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# THE GENERAL CRITICISM OF NEW TRADE UNIONS AND COLLECTIVE LABOUR AGREEMENT ACT IN TURKEY

## Introduction

Turkey, as a candidate country in the EU integration process since the 1960s, is generally characterized by low union density, decentralized collective bargaining, and authoritarian state figure as well as hostile labour-employer and labour-state relations. The main actor in Turkish industrial relations system is the state. There was neither a bourgeoisie nor a working class in the European sense in the Turkish pre-Republican period. As a result of the statist economic policy in the early years of the Turkish Republic, the state became the leading actor in industrialization. The state, as the biggest employer, adopted various acts to regulate both individual and collective labour relations. Therefore, all labour rights, gained in Europe through intense class struggle, were always given in Turkey by the state (Dereli, 2006: 38). The workers and employers, two important actors in the industrial relations system, were left behind and the state regulated labour relations unilaterally. This, though, led to detailed legislation non-existent in the European countries.

The current industrial relations system was established during the military regime of the early 1980s while economic restructuring was underway in Turkey. The backbone of the system was the new labour legislation, encompassing the 1983 Trade Unions Act (TUA) and the 1983 Collective Labour Agreement, Strike and Lock-out Act (CLASLA), as well as the 1982 Constitution. This legislation imposed extensive restrictions and administrative controls on unions, which have remained in force for almost thirty years without major changes and constitute the main legal framework of the present industrial relations system in Turkey (Uçkan, 2007: 123). Throughout the 1980s, the state actively intervened in industrial relations, moving in the direction of controlling and weakening trade unions and collective bargaining systems. Therefore, trade unions in Turkey have suffered major membership losses since the early 1980s and have been unable to resist de-unionization.

The Justice and Development Party (AKP), in power since 2002, also played a critical role in the decline of unionism in Turkey. The AKP marginalized labour as an important segment of civil society, while emphasizing civil society and democratization more generally. Due to its Islamic roots, the AKP supports the philosophy that the relationship between the worker and the employer involves a mutuality of duties and rights in the spirit of brother/sisterhood, not class antagonism. However, AKP's accomplishments favour employers and fall far short of

creating a brother/sisterhood relation between social partners (Yıldırım, 2006). The new Labour Act, adopted in 2003,[1] and a series of strike postponements in the early 2000s could offer clues about AKP's attitude towards trade unions.

Due to the infringement on union rights by both employers and the government, Turkey has been criticized by the ILO and the EU. The EU stated in 2012 progress report that:

> There has been no progress in alignment with the *acquis* in the field of labour law…High thresholds for entering into collective bargaining continue to significantly restrict the possibility of collective agreements and consequently impede the full exercise of the right to bargain collectively. Moreover, the lack of release of data on the number of workers in each sector by the authorities has prevented the conclusion of any new collective agreements for several months. Turkey excessively restricts the right to strike. In May 2012, the government adopted a law excluding also workers in the civil aviation sector from the right to strike. Following their protest against losing this fundamental right more than 300 airline workers were fired. Increasing the number of activities in which workers are deprived of this right takes Turkey a further step away from respecting full trade union rights in line with EU and ILO standards. Turkey also excessively restricts the right to establish or join trade unions as they cannot be set up along professional categories or in certain sectors, for example for civilian staff working for the Ministry of Defence. As a result of the restrictive legislative provisions and difficulties in exercising trade union rights, the level of unionisation and the coverage of collective agreements remain very low (Commission of the European Communities, 2007: 64–65).

Besides these international criticisms, both academics and trade unions criticised TUA and CLASLA as the fruit of the military era (1980–1983) in Turkey. Responding to these criticisms, the legislature amended the 1982 Constitution in September 2010[2] and removed some restrictions on union rights. These amendments gave trade unions hope for a better and progressive new collective labour act. After forceful and harsh debates, the new Trade Unions and Collective Agreement Act (TUCAA), combining the former TUA and CLASLA, was adopted in October 2012 without employer and union consensus.[3]The remaining restrictions on union rights and contradictory regulations caused the national and international unions to lobby for presidential veto of the act. The International Trade Union Confederation (ITUC), the European Trade Union Confederation (ETUC), and the Council of Global Unions expressed their concerns and demands regarding the new act to the Turkish government and the president.

