

Remote work and domestic violence against women

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After the outbreak of the pandemic, many companies in Turkey either started or continued to work remotely and many of them aim to make remote work permanent in the post-pandemic period. Remote work, once a luxury of high-skilled employees, is becoming more common across the entire labor market. As large numbers of workers were instructed to work remotely from home-offices during the pandemic, reported domestic violence cases against women increased. Women have been treated as collateral damage in the ongoing fight against the pandemic. Given the expectation that remote work will remain commonplace once the pandemic is over, it is of great importance for the sake of women workers to provide sufficient protection against domestic violence. Turkish Remote Work Regulation is grounded in a mutual agreement between the employer and the employee, and it favors flexibility for employers over security for employees, it also overlooks the specific needs of women workers, including protection for domestic violence victims. Turkish National Act on the Protection of the Family and the Prevention of Violence against Women contains, promisingly, regulations regarding women workers, but it has not proved sufficient in providing the necessary protections. In order to meet the needs of women in an unequally organised work environment and for the realisation of not only de jure but also de facto equality between women and men in the world of work, new approaches are required.

Keywords: remote work, violence against women, domestic violence, workplace violence, COVID-19 pandemic, employment law, Turkish labour law.

1. Introduction

The COVID-19 pandemic, the lockdowns following its emergence and the measures taken by governments to deal with it have operated like an unprecedented, unique collective experiment in the history of human kind. The crisis caused by the pandemic has created an environment where those who were already disadvantaged have suffered the most. It has highlighted and exacerbated existing inequalities within the societies, affecting women specifically. Indeed, women working remotely during the pandemic have found the situation more drastic and challenging than was the case before. A particularly concerning issue is an increase in domestic violence cases against women. This paper aims to introduce the legal protections that exist for women working remotely against domestic violence against the backdrop of the COVID-19 pandemic in Turkey. First, it calls attention to the emergence of new remote work regulations. Second, it examines the problems faced by women who work remotely. Third, it points to the increase in violence against

women. The fourth and fifth parts are dedicated to the legal regulations that exist regarding remote work and domestic violence, respectively.

2. Basic research

2.1. The COVID-19 Pandemic and Remote Work in Turkey: From Luxury to Fashion

Following the outbreak of COVID-19 and especially after its spread around the world and the declaration by the World Health Organization that it constitutes a pandemic, the Turkish authorities imposed drastic restrictions on everyday life in order to stop or at least slow down its spread (Kasım 2020, 1). In this context, many companies either started or continued to work remotely from the beginning of March 2020. According to studies from the beginning of the pandemic period, 54 % of Turkish companies ordered to work remotely for their head office employees in the first week of the pandemic in Turkey, compared to 94 % in the third week (Centel 2020, 17; Mercer 2020). A recent study has indicated that 49.04 % of employees switched to a hybrid model of both remote and rotational work, 35.56 % switched to remote work only and 10.04 % switched to rotational work only (İlkkaracan and Memiş, 2020, 1). Importantly, 59 % of companies plan to continue working according to the remote working model once the pandemic is over (Centel 2020, 17)¹. Some well-known and powerful companies in Turkey have already stated that they aim to make remote work permanent, especially for office employees, in the post-pandemic period (e. g. Koç Holding makes remote working permanent for 35 thousand office workers)². This indicates that remote work, once a luxury of high-skilled workers, is becoming more common across the entire labour market. In this way, remote work, which was generally considered temporary at the beginning of the pandemic, is likely to remain for a long time.

2.2. The COVID-19 Pandemic and Women Workers in the Home-Office: The Mandatory Home-Office and Patriarchal Gender Roles

Thanks to the COVID-19 restrictions implemented in Turkey, remote work has to some extent had a mandatory character for many sectors and many types of work (Kasım 2020, 3). Moreover, due to curfews and travel restrictions, remote work has been limited to workers' home-offices. In this way, paid work and unpaid work have coincided in the same place, raising questions regarding where paid work starts, where it ends, what is the place and time of work and even when a person should be understood as a worker. In particular, remote work in a home-office and practised by women workers challenges the long-criticised public-private dichotomy.

¹ Peryön COVID-19 Nisan 2020 Anketi // Mercer Türkiye. 2000. Available at: <https://www.mercer.com.tr/rapor-ma-kale-arastirma/nisan-covid19-anketi.html> (accessed: 17.08.2021).

