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DISCUSSION PAPER

Trade Unions in Turkey

Current Issues and Perspectives

Prepared by

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He worked as a union lawyer and Research Director for TEKSIF (Textile Workers Union, Turkey), Genel-Is (Public Services Employees Union, Turkey) and OLEYIS (Hotel and Restaurant Workers Union, Turkey) between 1965-1973. He also served on the PSI Executive Committee (Public Services International, Geneva), representing Israel, Turkey and Malta during 1967-1970.

He was also active in labour oriented politics and was elected to TBMM (Turkish Parliament) in 1973 as an MP from Istanbul (CHP, Republican People's Party).

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He has published eight books and many articles in national daily papers and academic journals, on issues of individual and collective labour law and other political and social issues.

Chapter 1: Freedom of Association in Turkey

The right to organize in the form of trade unions for both workers and employers has gone through three stages in Turkey:

1 The first law enacted in 1948 was called Labour Unions and Employers' Union Act (5018). Turkey was compelled to enact this law as a co-founder nation of United Nations and thus comply with the principles of UN Charter. This act merely stated the right of workers and employers to form trade unions, but no mention was made of collective bargaining and the right to strike.

2 After the military intervention of 1960, the new Constitution adopted in 1961 recognized the basic rights and civil freedoms for individuals and associations. The rights of workers and employers to form and join unions were recognized and so were the rights to bargain collectively and to strike; and related laws No's: 274 and 275 were accordingly enacted in 1963.

3 In 1980 Turkey had another military intervention, the Parliament was dissolved, a Convention was formed and a new Constitution was accepted with a referendum in 1982. Current framework of labour life was formed with this new restrictive Constitution.

Article 51 of the 1982 Constitution states that in order to protect and promote their economic and social rights and interests in labour relations, employees and employers are free to establish unions as well as upper level organizations, without having to obtain any prior permission provided that their rules and administrations must not be contrary to the principles of the Republic and of democracy.

In line with this constitutionally guaranteed principle, the Trade Union Act (2821) and the Act of Collective Bargaining, Strike and Lock-Out were enacted in 1983.

Freedom of Association as accepted in Article 51 of 1982 Constitution was also underlined in Articles 22 and 25 of Trade Unions Act (2821). These articles were defining individual positive and negative trade union freedoms.

Individual Positive Trade Union Freedom

The term is construed to mean the freedom of workers and employers to form and join unions of their own choosing, and confederations of such unions. The principle of union pluralism is also constitutionally guaranteed. According to Article 3 of the Trade Union Act, more than one trade union can be established in the same branch of activity. Constitution prohibits the membership of an employee to more than one union at a time.

Voluntarism

The formation of workers' and employers' unions is free and voluntary. No person can be forced to form or not to form, to join or not to join such organizations. This voluntarism is constitutionally guaranteed.

Trade Union Act also tries to curb the number of unions without legally undermining trade union freedoms. To realize this objective Act 2821 and 2822 have brought various indirect measures. One such measure is found in Article 5/1 of Act 2821 which states that the founding members of a union must be actively employed in the branch of activity in which the union is to be established. Also in order to be elected to the administrative organs of a union a worker must have active work experience for a minimum of ten years (Article 14). Even though this requirement is slashed from the relevant article of the Constitution by the Constitutional Court, it is still kept in the Trade Union Act.

Pluralism

As a consequence of voluntary unionism, multi-unionism (union pluralism) is a natural element of freedom of association. The principle covers workers' unions, employers' unions and confederations. Employees and employers can always set up new unions and confederations if they are not happy with the existing ones. Duplicate membership is prohibited by Article 51 of the Constitution and Article 22 of Act 2821. In case of duplicate membership, the latter will be void. This prohibition aims to prevent union inflation.

Persons who are not allowed to be union members

Article 21 of the Trade Union Act (2821) prohibits union membership for the members of the armed forces, except for workers in undertakings attached to the Ministry of National Defence, the Gendermarie and the Coast Guard.

Article 15 of the Trade Union Act for Public Servants (4688) enacted in 2001 in accordance with ILO Convention 151 also prohibits union membership for certain groups of public servants. These include the staff of the Parliament and the Presidency, high ranking judges, Presidents and Deans of universities, staff of intelligence agencies, police force, prison staff etc.

The freedom not to join, to resign or not to resign from a union (Individual Negative Trade Union Freedom)

Article 51/III of the Constitution and Article 22/1 of the Trade Union Act (2821) both emphasize the freedom for individuals not to join a union, and to resign or not to resign from his/her union. Also Article 31 of Act 2821 prohibits yellow-dog contracts and union-shop clauses (recruitment of workers with the condition of joining or not joining a union).

