

A GENERAL EVALUATION OF TURKEY'S NEW ACT ON TRADE UNIONS and COLLECTIVE AGREEMENTS

Assoc. Prof. Dr. Aziz Çelik
Kocaeli University, Labour Economy and Industrial Relations Department

- Contrary to expectations, Turkey's new act on trade unions and collective agreements does not further rights and freedoms.
- The new law is not in harmony with ILO's convention number 87 and with international work norms and thus also not with Turkey's constitution.
- The new law was passed notwithstanding the negative reaction of both national and international labour organisations.
- The new law maintains the basic parameters and general principles of the union regulations introduced immediately after the military coup.



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Turkey's new Law of Trade Unions and Collective Agreements (Sendikalar ve Toplu İş Sözleşmesi Kanunu - STİSK) was passed by Turkey's Grand National Assembly and issued in Official Gazette on 7 December 2012. The new law (STİSK) replaces Law Number 2821 on Trade Unions and Law Number 2822 on Collective Agreements, Strikes and Lockouts, which had been in force from 1983 until today and which were prepared by the military junta of 12 September 1980.

The old laws (2821 and 2822) limited the scope of unions to the level of sector and did not permit neither workplace and profession unions nor federations. The old laws required notary approval for union membership and resignation. They set a dual threshold as condition for authority to carry out collective bargaining. Unions that did not have as their members at least 10 percent of the total workforce of their sector and at least 50 percent+1 of the workforce in the company did not have the right to collective bargaining. Authority to engage in collective bargaining was granted by the Ministry of Labour. In the case of an objection (e.g. issued by the employer) to the granting of this authority, the collective bargaining ceased. This then would lead to a trial lasting for years, a period which was often used by employers to de-unionise workers. The old laws limited collective bargaining to the work-place and to the company, and did not permitive collective agreements at the sector and national levels. The old laws forbid strikes in many sectors in addition to those recognized by the ILO (like banking, petro-chemicals, urban transport and civilian personnel of the armed forces). The ILO's monitoring bodies (and in particular the Freedom of Association Committee) were of the opinion that the limitations in laws 2821 and 2822 were against ILO's conventions number 87 and 98.

In this way, regulations that up to now had been determined by two separate laws have been collected within the framework of a single law. The new law concerns only workers subject to an individual employment contract. The trade union rights of public employees are regulated by means of a separate law (Law Number 4688).

Preparation Process and Basic Approaches of the New Act

The process and method whereby the law was prepared are as important as its content. Therefore, a brief evaluation of the process and method of preparation is pertinent before moving on to

the content. It can hardly be said that the law is based on a consensus between the social parties concerned. While the Türk-İş labour confederation opposed some of the provisions of the law, the DİSK labour confederation opposed the substance of the law in its entirety. Türk-İş objected to Article 25 of the law that abolished the right to initiate union indemnity trials of workers of companies with less than 30 workers and of workers with less than 6 months seniority, and it objected to the abolition of the requirement that founders of unions should be Turkish citizens. Similarly, an opposition platform within Türk-İş (Sendikal Güç Birliği, Trade Union Solidarity Platform) opposes the basic provisions of the law. And in consequence, Türk-İş and DİSK have called on the President of the Republic to veto the law. Hak-İş did not put forward any serious objection and pronounced itself in favour of it. In union spheres it is thought that the main reason for this is that the law provides some tacit privileges to some of the unions that are part of Hak-İş. It is known that certain provisions added to the law provides advantages to unions member of Hak-İş. It is known that it is especially Hak-İş member unions in the fields of journalism and white collar workers that will be advantaged by these provisions. Also the International Trade Union Confederation (ITUC) and the European Trade Union Confederation (ETUC) have all called on the President of the Republic to veto the law, of which Türk-İş, DİSK and Hak-İş are members.¹

The new law was criticised by the International Labour Organisation (ILO)² while still at the draft stage, and the fact that it is far from satisfying the requisites of ILO conventions (especially conventions number 87 and 98) have been underscored. The fact that the draft text was not satisfactory was underlined also in the 2012 Turkey Progress Report of the European Union.³ This criticism notwithstanding, no improvements were made upon the draft plan during Parliament debate; on the contrary, a version with new restrictions was passed. It should also be added that large employer organisations (like TOBB and TUSKON) were especially in-