² Koç Holding, 35 bin ofis çalışanı için uzaktan çalışmayı kalıcı hale getiriyor // NTV.27.01.2021. Available at: <https://www.ntv.com.tr/ekonomi/koc-holding-35-bin-ofis-calisanini-icin-uzaktan-calismayi-kalici-hale-getiriyor,mzUeg8l8XUGZEKEBJJSjg> (accessed: 17.08.2021); Sabancı Holding uzaktan çalışmayı kalıcı hale getiriyor // NTV.17.03.2021. Available at: <https://www.ntv.com.tr/ekonomi/sabanci-holding-uzaktan-calismayi-kalici-hale-getiriyor,1cuEiCQ7nECuhntKOPBm0g> (accessed: 17.08.2021).

According to a survey, women in Turkey have been almost twice as likely to switch to working from home as men during the COVID-19 pandemic. In parallel, the working hours and workload of women both in unpaid and paid work have increased drastically. In Turkey, women do nearly four times as much unpaid work as men during the pandemic. Simultaneously, in households containing a female and a male partner, while the average workload (paid and unpaid work) of the former has increased, the total average daily workload of the latter has decreased (Ilkcaracan and Memis, 2020, 1). The closing of schools and day-care facilities combined with the rise of home schooling and home-offices have led to a return to (or at least the greater visibility of) classic gender roles in the country. Patriarchal gender roles have also been supported by different state regulations. For example, the Presidential Office Circular of 14 April 2021, aimed at regulating civil servants' remote work and working in rotating shifts during the pandemic, states that pregnant women and female staff with children under 10 years of age are considered on administrative leave during this time³. Even if this regulation is to be welcomed as a positive step in terms of finding a work-life balance, it is also controversial, as it only gives female civil servants with children under 10 years of age the right to administrative leave. By contrast, male civil servants are exempted from the regulation. Although this Circular was directed at civil servants as opposed to the workers of other organisations, it demonstrates how the state perceives women workers in society: as mothers and child carers.

2.3. The COVID-19 Pandemic and Domestic Violence Against Women in Turkey: Home is Not Always a Safe Place to Stay

Globally, even before the COVID-19 pandemic, one in three women have reported experiencing physical or sexual violence, mostly by an intimate partner⁴. The slogan of the Turkish government's campaign against the COVID-19 pandemic is 'Stay Home, Stay Safe'. But for many women, the home is not always a safe place to stay, the workplace is a refuge. As is the case all over the world, violence against women acts like a shadow pandemic in Turkey⁵. Indeed, in 2020, 300 femicides were committed and 171 women were found suspiciously dead in Turkey⁶. Women's organisations reported 20 femicide and 12 suspicious deaths of women in the month of July 2021 alone⁷. Sixty per cent of the women who were killed during the year 2020 were killed in their homes⁸. As large numbers of workers were instructed to work remotely from home-offices during the pandemic, domestic violence, which was formerly external to most people's working situation, became an internal ele-

³ COVID-19 Kapsamında Kamu Çalışanlarına Yönelik Tedbirler Genelgesi (Presidential Office Circular on Measures for Public Employees in the Context of COVID-19) // Resmî Gazete. 14.04.2021. 31454. Available at: <https://www.resmigazete.gov.tr/eskiler/2021/04/20210414-5.pdf> (accessed: 17.08.2021).

⁴ Devastatingly pervasive: 1 in 3 women globally experience violence // World Health Organization. 09.03.2021. Available at: <https://www.who.int/news/item/09-03-2021-devastatingly-pervasive-1-in-3-women-globally-experience-violence> (accessed: 15.02.2022).

⁵ Ibid.

⁶ We Will End Femicide Platform 2020 Report // Kadın Cinayetlerini Durduracağız Platformu. 2020. Available at: <http://kadincinayetleriniurduracagiz.net/veriler/2949/2020-report-of-we-will-end-femicide-platform> (accessed: 17.08.2021).

⁷ Veriler // Kadın Cinayetlerini Durduracağız Platformu. S.a. Available at: <http://kadincinayetleriniurduracagiz.net/kategori/veriler> (accessed: 17.08.2021).

⁸ We Will End Femicide Platform 2020 Report.

ment of the working relationship. Given the expectation that remote work will remain commonplace once the pandemic is over, it is of great importance for the sake of women workers to provide sufficient protection against domestic violence.

Domestic violence has long been discussed in the context of the (supposed) private-public dichotomy, but this is challenged in many ways by domestic violence against women who work remotely. The reluctance of the state to adequately regulate remote work is coincident with its unwillingness to interfere in the domestic space to the benefit of female remote workers. While remote work is on the rise and blurring the supposed boundaries between public and private, domestic violence against those who work remotely makes it imperative to question these very divisions.

