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From the perspective of EU integration and ILO standards: trade union rights in Turkey*

Introduction

Turkey has conducted bold and significant labour law reforms in the last years, which have now entered into force, but most trade union rights, in particular the right to organise, the right to strike and the right to bargain collectively are still not respected in line with the relevant ILO Conventions.

Turkey has ratified the Convention for the Protection of Human Rights and Fundamental Freedoms[1] and the revised European Social Charter,[2] in addition to 56 of 187 ILO Conventions, including the Convention on Freedom of Association and the Protection of the Right to Organise (No. 87, 1948);[3] the Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (No. 98, 1949);[4] and the Convention concerning the Protection of the Right to Organise and Procedures for Determining Conditions of Employment in Public Service (No. 151, 1978).[5] In spite of Article 90 of the Turkish Constitution, which states that:

> *International agreements duly put into effect bear the force of law. (…) In the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.*

some controversial provisions in the Acts regarding trade union rights are still in force[6].

In this paper, trade union rights in Turkey will be discussed in the perspective of core ILO standards. After drawing the general framework of the Turkish industrial relations system, the steps that have been taken and those which should be taken in the field of trade union rights is evaluated.

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[1] Ratified by Turkey on 18 May 1954.

[2] Ratified by Turkey on 27 September 2006.

[3] Ratified by Turkey on 25 November 1992.

[4] Ratified by Turkey on 8 August 1951.

[5] Ratified by Turkey on 25 November 1992.

[6] This provision is an achievement on its own, but it may bring more problems than it solves (Gönenç and Esen, 2007: 485). All courts, particularly the labour courts, have a heavy workload so it is difficult for judges even to be aware of the human rights agreements that Turkey has signed (Gönenç and Esen, 2007: 492). Thus, neither the lower courts nor the higher courts generally consider international conventions when coming to decisions. In other words, actual implementation is full of problems of controversies and conflicting interpretations.

1. A brief overview of the Turkish industrial relations system

The main actor of Turkish industrial relations system is the state. There was neither bourgeoisie nor working class in the European sense in the pre-Republican period in Turkey. Therefore, trade unionism, as a component of the principle of freedom of association, is a right given to workers and public servants in Turkey by the state rather than by a class-rooted social movement. In consequence, unions do not have sufficient power to affect and shape the socio-economic structure; they only play the roles written for them in the 1982 Constitution, the Trade Unions Act[7] (TUA), the Collective Labour Agreement, Strike and Lockout Act[8] (CLASLA) and Public Servants Unions Act[9] (PSUA).

There are two types of trade unions in Turkey, each of which is divided into rival confederations with significant political and policy differences. The first type includes unions organizing mainly blue-collar employees under the jurisdiction of the Labour Act and operating on the basis of the TUA and CLASLA. They are commonly known as *işçi sendikaları* (labour unions). The second type involves unions organizing public servants who are under the jurisdiction of the Public Servants Act and operating on the basis of the PSUA. They are called *memur sendikaları* (public servants unions). While labour unions have right to bargain collectively and strike, public servants' unions had neither of them until the amendment to 1982 Constitution in September 2010. Unions are split on both a sectoral and ideological basis. There are 102 labour unions, most of which are affiliated to three divergent and rival labour confederations (Türk-İş, DİSK and Hak-İş) and there are 89 public servants' unions, most of which are affiliated to seven rival public servants' confederations (Türkiye Kamu-Sen, Memur-Sen, KESK, Birleşik Kamu-İş, BASK, DESK and Hak-Sen). Confederations, the only form of higher organizations of trade unions or employers' associations, have corporate status and must be formed by at least five unions active in various industries.

The oldest, biggest and centrist labour confederation is Türk-İş (Confederation of Turkish Trade Unions); the left-wing (former Marxist and militant) one is DİSK (Confederation of Progressive Trade Unions of Turkey); and the conservative (former Islamic and religious) one is Hak-İş (Confederation of Righteous Trade Unions of Turkey).