[1] For details of new the Labour Act, see: Özdemir and Yücesan-Özdemir, 2006.

[2]The referendum of 12 September 2010 resulted in the acceptance of amendments to 27 constitutional articles. Until 2010, the amendments on constitutional articles amounted to 68 out of 177; with the 2010 amendments, this reached 53% of the total (Kalaycıoğlu, 2012: 1).

[3]Consensus could not be reached, even among union confederations. Confederations could not agree on a common draft and lobby actively against the government and parliament. They were fragmented, particularly on the threshold rate for collective bargaining authorisation.

The ILO drafted a memorandum pointing out numerous articles in the act that violate ILO standards, including Convention 87 and Convention 98. The European Commission also declared that fundamental union rights were not improved by the new act. Inspite of all this criticism, the new act was approved and came into force in November 2012. This paper examines TUCAA from the perspective of the triad of rights to organize, to bargain collectively, and to strike; the main changes will also be reviewed in a general comparison with the previous acts.

**The Right to Organise**

In Turkey, only workers and public servants have the right to organise. The retired, the unemployed, and students can neither establish nor join a union. Therefore, there are two types of labour unions in Turkey. The first organises mainly blue-collar workers under the jurisdiction of the Labour Act and operates on the TUCCA. The second organises public servants under the jurisdiction of the Public Servants Act and operates on the Public Servants Trade Unions Act (Yıldırım, 2006).

TUA, the previous act regarding workers, had heavy basic requirements for union founders, and these provisions have been criticized in Turkey and abroad. TUA frequently referred to the Penal Code and prevented those who have been convicted of a series of articles thereunder from being union founders. TUA only allowed Turkish citizens to form a union or become a union officer. TUCAA took these criticisms seriously and deleted most of the restrictions relating to the Penal Code and to the Turkish citizenship requirement (Art. 6).Trade unions now can also found international trade unions and open representative offices in Turkey (Art. 21). TUCAA also reduces the minimum age for union membership from 16 to 15 (Art. 17/1). Besides these amendments, the new act strengthens the protection of union shop stewards. According to TUCAA, no employer can terminate the contract of a shop steward working in her/his establishment unless s/he indicates clearly and precisely a just cause for termination. The shop steward or his/her union might lodge an appeal with the labour court. The termination must be annulled, and the employer should pay the shop steward's full wages and all other benefits to which he is entitled until the court's decision is finalized if the court rules that the shop steward is to be reinstated in her/his job. If the employer does not reinstate her/him, s/he gains full wages and all other benefits during her/his period of office as shop steward (Art. 24). Although TUCAA offers strong protection to the shop stewards during their period of office, they are not protected after their period of office. In other words, there is no safeguard for former shop

stewards. A stronger safeguard could be offered by extending the protection period one to two years after her/his term of office ends (Özveri, 2012: 96–100).

Despite all the positive protections of the right to organise, TUCAA retains the most important restriction on organising. TUCAA implicitly prohibits occupational and craft unions besides federations, which are industry-based, national top organizations. Thus, TUCCA keeps the industrial unions as a basic organising model and confederations as the top-level organisations (Art. 2). The main aim behind industrial unionism as a compulsory organising model is to strengthen trade unionism. However, this justification is not sincere when other limitations on collective bargaining and strike rights are taken into consideration. Due to the principle of industrial unionism, trade unions still must be established on an industry (sectoral) basis. While under the previous system there were 28 industries, TUCAA reduced that number to 20. For instance, the textile, garment, and leather become a single sector, while the paper industry was coupled with the wood sector and the shipbuilding sector merged with ports and warehouses. By reducing the number of industries, the legislature aimed to create a clear-cut union structure. If the unions at the related industries do not restructure themselves or intend to merge, though, most will lose the authorisation for collective bargaining.

