

## **FLEXICURITY IN TURKISH LABOUR LAW and SECURITY LAW**

**S. Alp LIMONCUOGLU**

Izmir Economy University  
Department of Economy  
E-mail:alp.limoncuoglu@ieu.edu.tr

**Jale TASOGLU**

Dokuz Eylul University  
Business Administration Department  
E-mail:jale.tasoglu@deu.edu.tr

### **Abstract**

*The aim of this study is to focus on the concept of flexicurity , accepted as the new market model balancing the needs of employers for greater flexibility and the need of employees for security. The globalization process changes the economic and social structure of the countries in the world. These changes necessitate lawfull and institutional innovation too. The first step has taken in EU Joint Employment Report. It has been projected that flexicurity shall be activated through new regulations on laws, activate labor market policies, education and social security system. In Turkey the Act of 4857 has regulated the flexicurity concept and the Social security Law regulates the measures that ensure security to reduce of negative effects of flexible employment.*

**Key Words:** *flexicurity, security, labour law*

**JEL Classification:** **K31, J81, J83**

### **1. INTRODUCTION**

The concept of flexicurity, which started to bloom in Europe in the mid 1990's, became more important during the period when the Lisbon criteria of the European Union came into effect. The fact that extensive discussions are not carried out in regards to the concept and arrangements regarding the labor legislation have not referred to this development up until now in our country, does not mean that flexicurity does not exist in Turkey. An example is the unemployment insurance application in association with income security, implemented in the year 2000. Recently, in a similar way, the concept of job security, discussed for many years, was incorporated into the legislation. However, as well as bringing together various branches of flexibility and security under one roof, as explained above, the concept of flexicurity also indicates how both concepts take support from one another and what sacrifices both of them need to make.

### **2. THE CONCEPT OF FLEXICURITY**

In its simplest form, the concept of flexicurity is defined as "social security for those who work flexibly" (Keller/Seifert 2004) In accordance with the most referred to definition in academic literature, flexicurity is "*a political strategy that on the one hand, works to increase the flexibility of labor markets, working organizations and work relations simultaneously and in a well-thought manner and on the other, works to increase the securities (employment security and social security) of weak groups both within and outside of the workforce market*" (Wilthagen/Tros 2004).

Wilthagen/Tros, also emphasized some of the difficulties involved in defining the concept of flexicurity as just a political strategy. In line with the characterizations of flexibility and security in literature, they defined the concept as, “(1) *developing the biographies and labor market careers of employees, which are in a relatively weak condition, by providing work, employment, income and combination security to an extent thus, providing a sustainable, high quality labor market and social inclusion together with (2) numerical (both external and internal), functional, and wage flexibility to an extent in order to keep up with the changing conditions of competition and production timely and adequately.*”

Tangian defines flexicurity as employment and social security for employees with flexible agreements (Tangian 2005). In the “Flexicurity Pathways /Turning Hurdles into Stepping Stones” titled report, dated 2007 and prepared by the European Expert Group on Flexicurity, it states that the main principal of flexicurity is established by the two concepts being supportive of one another. Indeed, just as flexibility is not monopoly to employers, security is not monopoly to employees.

Today, the best analytic framework accepted, in order to analyze flexicurity policies is Wilthagen’s Matrix (Wilthagen and others 2003). It is based on the points where security and flexibility applications join and points towards possible team applications based on the organization. The European Parliament’s Employment and Social Affairs Committee states that the matrix, which they also use, flexibility is based on the Atkinson’s flexible business model (Atkinson 1985). In accordance, we are able to distinguish four different types of flexibility : **a)** External numerical flexibility; Refers to the adjustment of labor intake. Having the flexibility of employing and dismissing worker on temporary work (or other flexible labor relations) or fixed-term contracts; **b)** Internal numerical flexibility (working time flexibility); The flexibility the employer has in order to adjust the working hours, days and period without reducing the number of workers employed (from another point of view the flexibility of the workers); **c)** Functional flexibility; the flexibility the employer (or worker) has in order to transfer workers to different departments to carry out different activities and tasks within the work place therefore, changing the organizational structure; **d)** Wage flexibility; the flexibility the employer has in association with workers’ wages in line with changing conditions in the labor market or competition.