Türk-İş with a pragmatic character has been following the "supra-party policy" since its establishment. Although Türk-İş avowed adherence to the "supra-party policy", it has permanent friendly relationship with the government regardless of a political party preference. As a fruit of this policy, Türk-İş was the only remaining representative of Turkish organized labour during the military regime by supporting the military government. However, DİSK has been banned during 12 years after the 1980 military coup and therefore had seriously lost its power. While the affiliated unions of Türk-İş are generally organized at public sector, DİSK generally has members at the private sector (Uçkan, 2002: 87-108). As a conservative confederation, Hak-İş has been increasing its members consistently since 2002 at

[7] Act No: 2821 of 5 May 1983.
[8] Act No: 2822 of 5 May 1983.
[9] Act No: 4688 of 25 June 2001.

the year that AKP (Justice and Development Party) became the ruling party. Hak-İş is predominantly, organized at public sector.

Union density rates and the numbers of unions and unionised workers have been published in the *Official Gazette* by the Ministry of Labour and Social Security (MLSS) twice a year (in January and July) since 1983. In July 2009, there were 3.232.679 trade union members organised in 102 unions, representing a union density of 59.88% (MLSS, 2009).[10] This union density rate, which seems rather high in comparison with EU countries, is quite deceptive when it is used in comparative research. Statistical data are more realistic and coherent after 1980 than in the 1960s and 1970s, but they still do not reflect the exact number of unionised workers and the union density rate because of exaggerated membership figures due to the undeclared termination of membership following the deaths of members and their becoming unemployed (except temporarily unemployed), as well as duplicate membership in the same industrial branch or sector. Meanwhile, the union density rate represents the proportion of unionised workers only in terms of the potentially unionisable and insured workforce (excluding public servants), not as a proportion of the total workforce or employment as in European countries. Thus, needless to say, with regard to the total workforce or employment,[11] the real union density rate (around 12-13%) is much lower, and below the EU average.[12]

Unions are split on both a sectoral (occupational pluralism) and ideological (ideological pluralism) basis. There are 52 employer associations and only one employer confederation (TİSK); but there are 102 labour unions organising in 28 sectors and three divergent and rival labour confederations.

The employer associations generally defend and improve social interests related to industrial relations rather than economic interests in Turkey; the economic interests of employers are defended and improved by several other associations and chambers such as TOBB (The Union of Chambers and Commodity Exchanges of Turkey) and TÜSİAD (Turkish Industrialists and Business Leaders Association).

Excluding the 1965-1971 period, public servants were deprived of the right to organise until the amendment in 1995 to Article 53 of the 1982 Constitution. Similar to the labour unions, the severe degree of divergence between unions representing public servants draws attention. There are 89 public servants' unions and 7 rival public servants union confederations[13]. The union density among public servants is

[10] *Official Gazette* 17 July 2009, No: 27291. The statistics on union density rates has not been published since July 2009, because the draft new Trade Unions Act has not been accepted yet.

[11] As of October 2011 the total workforce in Turkey is 26 939 000 while total employment is 24 486 000 (http://www.tuik.gov.tr/PreHaberBultenleri.do?id=621) [last accessed on 27 January 2012].

[12] There is serious confusion and contradiction on union density and union membership statistics in Turkey. Turkish union density figures are not comparable with other countries and they have not been acknowledged by the ILO. For discussions on official union membership statistics in Turkey, see: Aziz Çelik and Kuvvet Lordoğlu (2006) 'Türkiye'de Resmi Sendikalaşma İstatistiklerinin Sorunları Üzerine' *Çalışma ve Toplum* 9(2): 11-29.

[13] Türkiye Kamu-Sen, on the nationalist side, has had close relations with the ruling party AKP in recent years. The class-based and left-wing confederation KESK, on the same lines as DİSK, has been losing members until 2004. In the same period, Memur-Sen, which has strong ties with Hak-İş and political parties on the right-wing, has been gaining new members and as a fruit of this close relationship with AKP government, it is the most powerful public servants' confederation in Turkey.

rather high, at 63.75% in July 2011, when it is taken into consideration that public servants do not have the right to bargain collectively or to strike.

In spite of the industry-based structure of unions, collective bargaining is decentralised. The competent and authorised labour union is able to conclude a collective agreement only at the level of an establishment, or establishments. Collective agreements cover only those workers who are members of the signatory union, although non-members of the signatory union are also able to benefit from collective agreements where they pay solidarity fees. In 2010, collective agreements covered only 843 467workers,[14] most of them public workers, who can be described as the 'privileged minority' or 'aristocrats of workers' considering the total employment in Turkey. The huge difference between unionised and non-unionised workers in terms of wages and social benefits weakens the solidarity spirit between workers. There is an instrument for the extension of collective agreements, regulated in Article 11 of CLASLA, but it is not implemented effectively.[15] Therefore, it could be said that collective bargaining coverage is limited by union density in Turkey, contrary to most European countries.