TUCAA brings an important change to union membership procedure by allowing workers to make an online application for union membership or resignation by using the e-government gate (Art. 17/5, 19/2). Under TUA, there was a compulsory public notary requirement for becoming a member of a trade union or resigning from it. This requirement was criticised on the grounds that such stipulations were bound to limit individual freedom of association by making it more difficult and costly for workers to join or resign. However, the real motive for this intervention was to eliminate the charges of false membership and resignation which led to fraud allegations regarding the majority status of trade unions before the 1980s (Dereli, 2006: 249–250). Online application for union membership or resignation is aimed at preventing fraudulent memberships and facilitating membership procedure. However, this new provision would also provoke employers to force the workers to resign from their unions smoothly. In other words, the online application procedure facilitates not only membership, but resignation as well. Furthermore, employers could exploit such legal loopholes in their union avoidance strategies.[4] Employers could also manipulate the branch of activity to impede the collective bargaining authorisation process. The e-government system is designed to be under the control

[4] For union avoidance strategies in Turkey, see Yıldırım and Uçkan, 2009.

of the government also seriously concerns trade unions. Therefore, this new membership procedure may pave the way for some serious complications during the authorisation process for collective bargaining (Özveri, 2012: 60–63).

Safeguarding union membership is the crucial to the right of organising. As the ILO has stressed repeatedly, legal standards are inadequate if they are not coupled with sufficiently dissuasive penalties to ensure their application. However, TUCAA weakens the safeguard for membership, which was already inadequate, and removes remedies for anti-union discrimination available to a significant portion of workers. According to TUA, in the event of a violation of the rule prohibiting discrimination between members and non-members in requirements or the rule prohibiting termination of employment contracts for union-related activities, the employer shall pay compensation not less than the worker's annual wage. Although this provision covered all workers, employers could easily keep the trade unions away from their establishments by only paying compensation. Thus, workers could both become unemployed and de-unionised even if the termination was unjustified for invalid reasons. Some claim that employers dismissed more than 45,000 workers affiliated with Türk-İş and DİSK between 2003 and 2008 (Bakır and Akdoğan 2009: 93). Out of 11,173 applications for unfair dismissal, the courts awarded reinstatement in 17% (Türk-İş, 2006: 10).

Although the union membership safeguard was weak and inadequate under TUA as underscored above, the workers dismissed because of union membership were at least entitled to compensation. However, those that do not have job security were totally devoid of any safeguard for union membership under TUCAA (Art. 25/5) until October 2014. According to the Labour Act, only workers employed under an open-ended (indefinite) employment contract and who have completed a minimum seniority term of six months in an establishment with a minimum of thirty workers have job security (Art. 18). Consequently, workers who fail to meet these criteria were excluded not only from job security but also from the safeguard of union membership. However the Constitutional Court overturned the criterion of the establishment with a minimum of thirty workers for the safeguard for union membership on 2 October 2014. But the other two criteria for safeguard for union membership still exist. In the context of high unemployment rates, weak job security has remained a vital concern for workers, which has facilitated employers' threat of dismissal for unionisation.

**The Right to Bargain Collectively**

Although the right of collective bargaining in Turkey does not have a long history (only about 50 years), particularly in a comparison with the EU countries, collective agreements are the main instruments of Turkish collective labour relations, acting as industrial peace treaties between the social partners. The principal business of unions in Turkey is also collective bargaining. They partake in politics and conduct welfare programs for their members, but such activities are marginal and secondary. Trade unionism is essentially 'business unionism', and the business is negotiation and administration of a collective agreement (Süral, 2003: 37).

In spite of the industrial-based structure of unions, collective bargaining was decentralised until TUCAA was adopted in Turkey. Whereas CLASLA allowed only establishment, enterprise, and multi-employer (group) agreements, TUCAA brings industry-level agreement, called framework collective agreement. Framework collective agreement is an industry-level agreement signed between trade unions and employers' associations affiliated with the confederations[5] taking part in the Economic and Social Council (ESC) [6] (Art. 2/1(b). Framework agreements only consist of provisions on vocational training, occupational health and safety, social responsibility, and employment policies (Art. 33/3). Although the new act opens a window for a multi-layer collective bargaining system, there is no conflict resolution mechanism for framework collective bargaining. Due to this lack of conflict resolution, it could be claimed that framework agreement is almost stillborn. Framework agreements might be signed only between social partners who have already built successful social partnership.[7] TUCAA also discriminates against trade unions not taking part in the ESC by excluding them from framework agreements. If the new act could regulate the conflict resolution mechanism for framework agreements and did not discriminate between trade unions, it would be an opportunity to break the wage negotiation focus of the collective bargaining system. In Turkey, trade unions are focused more on labour legislation than on consultation and negotiation.