**Job and employment security**; the security that enables the worker to continue a certain job with a certain employer, and at the same time, even though it might not be the same employer, the security that it will always constitute a part of the worker’s working life, **Income security**; the security that protects your income if a paid job stops, slows down or unemployment occurs, **Combination security**; the security that in situation of social responsibilities and obligations such as personal and family matters that require the worker to take time off work does not affect the continuation of the paid job. As it stands, Wilthagen’s Matrix consists of 16 various combinations. With the help of the Matrix, countries can establish their own flexicurity situation and determine the strategy in accordance with their political terms.

**Table 1: Wilthagen's Flexicurity Matrix**

<b>Flexicurity</b>	<b>Job Security</b>	<b>Employment Security</b>	<b>Income Security</b>	<b>Combination Security</b>
<b>External Numerical Flexibility</b>	- Types of service agreements - Employment Protection Legislation - Early retirement	- Employment services - Training / lifelong learning	- Unemployment payments - Other social benefits - Minimum wages	- Job security for various types of leave
<b>Internal Numerical Flexibility</b>	- Shortened weekly working period / part-time working arrangements	- Employment Protection Legislation - Training / lifelong learning	- Complementary payments for part-time workers - Training benefits - Sick pay	- Different leave arrangements - Part-time retirement
<b>Functional Flexibility</b>	- Job enrichment - Training - Renting labor force - Temporary contracts	- Training / lifelong learning - Work rotation - Team work - Well qualified	- Performance based payment schemes	- Flexible working time arrangements
<b>Wage Flexibility</b>	- Local adjustments to labor force costs - Reduction in social security payments	- Amendments to social security payments - Employment subsidies - Salary supplements	- Collective wage agreements - Adjusted payments for shortened weekly working periods	- Flexible working time arrangements

Source. Eurp. Foundation for the Improvement of Living and Working Condition, 2007.  
 Security is also analyzed under four headings by Wilthagen and his friends:

### 3. THE COMMON ELEMENTS AND PRINCIPALS OF FLEXICURITY

In 2006, the European Commission organized a Three-Way Summit under the Finland Presidency at Lehti. The objective of the summit was to enable upper class employees and trade unions to contribute to flexicurity discussions carried out throughout Europe (European Foundation for the Improvement of Living and Working Condition 2006). In the European Commission's "Growth and Work" related 2006 Annual Progression Report, the **common elements**, as agreed by the social parties, were stated under four main headings and it was also indicated that without these four heading it was no longer possible to refer to flexicurity: **Flexible and secure contractual arrangements**: Specifies applicable arrangements to be implemented with the help of labor legislation, collective agreements, and working organizations enabling flexibility and security for both employers and workers. This principal in particular is associated with the job security

legislation. The strict job security legislation reduces dismissals as well as reducing new recruits (OECD 2006). There are findings that indicate that this legislation adversely affects youngsters, women, old people, and long-term unemployed people (Algan/Cahuc 2004; Nickell/Layard 1999). **Comprehensive lifelong learning strategies:** Specifies strategies that enable the continuity of employment and constant adaptation of workers against changing conditions. Within this scope, investing in people stands out and enables people to prepare for the changes in economical life. As a result, those who actually need the training such as untrained labor force, temporary workers, self-employed workers, and over aged workers, are unable to benefit from it (OECD 2005).

**Effective active labor market policies:** Specifies policies that will help people to contend with rapid change, shorten unemployment periods, and to ease changing jobs. Spending excessive budgets on these types of policies has a positive effect on the country's unemployment (European Commission 2007).

**Modern social protection systems:** Implies a system that offers an adequate income for people to live off, encourages employments, and simplifies the dynamism in the labor market. It also includes the conclusion that the system should have a wide enough coverage area to maintain a private, family, and work life balance (childcare included). At this point, the importance of an existing good unemployment insurance system is emphasized.

Bekker/Wilthagen (2008), underline that in order for the four common elements of flexicurity to be implemented successfully, social parties need to aware that they should act in mutual trust and collaboration, accompanied by a **supportive and productive social dialogue**. In the light of these developments, today, flexicurity is the focus of European employment policies and the fundamental basis for the 2008-10 European Employment Strategy recommended by the European Commission (E. Com. 2007). The last point reached in Europe in regards to flexicurity is determining the common principals. A great deal of private studies has been carried out and reports and conferences organized within the European framework. The European Commission's "Towards Common Principals in Flexicurity" titled declaration is a significantly successful study on the subject. The principals stated in the declaration, were accepted by the Employment, Social Policy, Health, and Consumer Relations Council in the council conclusion no. 16201/07 and presented to the European Council for evaluation at the meeting on December 14, 2007. The importance of the European Social Partners in successfully implementing flexicurity was again emphasized. The **common principal** of flexicurity as approved by the council are as follows:

a. Flexicurity is a means to reinforce the implementation of the Lisbon Strategy, create more and better jobs, modernize labor market, and promote good work through new forms of flexibility and security to increase adaptability, employment and social cohesion.