Another important characteristic of collective labour relations in Turkey is the hostile environment between labour and employers. Trade unions and employer associations have regarded each other as rivals and hostile partners, and so win-lose strategies, instead of win-win strategies, are generally preferred at the bargaining table. Consequently, collective bargaining is described as distributive bargaining, not integrative bargaining (Valk and Süral, 2006: 45).

Finally, workers do have the right to strike in the event of a labour dispute arising during negotiations on the conclusion of a collective agreement, according to the 1982 Constitution and to CLASLA. Therefore, only the right to strike in a dispute over interests is permissible and lawful in Turkey. The right to lock-out is regulated in a manner parallel to the right to strike and only defensive lock-outs, not offensive ones, are lawful. Although the restrictions on the right of strike and lock-out were removed by the amendment to the 1982 Constitution in September 2010, the parallel amendments to the CLASLA has been pending for more than one year. The right to strike and lock-out will be analysed in detail later.

2. Trade union rights from the perspective of ILO standards

Trade union rights are becoming more important as Turkey takes concrete steps towards full accession to the EU. Full trade union rights are crucial in terms of the approximation of the *acquis communautaire* in conjunction with Turkey's international commitments since trade union rights are the *sine qua non* of the Copenhagen Criteria.

The 1982 Constitution, TUA and CLASLA, which were adopted in 1983 following the military *coup d'état*, limited trade union rights. Some progress has subsequently been made but trade union rights are still contradictory to most ILO and EU

[14] The duration of agreements varies between one and three years, although the duration of most is generally two years. Therefore, collective bargaining coverage has been calculated by summing the coverage for two years.

[15] The Council of Ministers may make an order extending a collective agreement to all or some of the establishments not covered by any collective agreement within the same branch of activity (TUA, Art. 11). However, the Council rarely use its power for extension; it is not a common practice in Turkey.

standards. Turkey had ratified 56 ILO Conventions by 2012, including all eight conventions on core labour standards and Convention No. 151, as well as the revised European Social Charter, albeit with some reservations. However, Turkey generally signs international conventions concerning social norms and standards quite late,[16] particularly in comparison with EU countries, or else does not respect the ratified conventions and violates some of them.

Turkey, as a country eager and determined to join the EU, is in a process of harmonising its legal system with the *acquis communautaire*. In pursuance of this process, in 2003 Turkey adopted a new Labour Act, No. 4857, providing more flexibility and job security. The amendment to Article 53 of the 1982 Constitution also paved the way for new legislation on public servants' right to organise; as a late consequence, unions representing public servants were granted legal recognition in 2001 by the Public Servants Unions Act (PSUA) No. 4688. Taking into account the views of the ILO Committee of Experts, the legislature also made some new amendments to the 1982 Constitution in September 2010[17], although some changes are still pending implementation in terms of conformity with the ratified ILO Conventions and parallel amendments have not been made in the relevant acts.

2.1. Trade Union Rights of Public Servants: The Amended Constitution and Public Servants Union Act No: 4688

Until 2001, except between 1965 and 1971, public servants were not covered by any trade union legislation. Public sector workers have the right to organise, bargain and strike like private sector workers do, but public servants historically have had job security but no trade union rights. However, with the ratification of ILO Conventions Nos. 87 and 151 in 1992, the legislature made an amendment to Article 53 of the 1982 Constitution in 1995 paving the way for public servants to access the right to organise. Sub-section III of Article 53, as amended, reads as follows:

> *The unions and their higher organisations, which are to be established by the public servants mentioned in the first paragraph of Article 128 and which do not fall under the scope of the first and second paragraphs of the same article and also Article 54, may appeal to judicial authorities on behalf of their members and may hold collective negotiations with the administration in accordance with their aims. If an agreement is reached as a result of negotiations, a protocol of agreement will be signed by the parties. Such protocol shall be presented to the Council of Ministers so that administrative or judicial arrangements can be made. If such a protocol cannot be concluded by negotiations, the agreed and disagreed points will also be submitted for the consideration of the Council of Ministers by the relevant parties. The regulations for the execution of this article are stipulated by law.*

Thus, public servants' right to organise and to engage in collective negotiations with the administration were granted. However, unions representing public servants had

[16] As can be seen in ILO Convention No. 87.