Collective Trade Union Freedom

The right of employees to form and join unions and confederations as embodied in Article 51 of the Constitution also involves the concept of "collective trade union freedom" as the organizations have the capacity to handle their affairs as autonomous entities. A significant part of collective trade union freedom is the autonomy of such organizations to engage in free collective bargaining.

For the unions to exercise collective trade union freedom, the Act of Collective Bargaining, Strike and Lock-outs (2822) has laid two preconditions in Article 12/1. First precondition is the requirement that in order for a labour union to be authorized to negotiate with an employer or an employers' union on behalf of its members working in a workplace, the union must represent a minimum of %10 of workers employed in this industry in the country. Once this criterion is met, the second precondition is that the union must represent more than half of the work force in the particular workplace. These preconditions were laid down with the intent of obstructing yellow unionism and hindering possible union inflation.

Collective trade union freedom includes the right to form or not to form, to join or not to join confederations and international unions as corporate bodies. As these decisions are to be taken by the General Congress of the union, in practice this dimension of union freed rests on the will of the rank and file.

Protection of Trade Union Freedoms

Due to the mandatory effect of the Constitution any agreement or action contrary to the positive and negative trade union freedoms guaranteed in the Constitution, is void. Special guarantees concerning individual union freedoms have been provided by the Article 31 of the Trade Union Act (2821) which states: "the recruitment of employees shall not be made subject to any conditions as to their membership of a labour union or forcing them to join or refrain from joining a given labour union or to remain a member of or resign from a given labour union. No conditions contrary to this provision may be inserted in any labour contract".

This means that union security clauses such as "closed-shop" or "union-shop" have been effectively prohibited.

The above mentioned article depicts restrictions on the employers with respect to certain employment practices and termination of labour contracts.

Article 31/III provides that, "It shall be unlawful for an employer to make any discrimination between workers who are members of a labour union and those who are not, or those who are members of another labour union and those who are not, with respect to recruitment, arrangement and distribution of work, promotion, wages, bonuses, premiums, social and fringe benefits, discipline rules or provisions, other issues including termination of employment."

Employers taking into consideration objective standards such as the level of training, seniority, and subjective criteria such as skill, diligence may apply different treatment among the employees with respect to their remuneration and other conditions of employment.

Article 29 of Trade Union Act (2821) provides job security for union officials who have not been re-elected or have not run for office out of his/her own will.

Article 30 states that no employer may terminate the labour contract of shop-stewards working in the workplace unless he/she indicates clearly and precisely a just cause for termination.

Protection of Collective Union Freedoms

Article 26 of Trade Union Act (2821) grants the Unions the right to join confederations and international bodies without any prior consent of governmental bodies, and only with the decision of the General Congress.

Workers' unions and employers' unions cannot interfere in each others' internal affairs, as depicted in Article 38.

Trade unions enjoy three basic independence guarantees in Turkey:

- Workers' unions are independent from employers and their unions, and vice versa,
- Unions are independent from the government and the state.
- Unions are independent from political parties and religious establishments

In summary, the freedom of association depicted in the ILO instruments is generally accepted and applied in Turkey, at least for workers. However, there is a serious shortcoming in this respect regarding public servants. Though public servants can form or join trade unions of their own choosing, they are deprived of the right to bargain collectively and to strike, as envisaged in ILO Convention 151.

We must also mention that there are some restrictions on the right to strike. Some of them can perhaps be understood, such as the ones in fire fighting and funeral services, but the strike ban in the banking sector is completely unacceptable, and can only be explained as an unfair favour to the bank employers. As banking is an important part of UNI's and UNI-EUROPA's jurisdiction, any attempt vis-a-vis the Turkish government to remove this ban will be most timely and useful.

The enhancement of Turkish labour unions is confronted with two main obstacles:

- Turkish labour movement is suffering from an inflation of unions, and an insufficiency of membership. There are roughly over 100 unions organized in 28 industrial branches, as depicted in Article 60 of Trade Union Act (2821). Out of these only 50 unions have been able to fulfil the %10 minimum representation requirement and there is an unnecessarily severe competition (sometimes at the level of

hostility) among the existing unions. They are mostly competing over the already organized workers, rather than organizing the unorganized, and as result Turkish unions have not been able to recruit members on a large scale, and the overall rate of unionization is very low, as compared to EU practices.

- Another obstacle in membership recruitment is the fact that Article 9 of the Act of Collective Bargaining, Strike and Lock-out (2822) enables non-union-members to profit from a collective agreement signed by a union, simply by paying a solidarity due which is only two-thirds of the regular due, without the consent of the union.