b. It involves the deliberate combination of flexibility and reliable contractual arrangements, comprehensive lifelong learning strategies, effective active labour market policies, and modern, adequate and sustainable social protection systems.

c. It approaches are not about one single labor market or working life model, nor about a single policy strategy: they should be tailored to the specific circumstances of each Member State.

d. It should promote more open, responsive and inclusive labor markets overcoming segmentation. It concerns both those in work and those out of work. The inactive, the unemployed, those in undeclared work, in unstable employment, or at the margins of the labor market need to be provided with better opportunities, economic incentives and supportive measures for easier access

to work or stepping-stones to assist progress into stable and legally secure employment.

e. Internal (within the enterprise) as well as external flexicurity are equally important and should be promoted. Sufficient contractual flexibility must be accompanied by secure transitions from job to job.

f. It should support gender equality, by promoting equal access to quality employment for women and men and offering measures to reconcile work, family and private life.

g. It requires a climate of trust and broadly based dialogue among all stakeholders, where all are prepared to take the responsibility for change with a view to socially balanced policies. While public authorities retain an overall responsibility, the involvement of social partners in the design and implementation of flexicurity policies through social dialogue and collective bargaining is of crucial importance.

h. It requires a cost effective allocation of resources and should remain fully compatible with sound and financially sustainable public budgets. It should also aim at a fair distribution of costs and benefits, especially between businesses, public authorities and individuals, with particular attention to the specific situations of Small and Medium Enterprises.

#### 4. FLEXICURITY IN THE TURKISH LABOR AND THE SOCIAL SECURITY LAW

**A-Fixed Term Employment Contract;** The type of service contract valid within the Turkish Labor Law is the indefinite service contract. Even though a work relationship is not carried out for a fixed term according to Art. 11 of Labor Law no. 4857, the contract is deemed indefinite. This arrangement also allows a fixed term to be added to service contracts. Under our Labor Law, in order for workers to exercise their rights they need to work for a minimal period. Preparing contracts to state fixed term may result in the workers' rights being restricted. This situation is often experienced under Labor Law no. 1475. In practice, jurisdictional decisions try to constraint such situations. For example, keeping in mind the situations where employees are refrained from their right to severance pay because of consecutively executed fixed term contracts, it is accepted that the worker works in accordance with an indefinite service agreement as of date on the first employment contract (Supreme Court 9. H.D. 11.11.2008 t. 2007/30214 E. 2008/30712 K.; 11.04.2003 t. 2002/20581 E. 2003/6120 K.; YHGK 10.03.1999 t. 1999/9-130 E. 1999/133 K.). 4857 LC aims to eliminate this prejudice by limiting fixed term employment contracts. These limitations are in accordance with the limitation in the international documents accepted by Turkey. As stated by 4857 LC, *"the freedom parties have to originate such contracts is subject to pursuant limitations under "Framework Agreement Regarding Fixed Term Employment Contract" as constituted by the International Law Organization's (ILO) Agreement No. 158 Regarding The Employer Must Terminate the Employment Contract "and European Union Council study acquis and especially the Council's Guideline no. 99/70." In order for workers' rights to not be constrained by fixed term service contracts, 4857 LC specifically aims to limit the segregation between fixed term employees and indefinite term employees.* For Art.12 *"a worker employed under a fixed term contract, unless there is a justified reason for the segregation, will not be subject to different proceeding from an equal work employed under an indefinite employment contract solely on the fact that they are fixed term."*

**B-Part-Time Employment Contracts;** For Art. 13 of 4857 LC, *"Under circumstances where a worker's normal weekly working period is significantly lower in comparison to an equal worker employed by a full-time employment contract the contract is defined as a part-time employment*

*contract.*” Accordingly, “*An equal worker is a worker that carries out a similar duty at the workplace full-time. In situations where there is no such worker, a worker at an eligible workplace in the same line of business carry out the same of similar job, employed under a full time employment contract is taken as a basis.*” 4857 LC does not provide legal support for part-time work and in addition, it does not constitute part-time work as an in between step when moving from full-time employment to part-time or vice versa.