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

to wait until 2001 to be recognised *de jure* by a trade union act. Therefore, most public servants unions and their higher organisations were formed and operational as *de facto* organisations prior to 2001. Finally, PSUA No. 4688, dated 15 June 2001, was adopted in line with the principles embodied in Article 53 of the 1982 Constitution (Dereli, 2006: 370-377). Figure 1 (at end) summarizes the right of organising and collective consultative talks in Public Servants' Unions Act No: 4688 until 2010. However in September 2010 some important amendments have been made to the 1982 Constitution and the Article 53 has changed again. With this amendment, the right to bargain collectively was granted to the public servants. While the sub-section III of Article 53 has been repealed, three sub-sections related to collective rights of public servants have been added to Article 53. The new sub sections are as follows:

> *Public servants and other public officials have the right to conclude collective agreement.*
>
> *In case of disputes during the collective negotiations, parties may appeal to the Arbitration Board of Public Servants. The decisions of the Arbitration Board of Public Servants shall be decisive and in the force of collective agreement.*
>
> *The scope of the right to collective agreement, its exceptions, beneficiaries, modes, procedures and enforcement of collective agreement, reflection of the provisions of collective agreement on the pensioners, the establishment, working procedures and principles of the Arbitration Board of Public Servants and other matters shall be regulated by law.*

While public servants have gained the right to bargain collectively with these amendments, the relevant amendments on the Act No: 4688 has been pended until 4 April 2012. Therefore no collective negotiations have been held during last two years. With the amendments on the Act No: 4688, the name of the act has been changed as Public Servants' Unions and Collective Agreement Act. Figure 2 (at end) summarizes the right of organising and collective bargaining for public servants after 2010.

In a few weeks after the amendments on the Act No: 4688 accepted, the collective negotiations have been started on 30 April 2012. But the negotiations have been ended with conflict on pay increases and the conflict has been settled by the Arbitration Board of Public Servants, not by a strike. The Board which has 11 members (7 members has been assigned by the government) decided the pay increase of 4%+4% for the first year and 3%+3% for the second year inspite of big oppositions and protests arising from unions.

Briefly, with these amendments to the 1982 Constitution and the Act No: 4688 public servants gained right of collective bargaining, but not right to strike. According to the amended provisions, in case of the rising of a dispute between the public servants unions and the Government, the parties may apply to the Arbitration Board of Public Servants whose decisions shall be final and have the force of a collective agreement. And it is also possible to state that the Board is not fully independent from the government.

2.2. Trade Unions Act No. 2821: a straitjacket for trade unions

After the military *coup d'état* that took place on 12 September 1980, the 1982 Constitution was adopted by a referendum on 7 November the same year. Under the detailed, restrictive and prohibitive character of the 1982 Constitution concerning trade union rights, the new TUA No. 2821 and CLASLA No. 2822 was adopted in the same manner on 5 May 1983.

The attempt which has been made after 1980 to tidy up the trade union picture by legislation is aimed at creating a neat, centralised and strong trade union structure by reducing the number of trade unions (Dereli, 2006: 43). The significant vehicle to strengthen trade unions under TUA is the principle of industrial unionism. Trade unions have to be established on an industrial (economic activity) basis;[18] occupational and craft unions are explicitly prohibited by TUA (Art. 3). In consequence, the number of trade unions, which had reached 912 by 1979, was reduced by 2009 to 102. In parallel with this restriction, confederations, which must be formed by at least five unions operating in different branches, are also the unique form of higher organisations. These restrictions were made to reach the purpose of strong trade unionism, so these provisions have not been criticised over the years in terms of ILO Convention No. 98.

Trade unionism is based on the principle of the freedom of association guaranteed by both the 1982 Constitution (Art. 51) and TUA (Art. 6). Workers and employers have the right to form unions and higher organisations without previous authorisation and have both positive and negative individual freedom of association (Süral, 2004: 13). With the amendment to the Article 51 of the 1982 Constitution in 2010, simultaneous membership in more than one labour union in the same work branch will also become possible, if the relevant amendments are made in the Trade Unions Act.