Some discouraging membership figures from 2005, as (related to the actual practice of Freedom of Association): *

According to the statistics of the Ministry of Labour:

- In 2004, 1479 collective agreements were signed, covering 7918 workplaces and 325.189 workers.
- In 2005, 1824 collective agreements were signed, covering 14.077 workplaces and 570.438 workers.

Considering that collective agreements in Turkey are generally valid for two years, the sum of the two figures of covered workers can give us a rough idea on union membership in those years: **325.189 + 570.438 = 895.627.**

It is obvious that only **895.627** union membership out of a work force of 12 million people in industry is pathetically low.

In 2001 there were 104 unions active in 28 work branches (industry and services together). This fragmentation and roughly %13 percent unionization are the main reasons for a weakening labour movement.

One of the main reasons for this low rate unionization is that industrial and service workplaces are infected a very high degree of unregistered workers. One reliable estimate shows that %51 of the labour force is not under the coverage of labour laws and social security services.

The main pretext given by the employers for this illegality is high taxes social security shares.

In fact, the unwillingness of employers to register their workers and live with labour unions is the real reason causing this very low level of union membership. Regardless of the "lip service" kind of workers' protection provided in labour laws, employers have many ways of intimidating workers and unions, and in practice they are the "ruling party" as far as labour relations are concerned.

According to the figures released by Turk-Is (Turkish Confederation of Labour), which is the most representative of the existing confederations, 15.531 unionized workers were fired and 3.977 were forced to resign for their unions. This is another clear sign of the anti-union attitude of employers, hindering unionization in Turkey.

At this point we must mention that a new draft law is being prepared by the Ministry of Labour, hopefully in consultations with social partners, and it is further hoped that it will bring more freedom of association and less union inflation, thus resulting in higher unionization rates. UNI's and UNI-EUROPA's solidarity with Turkish unions at this stage and initiatives vis-a-vis the Turkish Government should be most timely and useful.

Chapter 2: Current Issues and Perspectives

Even though Turkey enjoys a relatively good degree of freedom of association based on constitutional and legislative grounds, in practice there are serious obstacles that should be overcome in order to make the existing rights tangible in practical life and compatible with international standards and ILO instruments. The Acts of Trade Unions (2821) and of Collective Bargaining, Strike and Lock-out (2822) continue to be applied with inherent shortcomings. The major problems confronting trade unions and workers currently can be summarized as follows:

1. Trade Unions Act depicts 28 branches of industry and services along which trade unions can be organized. This, as mentioned earlier, has given way to an increase in number of unions (trade union inflation), where a cut-throat competition is witnessed hurting the healthy growth of labour unions. This ramification should be reduced to at least 16 or even less branches so that the rivalry among labour unions can be harnessed.

2. Trade Union Act (2821) says that union membership and resignation thereof should be processed through Notary Publics in order to become effective. This requirement is a loss of time and money both for labour unions and workers and also a serious source of discouragement for unionization efforts.

3. Elected labour union officials are not protected properly by article 29 of Trade Union Act (2821) when they want to return to their previous employment after the termination of their tenure as union officials for the reasons either losing an election or not running for office again. The lack of protection is also envisaged at the shop level for shop stewards. This lack of proper protection makes labour union officials and shop-level union representatives vulnerable.

4. Unionization of public employees is not compatible with the principles foreseen in ILO Convention 151. The Law enacted for this purpose is known as Public Employees Trade Union Law (4688) and it prohibits strikes in the public sector. Instead of collective bargaining a procedure for collective consultation is foreseen in this law. This law should definitely be amended in accordance with ILO Convention 151.

5. The unions in Turkey can bargain for workplace-wide or enterprise-wide agreements, industry-wide bargaining are prohibited. (Article 3 of the Act of Collective Bargaining, Strikes and Lock-outs, 2822).This prohibition is an important obstacle in front of unionization efforts in any given area of work.

6. A union has to organize %10 of the workers employed nationwide in any of the 28 branches, if that union is to obtain "the right to bargain collectively" from the Ministry of Labour. If a union cannot fulfil this quota and thus not acquire the right to bargain collectively, it is not entitled to sign a collective contract even if it represents the majority of workers in a given workplace. This %10 quota requirement should be lowered in order to enable labour unions to bargain more widely. This change may increase the number of unions initially, which is another problem, but in time, hopefully the fittest will survive.

