for Domestic Workers" which excited me very much and I salute you all.

I was informed on the International Labour Organization's Convention No. 189, on Domestic Work about a year ago thanks to the Domestic Workers Solidarity Union to which I am a member. We observed that the Convention identified specific problems of domestic workers very accurately and generated solutions in many areas from payment of wages to violence, from the problems of migrant workers to private employment agencies. This Convention has become an important means of struggle in our organizational work and has been a source of inspiration to us. It is apparent that the Convention is based on serious field knowledge about us. Therefore, on behalf of all domestic workers, I would like to thank the International Labour Organisation for this valuable work.

The problems we, the domestic workers face in working life are many and diverse. I want to share these problems with you under several headlines. I think that we do not have control over our work, our time, our future and the labour market in which we work. I shall try to explain them one by one.

First of all, we do not have control over what we do. We do not have a specific job description. We find work as a child minder but have to perform nursing care, cleaning, cooking as well. We need to have a job description to prevent this situation. When we do not have a job description, however seriously we take our work, some things always seem to be missing. Together with my friends in our Union, we are working on a standard individual work contract as mentioned in the ILO's Recommendation No. 201. In this way, by specifying categories such as domestic work assistant, weekly cleaning staff, child and patient care assistant, we wrote detailed job descriptions for these categories.

Secondly, do not have control over our time. Most of the time, domestic workers cannot define their arrival and departure times or leave days. Depending on the private life of the employer, these hours and days always change. The private lives of domestic workers are not considered. Domestic workers live in someone else's life and someone else's time flow. Especially for those live-in employees, day and night get mixed. Since I worked for many years as a live-in worker, I know these problems first hand. Therefore, standardization taking into account the needs of workers and employers mutually is very important to us. For example, in the contract I mentioned, we divided the domestic work even to its smallest parts and calculated one by one how much time it takes. Thus, we aimed at regaining control over our time and securing the acceptance of domestic work literally as a professional job as defined by the ILO Convention.

Third, do not have control over our future. Since the employers can dismiss us easily, without any reason, we cannot guarantee our future. For example, in my last job I was dismissed for no reason, without any notice granting time to search for a new employment. In spite of the fact that social insurance is obligatory by law, very few domestic workers are insured. I myself am working without social insurance. We have friends who aged early since they experienced many illnesses from back pain to cancer, not yet classified as occupational diseases. None of them have a chance to retire. We are risking our future and our lives, in doing this job. So much so that sometimes we are disabled as a result of work accidents and even lose our lives. We are willing to work at the grassroots for the creation of awareness for social security of domestic workers. The support of the Ministry of Labour and Social Security, the Ministry of Family and Social Policies and Social Security Institute on this issue is very important for us.

Fourth, we do not have control over the labour market regulations in the sector we work. Domestic work is the easiest accessible sector for women who did not have an opportunity to be trained for another occupation because of their economic conditions or family structures. Many domestic workers, are not aware of their economic and social rights. Intermediaries in the labour market are able to exploit their weak and vulnerable status. Data collected by me and my friends from our own experience with dozens of employment agencies show that, some of these intermediaries receive commission from the workers although it is not legal; they are not capable of providing professional service, matching the needs of the employer and the employee and they can be abusive in job interviews.

The relationship of domestic worker with the home as a location is different from other people's relation. For us home workers, home means a location where we both live and work. Therefore, gender related problems in homes in both senses are much higher for domestic workers. We are subjected to injustice, psychological pressure, mobbing, degrading acts and even harassment and violence in homes we work. In our own homes, as all other women, we have to deal with the patriarchal order and gender division of labour brought about by it. So both as a family member and as an employee, domestic worker shoulders all kinds of inequalities and injustices. If the injustice and inequality to which the domestic workers are exposed begin in the home, then the home is the place where individual freedom and social justice should begin. For this reason, domestic workers should transform the home both as the space for work and for living. We are aware that the ILO Convention which recognizes domestic employees as domestic workers is a framework and a guiding text and that we cannot solve our problems alone. The real solution lies in the implementation of this Convention through legal and institutional arrangements and through grassroots organization as well. We ask that the related authorities in Turkey assume this responsibility and ratify the ILO Convention as soon as possible. We also request that the decision to suspend the activities of the Domestic Workers Solidarity Union in violation of the trade union rights of domestic workers and the ILO Conventions be overturned in the Court of Appeals. No solution on domestic workers can be implemented by excluding the domestic workers and their democratic organizations.

Entering working life is undoubtedly strengthens us. When I began to live in Istanbul alone and entered working life, I've seen that I got stronger and won my independence. However, new inequalities and injustices of the working life were awaiting me. As I started to discuss, negotiate and develop ideas to solve our common problems with fellow domestic workers my self-confidence increased; I learned to raise my voice against injustices. I now proudly say, I am a domestic worker; I demand domestic work to be recognized as work. I demand rules, standards, arrangements to be made which includes the ideas and requests of me and my friends. I demand these arrangements to be made to include migrant domestic workers as well. Most importantly, I demand the return of the dignity which has always been denied to domestic workers without further delay.

I and my domestic worker friends have a dream. We want to fight with whatever makes us feel inadequate, unworthy, powerless; to show first to ourselves and then to others that we can unleash the infinite potential that we carry within us. We call international institutions, public institutions and democratic mass organizations in Turkey to share our dream. For this reason, I would like to thank again the International Labour Organization and all the guests participating in this meeting."

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