According to the TUA, employers shall not discriminate between unionised and non-unionised workers. However, the remedies and safeguards against anti-union discrimination prescribed by TUA, in particular against dismissals, are neither adequate nor strong enough to prevent violations of this rule.[19] The ILO has stressed that:

[18] The 28 branches of activity are as follows: agriculture, forestry, hunting and fishing; mining; petroleum, chemicals and rubber; food; sugar; textiles; leather; woodworking; paper; press, publishing and broadcasting; banking and insurance; cement, ceramics and glass; metal; shipbuilding; construction; energy; commerce, clerical works, education and fine arts; inland transportation; rail transportation; sea transportation; air transportation; warehouse and storage; communications; health; accommodation and entertainment; national defence; journalism; and general services. It has been discussing to limit the number of branches of activity in order to make a more rational classification and pave the way for stronger unions for nearly a decade.

[19] Workers who have job security and are dismissed unfairly have the right to be reinstated in the job. If the worker is not reinstated, the employer must pay compensation equal to a minimum of four and a maximum of eight months wages (Act No: 4857, Art. 21). In the event of a violation of the rule referring to 'anti-discriminatory treatment between member and non-member requirements and for the infringement of the rule that the employment contract should not be terminated for his/her union-related activities', the employer shall pay compensation no less than the worker's annual wages (TUA, Art. 31). About unfair dismissals and job security in Turkey, see: Kadriye Bakırcı (2004) 'Unfair Dismissal in Turkish Employment Law' *Employee Responsibilities and Rights Journal* 16(2), June: 49-69.

> *Legal standards are inadequate if they are not coupled with sufficiently dissuasive penalties to ensure their application. (ITUC, 2007: 5)*

Consequently, private sector employers in particular tend to ignore individual freedom of association and dismiss workers for their union activities and membership in order to destroy and weaken trade unions. Therefore weak protections against anti-union discrimination have been criticized by ILO for decades. Workers who have job security and are dismissed unfairly have the right to be reinstated in the job, but the dismissals are not regarded as null and void. If the worker is not reinstated, the employer must pay compensation equal to a minimum of four and a maximum of eight months wages (LA, Art. 21). In the event of a violation of the rule referring to anti-discriminatory treatment between union member and non-member requirements and for the infringement of the rule that the employment contract should not be terminated for his/her union-related activities, the employer shall pay compensation not less than the worker's annual wage (TUA, Art. 31). Due to inefficient provisions on freedom of association and job security, employers easily keep the trade unions away from the establishment by only paying compensation. Thus, workers both become unemployed and are deunionised even if the termination was unjustified because of invalid reasons. It has been claimed that employers dismissed more than 45.000 workers affiliated to Türk-İş and DİSK between 2003-2008 (Bakır and Akdoğan 2009: 93). Out of 11,173 applications for unfair dismissal, the courts awarded reinstatement in 17 per cent of all the cases (Türk-İş, 2006: 10).

The provisions of the 1982 Constitution and TUA on internal union affairs (i.e. organs, the election of representatives, revenues and expenditures, and the activities of trade unions) are overly detailed and seem as such to be a kind of intervention in union democracy. Owing to these provisions, Turkey has several times been criticised by the ILO Committee of Experts:

> *However, in the government's view, these provisions did not hinder the autonomy of unions, but rather were aimed at ensuring the democratic functioning of unions, protecting the rights of members and maintaining transparency in union activities. (ILO, 2007b)*[20]

Another point criticised by ILO and within labour circles in Turkey is the required Turkish nationality in order to establish a trade union. According to TUA, the basic requirements for founders of trade unions are as follows: To be a Turkish citizen and to be able to read and write Turkish (TUA, Art. 5).

Another restriction on the right to organise is the compulsory public notary requirement before an individual can become a member of a trade union or resign from it. Membership of a trade union is acquired by forwarding five copies of the registration form, certified by a public notary, to the trade union (TUA, Art. 22). In parallel with this provision, notice of resignation from a trade union must be given in the presence of a public notary (TUA, Art. 25). Public notary intervention is criticised on the grounds that such stipulations are bound to limit individual freedom of association, by making it more difficult and costly for workers. However, the real motive for this requirement is to eliminate the charges of false membership and

[20] http://www.ilo.org/ilolex/gbe/ceacr2007.htm [last accessed on 15 February 2008].

resignation which had led to fraud allegations as regards the majority status of trade unions before the 1980s (Dereli, 2006: 249-250).