**C-On-Call Work;** On-Call work is deemed a form of part-time employment. This is the opinion of the Supreme Court. The 9<sup>th</sup> Civil Chamber’s 22.05.2006 dated decision no. 2006/5115 E. 2006/14969 K. openly states that on-call work is as a form of part-time work. For Art. 14 of 4857 LC, “*A written contract, which states that the worker accepts to undertake the requested work and will execute his responsibilities upon call, is a part-time employment contract based on on-call working.*”

**D-Temporary Working Relationship;** Art. 7 of 4857 LC. “*Provided that the Employer has written consent from the work during the assignment, the worker may be assigned to anywhere within the holding company or within the group companies provide that the worker job description does not change. This is said to be a temporary working relationship.*” The Article brings limitations to the time of the relationship. Accordingly, a temporary working relationship can only be contracted for a maximum period of six months, and can only be renewed twice. As a result, the maximum period limitation for a temporary working relationship is one and a half years. According to discipline, if the worker is still actively working at the workplace after the second extension period, the contract needs to be converted from being a “temporary” to an “infinite term employment contract” and both employers will be deemed “shared employers” and have joint obligations towards the worker (Demir, 2003; Çelik, 2007).

**E-Principal Employer-Subcontractor Relationships;** Art. 2 of 4857 the concept of subcontracting is, “*the connection between the subcontractor, who undertakes to carry out auxiliary tasks related to the production of goods and services or in a certain section of the main activity due to operational requirement or for reasons of technological expertise in the establishment of the main employer (the principal employer) and who engages employees recruited for this purpose exclusively in the establishment of the main employer is called the principal employer-subcontractor relationship.*” The subcontractor definition in 4857 LA is less flexible in comparison to 1475 LA. It was easier to establish sub-contractual relationships under 1475 LA. However, these limitations were brought into effect to protect the workers due to difficulties experienced in the application. In the Article, it clearly emphasizes the subject and explains the reasons for their limitations. It states that due limitations to the workers’ individual and collective rights under the subcontracting application and the increase in court cases regarding workers’ not being able to exercise their rights these constraints have been implemented.

**F-Compensatory Work;** Compensatory work is a term that has entered the labor legislation with 4857 LA. Art. 64, “*In cases where time worked has been considerably lower than the normal working time or where operations are stopped entirely for reasons of suspending work due to force majeure or on days before or after the national and public holidays or where the employee is granted time off upon his request, the employer may call upon compensatory work within two months in order to compensate for the time lost due to un-worked periods.* It is stated in the Law

that such work shall not exceed three hours per day, must not exceed the maximum daily working time in any case, it shall not be carried out on holidays, and it shall not be considered overtime work or work at extra hours.

**G-Shorter Working Time;** Shorter working time arrangements were enforced by Art. 64 of the Labor Legislation. However, it was abolished by Act No. 5763 dated 15.05.2008. Shorter working time and its pay, Article 18 under the same law, and Law no. 4447 (Unemployment Insurance), have replaced the abolished Article. Work can be suspended or shortened at the establishment for at least 4 weeks and in any case will not exceed three months. The Law states that the shorter working pay will be funded by the Unemployment Insurance Fund.

**H-Condensed Work Week and Offsetting Method;** The term-condensed workweek, an example of the offsetting method, is a new flexible work opportunity recently included in the legislation with 4857 LA. Article 64 under 4857 LA lays out the period of a working week. The Article states the period of a working week as 45 hours, like 1475 LA. However, as opposed to the previous Law the equal distribution between days has been amended. The second sub-article of the article states, *“provided that parties are in agreement, the normal period of a working week maybe distributed over the working days stated for the workplace but without exceeding eleven hours per day.”* As it stands, the working period of 45 hours may be completed in less than 5 or 6 days by going beyond the classic working relationship.

**I-Overtime and Long Term Working;** In accordance with Art. 41 under 4857 LA, overtime is, within the framework of the conditions stated by Law, time exceeding the weekly 45 hours.

**J-Transfer of Employment Contract;** It is beneficial to touch about the subject in order to reflect its place within the application and how it can provide flexibility. The 4857 LA does not contain a regulation regarding the transfer of an employment contract. The Supreme Court explains the transfer of an employment contract as, *“it is a non-temporary relationship whereby the worker, the employer, and the transferee of the service contract sign an agreement stating that the worker will from there onwards provide their services to the transferee of the service contract”*(Ekonomi, 2009).

**K-Paid Annual Leave;** Leave arrangements allow the business to determine how many workers they will need during a certain period and enable the employees the flexibility to maintain their work-family balance. One of the important elements of leave is having the right. Therefore, it is fundamental that while exercising their rights, their employment contracts continue and are not terminated due to exercising these rights.