1 http://cms.iuf.org/sites/cms.iuf.org/files/GlobalUnions_2102oct_turkey%20-%20corrected.pdf
<http://www.ituc-csi.org/turkey-bill-on-collective-labour.html?lang=en>
http://www.ituc-csi.org/IMG/pdf/turkish_bill_ituc-etuc_joint_letter_to_pm_15-10-12.pdf

2 <http://www.disk.org.tr/default.asp?Page=Content&ContentId=1332>

3 http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/tr_rapport_2012_en.pdf



fluent during the phase of preparation and passing of the law. TİSK and TÜSİAD also accepted in general the provisions of the new law. However, it should also be said that these two organisations in particular remained in the background and that it was TOBB and TUSKON, which represent small and mid-sized companies, that were present in critical points.

The new labour union law is a regulation that instead of guaranteeing union rights and freedoms according to ILO norms, introduces authoritarian and discriminatory rules that perpetuate the majority of existing prohibitions and restrictions.

Content of the New Law

Both the ILO and the European Court of Human Rights have by means of various decrees confirmed that union rights comprise an indivisible whole and that union rights are meaningful only when combined with the rights to collective agreements and to strike. Our evaluation will be based on this approach of the ILO and the ECHR.

Even though the new law introduces some limited improvements especially as far as the founding of unions, the internal functioning of unions and union membership (within the context of freedom of association) are concerned, it maintains, and in some areas even increases limitations, especially those concerning the rights to collective agreements and to strike.

a) The new Law's Provisions on Founding of Unions, of Union Membership and of the Rights to Union Activities

The law has simplified conditions for founding unions and has introduced some regulations that simplify the internal functioning of unions. Contrary to the old law, a great part of the rules concerning the internal functioning of unions has been rendered subject to the unions' own regulations. Another favourable change is that the obligation for notarization when registering new union members or resigning from union membership has been abolished. The minimum age for union membership has been lowered from 16 to 15. However, these limited improvements remain insignificant due to the presence of substantial limitations which are also introduced by the new law.

The new law limits unionisation to the level of sectors, and does not permit unions at the work place-company or profession levels. The law guarantees only sector unions and confederations as union or-

ganisations, and does not permit the foundation of groups of unions at the federation, provincial or regional levels. Since it recognises the right to found unions only at the level of sectors, the law does not let retired people, agricultural workers or the unemployed found unions.⁴ At the moment, founding of such unions is obstructed or they are shut down.⁵

The number of sectors has been reduced from 28 to 20, but certain non-objective classifications have been introduced in this regard. For example, naval yard workers, who should have been included among metal workers, have instead been included in the maritime and warehousing sectors.

Even though the internal functioning of unions has been simplified, the law continues to regulate the nature of the administrative and executive organs of unions and the number of members of said organs. This qualifies as intervention in the internal matters of unions.

The elimination of the notary mechanism, which was a very serious obstacle to union membership, is to be welcomed. However, replacing this by an online-based system in which union accession has to be sought through a centralised state portal (e-state/ e-devlet), is of such a nature as to threaten the freedom of setting up a union. Membership thus has become subject to electronic control by the Labour Ministry. A worker who wants to become a member of a union will register in an electronic system prepared by the state (the state will be notified of the membership, which will later be submitted to union approval). This could result in infringements of the privacy of personal data and could also be abused by employers.

While on the one hand this law increases the security of shop stewards, on the other it eliminates the trade union security (right to organise) of around half (about 6 millions) of the workers within the scope of the law of unions. Article 25 of the new law has eliminated the right of workers of workplaces employing less than 30 workers and of workers employed for less than 6 months, to sue for trade union compensation in case of dismissals on the ground of trade union activity. This

⁴ According to ILO's convention number 87 and to the decisions of the committee for the freedom of association, workers have the right to found union organisations at any level and of any kind that they want. It is because of this reason that it should be possible to establish company and profession-based unions, and also federations and unions of unions.