2.3. Collective Labour Agreement, Strike and Lock-Out Act No. 2822: a small playground for trade unions

The rights of workers to bargain collectively and to strike are regulated by CLASLA No. 2822, which is supplementary to TUA No. 2821. The main aims of these Acts were to eliminate the abuses of the previous system but have had the effect of creating new malfunctioning practices (Aydın, 2005: 368). CLASLA No. 2822 of 1983 put new restrictions on the right to bargain collectively and to strike compared to CLASLA No. 275 of 1963.

In spite of the industrial-based structure of unions, collective bargaining is decentralised. Competent and authorised trade unions may bargain collectively with employers or employer associations and conclude an agreement at only three levels (CLASLA, Art. 3): establishment, workplace and undertaking (enterprise) levels (Süral, 2004: 21). Thus, industry-level collective bargaining and agreements were abolished by CLASLA No. 2822. 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. CLASLA has brought two major and controversial stipulations concerning authorisation for collective bargaining (CLASLA, Art. 12): to represent at least 10% of the total number of employees in the concerned industry – the so-called 10% threshold; and to represent more than half of the total number of employees in the concerned workplace. These requirements are probably the most provocative challenges to the right to bargain collectively and to ILO Convention No. 98 in Turkey. Thus, the ILO Committee of Experts recalls that the dual numerical requirements for authorisation are not in accordance with the principle of voluntary collective bargaining. It has been discussing to eliminate the threshold system gradually for nearly a decade, but there is no amendment to the CLASLA yet. By the way, any consensus between the labour confederations on this issue has not been reached so far. Türk-İş is the biggest supporter of the 10% threshold system, but this is strongly rejected by DİSK and Hak-İş.

Any trade union or employers' association or unaffiliated employer that receives the authorisation information communicated by the MLSS may lodge an appeal with the labour court (CLASLA, Art. 15). However appeal to the court suspends the procedures to fix authorisation until the final ruling and giving a start for a long (about 1,5-2 years) judgement process. Employers use the appeal as an opportunity both to prolong the collective bargaining process and force the workers to resign from their unions or dismiss the unionised workers at that period via various union busting strategies. In Turkey, lodging an appeal against collective bargaining authorisation seems as a direct reflex of the employers.

Collective agreements may be concluded for a specified period of not less than one year and not more than three years (CLASLA, Art. 7/I). But collective agreements are generally signed for two year period in Turkey. The social partners tend to expect more from laws than from collective bargaining. As a consequence, Turkish labour law covers a broad spectrum of issues, i.e. job security, paid leave, fair treatment,

occupational health and safety, which in other countries are the subject of collective bargaining. Because many issues are regulated in great detail in the law, collective bargaining mainly focus on wages. The tendency of social partners to demand law and law amendments from the state rather than trying to make gains through collective bargaining is both weakening the content of collective bargaining and being a barrier to institutionalize the social dialogue in Turkey (Valk and Süral, 2006: 46-48).

The constitutional changes entered into force in September 2010 also repealed the prohibition of the conclusion of more than one collective labour agreement at the same workplace for the same period. However this prohibition is still taking place in the CLASLA.

CLASLA has also brought some restrictions, prohibitions and detailed regulations on collective dispute settlement. Both strikes and lock-outs must be called by competent parties (not by confederations) and have a work-related purpose. Strikes/lock-outs called for other purposes and general strikes/lock-outs, or sympathy strikes/lock-outs, are prohibited and unlawful. Offensive lock-outs, go-slows, sit-ins, deliberate reductions in output and any other acts of resistance are also illegal (CLASLA, Art. 25 and 26). Thus, trade unions are not able to use the strike to support their position in a search for solutions to the problems posed by major social and economic policy trends that have a direct impact on their members. The Freedom of Association Committee considers that these restrictions are serious violations of freedom of association (ILO, 2006: 110-113). Parallel to this criticism, with the amendment to the Article 54 of the 1982 Constitution in 2010, “politically motivated strikes and lockouts”, “solidarity strikes and lockouts”, “occupation of work premises”, “labour go-slows” as well as other forms of obstruction shall not be prohibited. But there are no relevant amendments in the CLASLA yet.