[5] Industrial relations are asymmetrical in the sense that trade unions are organized into three rival confederations (Türk-İş, DİSK, and Hak-İş), while there is only one confederation of employers' associations (TİSK) in Turkey. Both labour and the employers' confederations have three members each at the ESC.

[6] The ESC was established in 1995 as a part of the effort to join the EU. However, the ESC is frequently criticised because of its over-represented government composition, irregular meetings, and inefficiency. From its foundation, the ESC has been a state-dominated discussion forum rather than an institution that makes binding decisions with an equal contribution from its participants (Akan, 2011:330). For details about the ESC in Turkey, see Yıldırım and Çalış, 2008.

[7] For instance, the MESS (Turkish Employers' Association of Metal Industries) and the Türk Metal Union have been implementing a joint training and occupational health and safety project since 2000, and took part in the ESBOHS (European Cooperation Bridges for Occupational Health and Safety) Project financed by the European Commission between 1 December 2010 and 30 November 2012.

Labour legislation has always been the major avenue for establishing labour standards. In general, the social partners tend to expect more from laws than from negotiation and consultation among themselves. As a result, legislation covers a broad spectrum of issues in Turkey, issues which in other countries are the subject of social dialogue and collective bargaining. For instance, job security, fair treatment, training in occupational health and safety issues, and paid leave are regulated in great detail by the law. Therefore, collective bargaining mainly concerns wages (Valk and Süral, 2006: 46) and consequently, the struggle of trade unions in Turkey has largely been one-dimensional (collective bargaining), at one-level (collective agreement), and on one issue (wages) (Özdemir and Özdemir, 2007: 468). If the framework agreement provision had a complimentary conflict resolution mechanism, it could help to build industry-based social dialogue and broaden the content of collective bargaining.

Due to the multi-union situation, the determination of competent and authorised trade union is rather problematic. Only the industrial unions have competence for collective bargaining, not the confederations, and competence is a prerequisite for authorisation. The CLASLA had imposed two major and controversial stipulations concerning authorisation: representation of at least 10% of the total number of employees in the concerned industry (the so called 10% threshold) and representation of more than half of the total number of employees in the concerned workplace. These requirements were probably the most provocative challenges to collective bargaining rights and to the ILO Convention No.98 in Turkey. Therefore, TUCAA reduces the industrial threshold gradually from 10% to 1% and the enterprise threshold from 50%+1 to 40% while the establishment threshold remains as is (Art. 41). The reduced threshold seems a positive step for unionism. However, it will be more difficult to meet even these reduced thresholds because of the lowered number of branch of activity (by sector). It is assumed that this means 10 out of the 50 currently authorised unions will lose their authorisations immediately.

**The Right to Strike**

The serious limitations and restrictions on the settlement of collective labour disputes, particularly on the right to strike, remain in the new act. According to the CLASLA, in the presence of a collective labour dispute, the mediation process had to be initiated. In other words, mediation was a step before taking any strike and/or lockout action or before resorting to compulsory arbitration under which strikes and lockouts were not permissible. The main function of the mediator is to exert every effort possible in order to help the parties find solutions

in the settlement of disputes, and though not mandatory, to offer recommendations which s/he can incorporate into her/his final report in the event of a failure to reach agreement. However, this mediation system was criticized for its inefficiency in settling collective labour disputes. In fact, the success rate of the mediation mechanism decreased to 15% in recent years. So the mediation mechanism was accepted as a regular step toward reaching the next stage, but not as a tool to settle the collective labour disputes. Despite all of these criticisms about the mediation mechanism, it is remained in the TUCCA without any changes (Art. 50).

If the mediation proceedings fail to resolve a dispute, then trade unions have right to call a strike in Turkey. The CLASLA allowed and guaranteed only the right to strike for interest disputes and defensive lockouts, but political strikes/lockouts, general strikes/lockouts, solidarity strikes/lockouts, occupation of the establishment, work slowdowns, deliberate reductions of output, and any other concerted resistance were explicitly forbidden. These restrictions also appeared in the 1982 Constitution, but they were removed by amendment in September 2010. Although there are no explicit bans on strikes by type in the TUCCA, only strikes for interest disputes (Art. 58/2) and defensive lockouts (Art. 59/2) are allowed.