2.4. Legal Regulations about Remote Work: Flexibility for Employers Favoured over Security for Employees

The Republic of Turkey is neither a party to International Labour Organization C177 — Home Work Convention of 1996, nor the European Union Framework Agreement on Telework of 2002. Nevertheless, remote work is not new to Turkish employment law. The 2016 amendment to the Turkish Labour Act No. 4857 acknowledges remote work as a type of employment relationship which is based on a written remote work employment contract (Art. 14, IV Labour Act No. 4857)⁹. According to the Turkish Labour Act, remote work is defined based on the use of technological communication tools within the scope of the work organisation created by the employer (Art. 14, IV Labour Act No. 4857). The 2016 amendment to the Labour Act also states that the details of the remote work employment relationship will be determined by a regulation issued by the Ministry of Labour and Social Security. However, the relevant contract parties had to wait until March 2021 for this regulation to be formalised, the Remote Work Regulation (RWR)¹⁰. So, when employers started to require their employees to work from a home-office due to the pandemic, there were actually no detailed regulations in place to guide them as to the details of remote work.

RWR specifically covers the following subjects: the arrangement of the workplace (Art. 6 RWR); materials and work tools (Art. 7 RWR); covering production costs (Art. 8 RWR); determining working time (Art. 9 RWR); communication between employees and employers (Art. 10 RWR); data protection (Art. 11 RWR); and occupational health and safety (Art. 12 RWR). With the exceptions of data protection and occupational health and safety, RWR largely allows the parties of the employment contract to determine the main variables of remote work depending on the existence of a mutual agreement between them. As RWR is grounded in a mutual agreement between the employer and the employee, it is easy to notice that it does not actually attach importance to the protection of employees generally. Considering the typical imbalance in strength of the parties of the employment contract, it is clear that the regulation favours flexibility for employers over

⁹ 4857 Sayılı İş Kanunu (Labour Act No. 4857) // Resmî Gazete. 10.06.2003. 25134. Available at: <https://www.resmigazete.gov.tr/eskiler/2003/06/20030610.htm#1> (accessed: 17.08.2021); İş Kanunu ile Türkiye İş Kurumu Kanununda Değişiklik Yapılmasına Dair Kanun, (Act on Amending the Labour Act and the Turkish Employment Institution Act) // Resmî Gazete. 20.05.2016. 29717. Available at: <https://www.resmigazete.gov.tr/eskiler/2016/05/20160520-24.htm> (accessed: 17.08.2021).

¹⁰ Uzaktan Çalışma Yönetmeliği (Remote Work Regulation) // Resmî Gazete. 10.03.2021. 31419. Available at: <https://www.resmigazete.gov.tr/eskiler/2021/03/20210310-2.htm> (accessed: 17.08.2021).

security for employees. Consequently, the regulation also overlooks the specific needs of women workers, including protection for domestic violence victims.

According to RWR, an employment relationship can be established directly, from the very beginning with a remote work employment contract (Art. 14, I RWR). Alternatively, with the mutual agreement of the parties, an existing employment contract can be converted to a remote work employment contract (Art. 14, I RWR). A worker in an existing employment relationship may also request to work remotely (Art. 14, II RWR). However, the employer is not obliged to accept such a request. Therefore, workers do not enjoy any recognised right to remote work according to the RWR. Nevertheless, the right to require that an employee work remotely is granted to the employer in the case of *force majeure* events, including pandemics (Baycik et al. 2021, 1691). In such instances, it is possible to switch to remote work with the employer's sole discretion, even without the consent of the employee (Art. 14, VI RWR). No exceptions are recognised for situations such as care responsibilities or domestic violence.

Nevertheless, the employer is obligated to inform the worker about occupational health and safety precautions, to provide the necessary safety training, to provide health surveillance and to take the necessary occupational safety measures related to the work equipment provided (Art. 12 RWR). The employer should also take into account the nature of the remote work undertaken by the worker (Art. 14/IV Labour Act No. 4857 and Art. 12 RWR). In this way, the employer must ensure that the working conditions of the remote worker are safe and do not threaten their health. (Astarlı and Baysal 2021, 2). An interpretation of this regulation, taking into account the needs of women workers as a group, should ensure that the occupational health and safety regulations included also cover domestic violence, as domestic violence is above all a health and safety issue. Occupational health and safety regulations could involve e.g. a violence prevention plan which includes policies and procedures, a report mechanism, trainings, but also paid, job-protected leave to help the victims to recover themselves.