Strikes and lock-outs can be prohibited in the event of an acute national emergency, i.e. in times of war, whether a general or partial mobilisation, or a disaster caused by fire, flood or earthquake (CLASLA, Art. 31). However strikes and lock-outs are also permanently banned in public and essential services which are described in a rather extensive way (CLASLA, Art. 29 and 30). Mediation and, if not successful, compulsory arbitration (the Supreme Arbitration Board) must be invoked to resolve a dispute under these circumstances. The inclusion of several essential services, such as the production of petroleum and a sizable portion of the petro-chemical and banking industries, as well as military establishments not directly related to national defence, has been criticised by the ILO. With an act adopted in May 2012 the strikes in the civil aviation industry was also banned, in the eve of a strike in the Turkish Airlines. When the draft act has been discussing in the parliament, the Turkish Airlines workers went on a work slowdown. As a consequence, the employment contracts of 300 cabin workers participated slowdown have terminated. Now trade unions are lobbying to the President to veto this act.

One of the most controversial and criticised provisions in CLASLA is the postponement of legal lock-outs and, in particular, strikes. A legal strike or lock-out 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 (CLASLA, Art. 33 and 34). Actually, this provision paves the way for a transformation of ‘postponement’ into ‘prohibition’ (Dereli, 2007: 94-95). Moreover, the assessments of the degree to which a strike

imperils public health or national security are quite subjective in many cases, while the interpretation of the concepts of ‘public health’ and ‘national security’ is 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).

Disappointingly, the Council of Ministers generally uses the power to postpone legal strikes for political reasons: the lobbying activities of employers are rather effective on the Council. The postponements which occurred in the glass industry in 2003 and 2004 are the most interesting and striking examples (see Table 1). The Council of Ministers published an order to postpone the strike called by Kristal-İş, citing national security, on 8 December 2003 but, within a few days, the High Court Administration cancelled this order and Kristal-İş continued to strike. However, the Council issued another postponement, citing both national security and public health, on 14 February 2004 in contravention of the Court’s decision. This shows us how authority can be abused and misused (Aydin, 2005: 386; Çelik, 2005: 251).

Table 1 – Postponed strikes (2000-2007)

Date	Reason	Industry	Trade union
24 August 2000	Public health	General services	Belediye-İş, Genel-İş
5 May 2000	National security	Rubber	Lastik-İş
8 June 2001	National security	Glass	Kristal-İş
17 May 2002	National security	Rubber	Lastik-İş
25 June 2003	National security	Rubber	Petrol-İş
8 December 2003	National security	Glass	Kristal-İş
14 February 2004	National security, public health	Glass	Kristal-İş
16 March 2004	National security	Rubber	Lastik-İş
1 September 2005	National security	Mining	T. Maden-İş

Source: Aziz Çelik (2005) *AB Sosyal Politikası* İstanbul: Kitap Yayınevi, p. 252; Aziz Çelik (2008/3) 'Milli Güvenlik Gerekçeli Grev Ertelemeleri' *Çalışma ve Toplum, 18(3) pp. 131-132.*

Conclusion

Accession negotiations between the EU and Turkey have been continuing since 2005. Trade union rights and social dialogue is one of the key components of the Copenhagen political criteria. However, due to the failure to implementation ILO Conventions in full, in particular regarding trade union rights, Turkey has been criticised over the years in progress reports. Some positive, but disappointingly slow, steps have been taken by the government during the process of accession, but these still leave Turkey some distance away from fulfilling the requirements of the *acquis communautaire*.

Trade unionism is not based on a class-rooted social movement and the working class has no culture or tradition of fighting for its own rights in Turkey. Therefore, labour legislation has been the major means of establishing labour standards and trade union rights. In other words, labour has built on the tendency to expect everything from the state. However, a rigid and restrictive legislation is being used by the state to control labour rights. Rights and freedoms should be the principle and, meanwhile, restrictions and prohibitions should be the exception in Turkey – i.e. a democratic, secular and social state governed by the rule of law as stated in the Constitution.

Turkey, as a candidate country in the EU integration process for more than fourty years since the 1960s, still falls short of ILO standards, particularly Conventions Nos. 87 and 98. ILO standards are the *sine qua non* of the *acquis communautaire*, so Turkey must break its resistance to the ILO norms regarding trade union rights so as

to harmonise its social policy standards with the *acquis communautaire* and to strengthen the weak mechanisms of the social dialogue. Finally, it is clear that the EU integration process is not a magic baton for social policy and trade union rights in Turkey, but it is full of opportunities waiting to be embraced by the social partners and by civil society. Thus, the social partners should use this golden opportunity as leverage to develop trade union rights along the lines of ILO norms.