Some operations and areas considered essential and critical to the functioning of the economy and public life (i.e., funeral and mortuary, water, electricity, city gas, public notaries, cemeteries, educational and training institutions, day nursery, and old-age retirement houses) are still excluded from the right to strike and lockout (Art. 62). Nevertheless, the new act removed the strike ban in the civil aviation industry in May 2012. The strike ban in civil aviation was very controversial, due to its adoption on the very eve of a strike at Turkish Airlines. The Minister of Economy declared the intention of the government in issuing the strike ban as follows:

> No offense to anyone, strikes will be banned in strategic sectors such as this one! For example, imagine if there is a strike in a bank for three days, it would go bankrupt instantly... The fact that we are stopping strikes is among the elements which made the Turkish Airlines so successful. As a matter of fact, I read in a foreign magazine [that]the Turkish Airlines is better than Lufthansa because there are no strikes. (http://en.internationalism.org/icconline/201207/5059/turkish-airlines-strike-workers-against-bosses-and-union; http://www.hurriyet.com.tr/yazarlar/20782184.asp)

Considering that the strike ban on civil aviation remained in force for only six months, it is possible to claim that it was aimed to break the strike at Turkish Airlines[8]. Just a short while after the enactment of the Act No: 6356, a ban on strike was introduced for stock exchange and financial services with a provision added to the Capital Markets Act passed on 6 December 2012. However the Constitutional Court constrained the bans on the strikes and overturned the strike ban in the banking sector and urban public transportation on 2 October 2014.

According to the new act, in the event of a strike or lockout, the governor is also entitled to take necessary measures to maintain production at the workplace in order to meet the inevitable and urgent needs of the citizens (Art. 74/1). Thus, this new provision can be understood strike breaking mechanism for the state.

One of the most controversial provisions regarding the right to strike, the postponement of legal strikes and lockouts, remains in the TUCCA (Art. 63). A legal strike or lockout may be postponed for up to sixty days by order of the Council of Ministers for reasons of public health or national security. At the end of the postponement period, if a collective agreement cannot be signed, there is recourse to compulsory arbitration in order to settle the dispute. Actually, this provision paves the way for a transformation of 'postponement' into 'prohibition' (Dereli, 2007: 94–95). The postponement of legal strikes, an accepted legal practice borrowed from the US Taft-Hartley Act, has been a telling feature of Turkish industrial relations, particularly between 2002 and 2005 under the AKP government (Aydın, 2004: 365–421). The postponement of legal strikes are still very common. For instance, the Council of Ministers postponed the strike by Kristal-İş Union at glass sector on the grounds of it constituting a risk to public health and national security in 2014. Following this postponement, the government also postponed the strike launched by Birleşik Metal-İş Union at metal sector considering the strike as prejudicial to national security in January 2015. So it is possible to say that the government uses the regressive law on a routine basis to stifle workers from exercising their right to strike. Moreover, the assessments of the degree to which a strike imperils public health or national security are quite subjective in many cases, while the interpretations of the concepts

[8] When the draft act regarding the strike ban of the civil aviation industry was discussed in Parliament, the Turkish Airlines workers who were members of the Hava-İş Union went on a work slowdown. The employment contracts of 305 cabin workers participating in the slowdown were terminated. These workers lodged an appeal against these terminations with the labour court, and the Hava-İş Union initiated a campaign for reinstatement of the dismissed workers. As a consequence, the court concluded that the termination was unjustified and the workers should be reinstated by 20 December 2012 because the alleged reason was invalid for 26 of the workers. If Turkish Airlines did not reinstate them, it would have to pay at least year's wages as compensation to the workers. The court process for the other dismissed workers is on-going (http://www.havais.org.tr/).

of ‘public health’ and ‘national security’ are subject to misuse in most disputes, even though the parties may lodge an appeal with the High Court Administration for the cancellation of the postponement order (Aydın, 2005: 383).The postponement of strikes threatens not only the right to strike but also the right to bargain collectively. This provision has been used to undermine trade union rights. Admittedly, the postponement of strikes in Turkey is often premised on alleviating the pressure on governments from employers’ organisations. In line with the employers’ pressure, Turkish governments often misuse the legislation as a hindrance to any strike on pure economic grounds (Çelik, 2008: 87). Although serious criticism exists about the postponement of strikes at both national and international platforms, the new act retains this controversial provision.