⁵ The Emekli-Sen union of retired people has been banned, and the trial for banning the Genç-Sen youth union is ongoing.



amendment was introduced during parliamentary debate by members of parliament belonging to the ruling party, upon the request of employers' organisations. In this way, around half of all workers have been left without their constitutional and legal union rights.⁶ What is more, this provision is an infringement of the principle of equality.

The new law has made it obligatory for unions to have their financial accounts audited by private financial audit companies. This private audit is contrary to union freedom.

The provisions of the law related to unionisation are gravely inconsistent with the ILO's convention number 87 and its decisions concerning supervisory bodies, and contain characteristics of such a nature as to eliminate the essence of freedom association. The provisions of the law concerning unionisation preserve many rules of Law Number 2821 that was prepared following the coup of 12 September 1980. The most important of the old limitations to be preserved by this new law concern the following elements: union founding parameters (limited to sector), shape of union organisation (limited to sector unions and confederations), state control over membership (the e-state portal), single level of collective bargaining, administrative powers attributed to the ministry concerning collective agreement representation and bans on strikes.

Provisions on Right to Collective Agreements
The most glaring self-contradiction of the law is that while it introduces the requirement for unions to be organised at the level of sector, it recognises a collective bargaining regime at the level of workplace-company. Just as in the past, the new law sets collective bargaining at the level of workplace and company. The law does not accept collective bargaining at the levels of country, sector or branch. Even though the law recognises an institution called "framework contract" at the level of sector, these framework contracts are subject to approval by the employer and are limited to matters like professional training, workplace health and security, and social responsibility. It does not permit negotiations of salaries and working conditions. And what is more, it prohibits strikes in case of disagreement concerning framework contracts. It is for this reason that framework contracts will

remain as superficial improvements.

The law does not include an effective extension mechanism. Since the extension mechanism is subject to government initiative, the scope of collective bargaining will continue to be limited.

Just as in the previous regulation, the most important restriction of the new law concerns the process of competency of the collective bargaining. There are two important restrictions within the competency process. The first is the sector and work place-company threshold while the other is the fact that competency is provided by the Ministry of Labour, which is a political institution.

The law lowers the sector threshold, which in the old regulation was 10 percent, to 3 percent. But even the 3 percent sector threshold is high and is of the kind that damages trade union rights. Taking into account the fact that in Turkey the trade union density in the private sector is around 3 percent in practice, it becomes clear just how damaging this restriction is from the point of view of unionisation. In many sectors the 3 percent sector threshold will obstruct the establishment of new unions and will abolish the right to carry out collective agreements of the unions that at present have this right. In Turkey, there are around 12 million workers with social security. In some areas, the 3 percent threshold corresponds to very high numbers. For example, in the office workers sector, which has 2.5 million workers with social security, the 3 percent threshold corresponds to 75 thousand workers.

According to the law, in the case of unions which belong to confederations that are members of the Economic and Social Council (Ekonomik ve Sosyal Konsey - ESK), the sector threshold will be 1 percent up until 2016. This is a serious discrimination and an infringement of the equality principle of the constitution. This means that the members of the Türk-İş, Hak-İş and DİSK labour confederations will be subject for 4 years to a 1 percent limit, while the other unions will be subject to a 3 percent threshold. This is not an objective criterium because in Turkey there is no active Economic and Social Council. The ESK is a pseudo organisation that does not even hold meetings.

While the law maintains the workplace threshold at 50 percent +1, the threshold for establishments encompassing all the workplaces of a single company has been reduced to 40 percent. However, these high percentages make unionising more difficult and eliminate workers' representation and

⁶ According to Ministry of Labour and Social Security data, 52 percent of workers work in workplaces with less than 30 workers. Moreover, it is estimated that this figure would rise to over 60 percent if those workers with less than 6 months of seniority were also included.



their right to collective bargaining. Consequently, unions unable to achieve the necessary numbers for both the sector and the workplace and company at once will not have the right to collective bargaining.

What is of critical importance as far as collective labour agreements are concerned is how the competency procedures on whether or not a union has achieved this threshold are carried out. These procedures are carried out by the Labour and Social Security Ministry. In case there is an objection to the competency procedures carried out by the Ministry the collective bargaining process will stop and it will then be necessary to wait for the outcome of the competency trial, which could take years to conclude. In this way, even if the union has managed to establish a majority at the sector and work place level, objections by employers might prevent the enjoyment of the right to a collective agreement and this might lead to union-busting practices in work places.