2.5. Legal Regulations about Domestic Violence: Increasing Violence, Decreasing Protection

The Republic of Turkey is today neither a party to the Istanbul Convention (CETS) — Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence 2011, nor to International Labour Organization (ILO) Convention No. 190 — Violence and Harassment Convention 2019. Indeed, at the same time as all kinds of violence against women were increasing in pandemic-stricken Turkey, the country announced its withdrawal from the Istanbul Convention on 20 March 2021 — despite being the country where the convention was signed in 2011 and its first signatory — and denounced it effective on 1 July. The Istanbul Convention is based on the understanding that violence against women is a form of gender-based violence and a manifestation of historically unequal power relations between women and men (Preamble CETS). The Convention promotes the role of the private sector in preventing violence against women, including domestic violence (Art. 5, II; Art. 9; Art. 17 CETS). It also states that 'violence against women' — referring to all acts of gender-based violence, whether occurring in public or in private life — should be understood as a violation of human rights and a form of discrimination against women (Art. 3 CETS). However, even though Turkey subse-

quently denounced the Istanbul Convention, the Turkish National Act on the Protection of the Family and the Prevention of Violence against Women (APFPV)¹¹ states that in the implementation of it, the international conventions to which Turkey is a party as well as the Istanbul Convention should be taken as a basis. Whether judges actually use the Istanbul Convention when making their interpretations will only become clear with time.

The APFPV defines violence against women as all kinds of attitudes and behaviours that cause a violation of women's (and only women's) human rights by gender-based discrimination (Art. 2, I, ç APFPV). Domestic violence is described as all kinds of physical, sexual, psychological and economic violence that occurs within the family or the household or against other members of the family, even if the victim and perpetrator do not share the same household (Art. 2, I, b APFPV). Promisingly, the Act contains regulations regarding women workers. Certainly, a judge can prohibit the perpetrator from approaching the protected person, their residence, school or workplace, which is of great importance to women whose residence and workplace are the same (Art. 4, I APFPV). A judge can also decide to alter the workplace of the victim (Art. 4, I, a APFPV). A decision is carried out by the competent authority in accordance with the provisions of the relevant legislation to which the worker is subject (Art. 10, VII APFPV). Nevertheless, the regulation may also cause women workers to experience unfavourable practices regarding wages, career opportunities and other rights (Dulay Yangın 2020, 5). According to the Constitutional Court, if a woman who is a victim of violence requests a change of workplace, but this is rejected, her right to protect her material and moral existence is violated¹². The Act also states: If the protected person works and has children, nursery / kindergarten facilities are to be provided for a limited period of two months to support the participation of the protected person in working life (Art. 3, I, d APFPV). This appears to be a positive regulation in terms of ensuring the participation of victims of domestic violence in the working life, yet it is arguably insufficient through being limited to just two months.

In addition, according to the Turkish Trade Union and Collective Agreement Act (TUCAA)¹³, trade unions pay attention to gender equality in their activities (Art. 26, III TUCAA). This obligation could also be interpreted in such a way that the activities of the trade unions mentioned include activities aimed at preventing domestic violence (Dulay Yangın 2020, 6).

3. Conclusion

The pandemic crisis has both highlighted and exacerbated social inequalities in the world of work, including for women now working remotely in Turkey. Neither the individual needs of women nor the needs of women workers as a group have been considered during this unique period. At the same time as violence against women has increased, legal regulations have not proved sufficient in providing the necessary protections. Instead,

¹¹ Ailenin Korunması ve Kadına Karşı Şiddetin Önlenmesine Dair Kanun (Act on the Protection of the Family and the Prevention of Violence against Women) // Resmî Gazete. 08.03.2012. 28239. Available at: <https://www.resmigazete.gov.tr/eskiler/2012/03/20120320-16.htm> (accessed: 17.08.2021).

¹² Anayasa Mahkemesi (Constitutional Court of the Republic of Turkey) // T. C. Anayasa Mahkemesi. 17.07.2019. 2016/14613. K.S. Available at: <https://www.anayasa.gov.tr/media/6207/2016-14613.pdf> (accessed: 17.08.2021).

¹³ Sendikalar ve Toplu İş Sözleşmesi Kanunu // Resmî Gazete. 18.10.2012. 28460. Available at: <https://www.resmigazete.gov.tr/eskiler/2012/11/20121107-1.htm> (accessed: 17.08.2021).

women have been treated as collateral damage in the ongoing fight against the pandemic. The next steps will be crucial. In the context of Turkish law, Act on the Protection of the Family and the Prevention of Violence against Women, occupational health and safety measurements according to the Remote Work Regulation and trade unions role in gender equality could be a promising tool in the fight against domestic violence against women. However, in order to meet all the needs of women in an unequally organised work environment and for the realisation of not only de jure but also de facto equality between women and men in the world of work, new approaches are required. Such approaches should address the specific needs of women workers as a group in light of the complex and intersectional nature of the discrimination they experience.

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