**L-Maternity Leave;** It is not possible to evaluate maternity leave as a flexibility from an employer's point of view. However, it is possible to accept it as flexibility from the employee's point of view. The fact that these granted types of flexibility increase the productivity and workplace loyalty of an employee and play an important role in attracted the employee back to work is obvious.

**M-Paternity-Parental-Career-Nursing Leave;** There is no arrangement within the Labor Legislation that entitles a male worker to paternity leave. Thus, due to this reason, part of the leave

offered to the mother does not constitute parental leave.

**N-Marital and Bereavement Leave;** Art. 46 /b, which sets out the weekly paid leave in the Labor Legislation, the three-day leave granted as marital leave or bereavement leave in the case that mother or father, spouse, siblings or children to the employee will be evaluated like the weekly holiday calculations.

**O-Early Retirement and Gradual Retirement;** The fundamental underlying reason for early retirement and gradual retirement arrangements is the battle against unemployment. There is no social policy arrangement in our country for early retirement or gradual retirement.

## **5. ARRANGEMENTS FOR SECURITY IN TURKISH LABOR AND SOCIAL SECURITY LAW**

When analyzing the arrangements in regards to our labor and social security laws we see that we also handle the security types determined by Wilthagen, as accepted by global literature. Wilthagen analyzes security by separating it into four. The first two are job security and employment security fundamentally seem as those they contradict one another. Job security means that under no subjective circumstances can the person's enjoyment of doing their job be subject to termination. On the other hand, the meaning of employment security is not a person protecting their job, but is based on the understanding that a person should stay within the employment market for as long as possible, in other words actively working. Additionally, in order to enable employment security, as well as reducing arrangements in place for job security, there will be a need for lifelong training strategies and active workforce market policies. Law no. 4773 LA dated 2003 is known as "job security" in Labor Legislation literature. However, arrangements regarding job security are also listed in labor legislation(Code N.4857, 5953, and 854) and Law no. 818 under the Code of Obligations under the following headings: The necessity for a valid or just reason in terminating the service contract; Period of notice and Compensation; Compensation for bad faith damages.

## **6. CONCLUSION**

Flexicurity is a fact that can be enable in every country in accordance with their specific conditions. When we think about the fact that the concept originated in order to increase the competitiveness of European companies and the social structure within the global economy, we are able to contemplate how importance the subject is for our country. When we evaluate the labor legislation and social security laws in our country, regarding arrangements directed at flexibility we can see that whether it is in terms of employment types, or in terms of working relationship regarding other arrangement subjects, it is in accordance with comparative law.

## **REFERENCES**

- Atkinson, J. (1985), "Flexibility, Uncertainty and Manpower Management", IMS Report No.89, Institute of Manpower Studies, Brighton.
- Bekker, S. & Wilthagen, T. (2008), "Flexicurity /a European Approach to Labour Market Policy", *Intereconomics Review of European Economic Policy*, 43 (2), 68 – 73.

Çelik,S. (2007), Türkiye İşgücü Piyasasının Esnekliği ve Esnek Çalışma Önündeki Engeller. Uzmanlık Tezi. Ankara

Demir, F. (2003) 4857 Sayılı İş Kanununun Başlıca Yenilikleri ve Uygulamadaki Muhtemel Etkileri, Mercek, Temmuz 2003,8(31);89-119

European Social Partners (2007), “Key Challenges Facing European Labour Markets: A Joint Analysis of European Social Partners”, Brussels.

European Union Employment Comitee Working Group/EMCO (2006), “Flexicurity”, Brussels,

Noyan, M.A. (2007)Türkiyede Çalışma Hayatında Esneklik Politikasının Çalışma Süreleri Açısından Değerlendirilmesi,Yayınlanmamış Doktora Tezi. İzmir;Dokuz Eylül Üniversitesi, SBE.

OECD (2004), (2006), (2007) Employment Outlook, OECD Press, Paris.

Tangian, A. (2005), “Monitoring flexicurity policies in the EU with dedicated composite indicators”, Paper presented at the conference of the International

Wilthagen, T. & Tros, F. (2004), “The Concept of Flexicurity: A New Approach to Regulating Employment and Labour Markets”, *European Review of Labour and Research*, 10(2), 166 – 187.

Wilthagen, T., Bekker S. & Schippers, J. (2006), “Taking action on transtional labour markets”, Paper presented at the ILP conference, Amsterdam,