There are furthermore instances in which the ministry has discriminated from the political point of view. The biggest obstacle faced by unions and the right to collective bargaining in Turkey is the competency mechanism. This long and complex competency mechanism destroys the essence of unionisation and of the right to collective bargaining.

The law regulates the procedure for collective bargaining in detail and determines the timing and stages in a detailed way that hampers the free bargaining process. The parties cannot carry out collective bargaining negotiations according to their own free will and instead are subject to the complex and rights-restricting procedure as laid out by the law. For example, the law restricts the period for collective bargaining to 60 days. According to ILO's monitoring bodies, the procedures for collective bargaining should be freely determined by the parties of the agreement and public authorities should not be able to impose limiting rules.

Restrictions on the Right to Strike

The most restrictive provisions of the law are concentrated in the right to strike. The law holds all strikes other than those held in case of disagreement during collective bargaining (conflict of interest strikes) to be illegal. In this way, all work slowdowns, strikes in solidarity, strikes in sympathy and general strikes, have become illegal. All strikes apart from those permitted by law (conflict of interest strikes) are subject to onerous monetary

sanctions and in addition to this; the law makes it possible to terminate the employment contracts without any compensations and severance pay of all workers who take part in such "illegal" strikes.

The law restricts the duration of strikes and makes it obligatory to preventively inform the employer. Strikes have to be held within the 60 days following the decision to strike. The law has changed the way a strike is voted upon so as to make it more difficult to strike.

The law perpetuates a large number of strike prohibitions. The ban on strikes in banking services, the petrochemical industry, natural gas production and urban transportation continues. In addition to this, Ministry of Defence's workers and civilian employees working within the armed forces cannot strike. These prohibitions on strikes are contrary to ILO norms. In particular, the ban on strikes in the banking sector is completely baseless.

The law perpetuates the government's power to postpone any kind of strike for national security or general health reasons.

The law allows the government to postpone any strike for sixty days if it is deemed to endanger "national security and public health". In the past this rule was not applied only to the essential services the interruption of which would endanger the life, safety and health of the whole or part of the population but also it is applied to any ordinary strike in any service or industry.

For example strikes in the tire and glass industries were postponed for national security reasons. What is more, the new law abolishes the possibility of judicial appeal, which existed with the old law. While the old law contained a provision making it possible to appeal to the state council (a supreme court) against the postponement decree, the new law does not. In this way, strike postponement turns into a strike ban.

In addition to this, the law grants the courts the right to stop strikes should one of the parties' claims that the strike is being carried out "in a way contrary to good faith, and in a way that will damage society and national wealth." That strikes, which in themselves lead to economic loss, might be banned for as uncertain and abstract reasons as damage to society and national wealth, is something that destroys the essence of the right to strike.

With the new law, the ban on strikes in the aviation sector introduced in 2012 was lifted. However,



with a provision added to the Capital Markets Law passed on 6th December 2012, a short while after the enactment of Law Number 6356, a ban on strikes was introduced for stock exchange and financial services.

Conclusion

Turkey's new trade union legislation (STİSK) keeps many restrictions contained by union laws number 2821 and 2822, which were the product of the military coup of 12 September 1980, and which had been in force since 1983, and what is more, they introduce certain provisions that in some cases are even more restrictive. As for the few improvements in the laws, they are practically useless. The new trade union law contains provisions contrary to ILO conventions number 87 and 98, to decrees of ILO supervisory bodies and to the revised European Social Charter. And this, notwithstanding the fact that according to Article 90 of Turkey's Constitution approved international conventions are superior to national law. Therefore, the new union legislation is also contrary to the Constitution.



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Friedrich-Ebert-Stiftung
Cihannüma Mahallesi Mehmet Ali Bey Sk. 12/D5
34353 Beşiktaş-Istanbul
Türkiye

Tel: +90 212 310 82 37
contact@festr.org
www.festr.org

Responsible: Michael Meier
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