Table 1. Strike Postponements on the Grounds of National Security and Public Health (2002-2015)

| Date of Governmental Decree | Reasons | Sector | Trade Union |
|---|---|---|---|
| 17 May 2002 | National Security | Rubber | Lastik-İş |
| 25 June 2003 | National Security | Rubber | Petrol-İş |
| 8 December 2003 | National Security | Glass | Kristla-İş |
| 14 February 2004 | National Security and Public Health | Glass | Kristal-İş |
| 21 March 2004 | National Security | Rubber | Lastik-İş |
| 1 September 2005 | National Security | Mining | Maden-İş |
| 27 June 2014 | National Security and Public Health | Glass | Kristal-İş |
| 30 January 2015 | National Security | Metal | Birleşik Metal-İş |

When we look at recent strike statistics since the AKP government came into power, one can see a decline, though a small increase for 2004 can be observed (Table 2). With this new act, it could be expected that the number and efficiency of strikes will decrease significantly.

Table 2. Strikes 2002–2013

| Years | Number of Strikes | Number of Workers Involved | Number of Workdays Lost |
|---|---|---|---|
| 2002 | 27 | 4,618 | 43,885 |
| 2003 | 23 | 1,535 | 1,44,772 |
| 2004 | 30 | 3,557 | 93,161 |
| 2005 | 34 | 3,529 | 1,76,824 |
| 2006 | 26 | 2,061 | 1,65,666 |
| 2007 | 15 | 25,920 | 13,53,558 |
| 2008 | 15 | 5,040 | 1,45,725 |
| 2009 | 13 | 3,101 | 2,09,913 |
| 2010 | 11 | 808 | 37**,**762 |
| 2011 | 9 | 557 | 13,273 |
| 2012 | 8 | 768 | 36.073 |
| 2013 | 19 | 16.632 | 308.426 |

Source: Ministry of Labour and Social Security

http://www.csgb.gov.tr/csgbPortal/ShowProperty/WLP%20Repository/csgb/istatistikler/1984_2012_grev)

**Conclusion**

Due to the late commencement of labourisation and democratisation in Turkey, the workers there have no tradition of fighting for their own rights. Consequently, trade unionism is based generally on legislation rather than on a class-rooted social movement. The motto for trade unionism, which is 'union rights are taken, not given', applies in reverse in Turkey. Therefore, Turkish workers have developed a habit of expecting everything from the state. The labour and union rights were enlarged and improved in some periods (i.e., 1961–1980) but were frequently restricted, particularly following the 1980 military *coup d'état*. The rigid, detailed, and restrictive legislation has been mainly used by the state to control the working class and labour rights.

The TUA and CLASLA, in force almost 30 years, were criticised as the fruit of the military era for decades by both trade unions and bureaucrats. The failure to implement fundamental ILO Conventions; —particularly Conventions No. 87 and 98—Turkey has also been criticised over the years in the EU progress reports. Consequently, different draft acts regarding union rights were prepared and discussed at different periods. Some important restrictions on union rights were removed by the amendments to the 1982 Constitution in 2010, and these amendments

gave a hope for improvement of labour and union rights. After long and heated debates, the new act on collective labour relations, TUCAA, was adopted in November 2012.

However, TUCAA fails to bring meaningful and progressive improvements for union rights. Despite some minor positive changes, it introduces more restrictions on union rights than the previous acts had. Although TUCAA is a brand new act, some of the critical provisions on freedom of association, collective bargaining and strike were overturned by the Constitutional Court and most of the provisions and practices of the government still violate ILO Conventions Nos. 87 and 98, both of which have been ratified by Turkey. İt is also claimed that strong unionism is intended, but the act will pave the way for centralised and state-controlled trade unionism. Briefly, a new era in which trade unions will lose more power and become more inefficient will begin with TUCAA, an act consisting of restrictions and limitations.

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