7. Workers' unions are required by law to hand the names of their members to the employer where they intend to bargain for an agreement before they apply to the Ministry of Labour for the right of recognition to bargain (Article 13 of the Act of Collective Bargaining, Strikes and Lock-outs, 2822). This requirement generally results with the termination of individual labour contracts of prominent pro-union workers. This unexplainable requirement should be omitted from the law in order to secure the employments of union members.

8. According to articles 29 and 30 of the Act of Collective Bargaining, Strikes and .Lock-outs (2822) strikes are banned in certain areas of work (banks, notary publics, certain petro-chemical installations etc.) and in certain work places (educational facilities, nursing homes for elders, hospitals, health care centres etc.). These prohibitions should be reduced to acceptable limits and brought in line with international standards.

9. Union members are generally subject to contract terminations upon union membership when the employers become aware of it. Labour Law has job security clauses (Articles 18-21) for such workers but it is not sufficient. Job security clauses are effective only in workplaces employing 30 or more workers, but only %10 of work places fall in this category. Furthermore, the law protects workers only with six months or more seniority. Upon termination of his contract the

worker can sue the employer and if the judge decides that he is not fired with a just cause or that he is fired for being a union member, than he can decide for his reinstatement and if not reinstated he rules that he is paid a certain indemnity. In case of terminations for union reasons, this indemnity will not be less than the worker's yearly pay. The employers, generally, re-hires him to avoid the payment of indemnity but fires him again after a short period later and the whole cycle begins again.

10. The workers should be given the right of choosing between the alternatives of reinstatement and indemnity, during the court session, not after it. This right will provide a more meaningful security for the worker.

11. There is not a direct and healthy correlation between ILO Conventions 87 and 98 and the laws governing industrial relations system in Turkey. For example out-sourcing is not under the coverage of Trade Union Act. The growing number of part-time workers, workers with in-definite period contracts. Large number of workers with flexi-time employment and wide examples sub-contracting, both of which are not covered by labour and union laws, are important causes of low level of unionization in Turkey.

12. EU emphasizes social dialogue and the formation of Societas Europea (European Company) in industries and services in Europe, where Works Councils are to be established as an essential element of social dialogue. Industrial Democracy is an important concept for EU countries to promote labour peace and high productivity. Usually employers and governments have shown insufficient interest in social dialogue projects. Even though Labour Law of Turkey has devised a tri-partite consultation system in article 114, it is far from being meaningful. It will be very useful if UNI-EUROPE, ETUC and similar organizations assist Turkish unions and encourage Turkish authorities to pay more constructive interest in this matter.

Finally

- **Noting the facts and problems in Turkish labour scene we can conclude that, as far as labour laws and practices are concerned, Turkey's accession process and her adaptation to EU aquis is slow and to some extent discouraging. The Revised European Social Charter was sent to TBMM (Turkish Parliament) on Feb.7, 2005. If ratified fully it would have gone into effect in accordance with the article 90 of the Constitution (which states that all international agreements duly ratified by TBMM are stronger than existing legislation), but the government put reservations on the fundamental trade union rights. The Social Charter is still ab inito.**

- **The EU should request from the Turkish Government the elimination of the reserves put on the Social Charter thus widening the avenue for labour unions in Turkey.**

- **In a country where nearly 14 million workers are employed with individual contracts, if only %48 are under the coverage of labour and Social Security laws and only %8 can enjoy the security and benefits of labour unions, we cannot say that social justice is achieved in that country.**

- **In the name of international solidarity UNI and UNI-EUROPE and their member unions, ETUC and its member unions and other similar international agencies should continue to support Turkey's full membership to EU, provided that Turkey complies with the necessary and announced criteria. The process towards full membership will certainly improve labour life in Turkey and benefit Turkish workers and unions.**

- **It would be very useful if UNI, UNI-EUROPE; ETUC and similar agencies urge EU and its officials to establish more sincere, constructive and practical relations with Turkey so that Turkish workers in the end can see that there are other and more dignified ways to live. If EU officials give a higher priority to social and trade union issues during negotiations, undoubtedly Turkish workers and low-income citizens in particular, and Turkish democracy in general, will profit. UNI, UNI-EUROPE, ETUC and similar agencies could play a fundamental role to this end.**

- **The Ministry of Labour has started preparations for updating Trade Union Act (2821), as part of the reforms for Turkey's compatibility with the EU aquis and practices. It is announced by the Ministry that there will be wide consultations with the social partners, including labour unions. Therefore it is high time for UNI, UNI-EUROPA, ETUC and similar agencies, to cooperate closely with Turkish unions, with a view of influencing Turkish public opinion and relevant authorities in order to reach acceptable formulations.**