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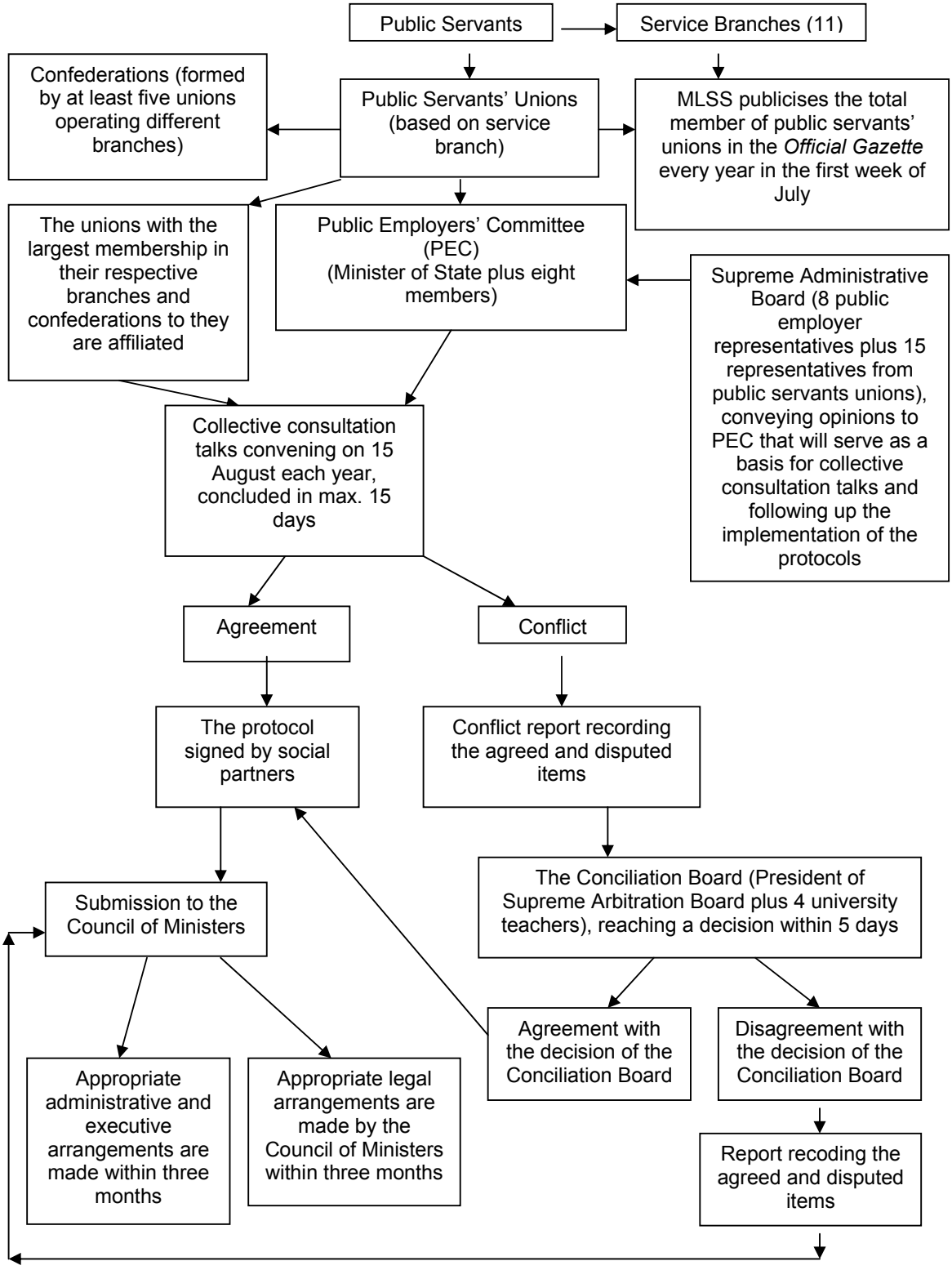
Figure 1 – The right of organising and collective consultative talks in Public Servants' Unions Act No: 4688 until 2010.



Source: Mesut Gülmez (2002) *Kamu Görevlileri Sendika ve Toplu Görüşme Hukuku* Ankara: TODAİE, p. 607.

Figure 2 – The right of organising and collective bargaining in Public Servants' Unions and Collective Bargaining Act No: 4688 since 2010.