



**CHP Istanbul Deputy, Commission of Health, Family, Labour and Social Affairs Member
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Law**

The process which had started with January 24 decisions and complemented by September 12 Coupe is definitely the most important factor that affects trade unionist movement in Turkey negatively. While trade unionist organizations were closing with September 12, important limitations were brought to collective agreement right. Laws No 2821 and 2822 are the ones appeared after September 12 and changed Laws No 274 and 275. As known by public opinion, these laws reflect a conception which limits libertarian atmosphere of previous period. And also they were important indicators for new period's approach and state's position to organized labour movement.

Thirty-one years has passed since September 12. Despite passing long times, September 12 Law could not be overcome. Not existing of a radical reform and an up-grade about democratization disturbs entire trade unionist structures.

Law drafts had been prepared in previous government periods, some changes were done in 1995 but there had not been any development for main problems.

First law draft related to new law search especially started in 1999 became to public opinion in 2004 but it was withdrawn by Ministry after reactions of trade unions. Then a range of meetings were held and a new law draft was carried to agenda despite criticisms of trade unions. As a result of meetings which were held in 2010 and 2011 after debates especially about sectoral thresholds and number of sectors, a partial agreement was arranged and declared to Council of Ministers by Ministry of Labour and Social Security. **Objective of law draft is stated as arranging domestic law for overcoming criticisms of International Labour Office.** Draft of law which passed to Council of Ministers in October was postponed until January 31 because of resistances of some ministers (names of minister of economy, industry and finance are told).

After coming to National Assembly of Turkey, law draft was forwarded to Commission of Health, Family, Labour and Social Affairs, was sent to Commission of European Union Cohesion and Commission of Justice as a collateral commission.

Commission of Health, Family, Labour and Social Affairs relegated law draft to subcommittee. Subcommittee started to work in February 21. Subcommittee finalized their activities in March 1 and sent their report to commission in March 5 and Commission started negotiations in March 7. Taking opinions of related social partners and confederations by subcommittee about this law which is the most important arrangement for working life and provision of working peace was very useful. But during activities of subcommittee, resolution of commission member deputies' were not taken into consideration, an attitude through shaping law draft according to government representatives was exhibited.

During negotiations in subcommittee our solution suggestions as CHP which were convenient to ILO norms were not accepted.

Activities of Commission of Justice are still going on. Commission of European Union Cohesion finalized their activities related to law draft, law draft was handled generally in such meetings, and CHP deputies were not allowed to reflect their opinions related to draft of law articles.

Next meeting of Main commission will be held at 16:00 in March 14 2012. Course of law draft in Turkish National Assembly is this.

2. EVALUATION ABOUT LAW

This law draft which is directly related with working life in Turkey and based on two important justifications as creation of a contemporary working life and corresponding with ILO and European Social Chart and EU norms, they may also be seen in Law draft justification, was evaluated as a positive step. But contemporizing Laws No 2821 and 2822 as a product of September 12 coupe and reflecting a comprehension that limits libertarian atmosphere about trade unionist organization and collective bargaining right, this law draft which targets free and democratic organization and collective bargaining right is far from its objectives.

But this law draft did not take into consideration suggestions of science committee and approaches and commitments of Tripartite Advisory Committee.

Unions Act No. 2821 and Collective Agreements, Strikes and Lockouts Act No. 2822 have been criticised because of their anti-democratic qualities and not protecting freedom of organization by trade unions and International Labour Organization more than a quarter century. Therefore, Turkey comes to the agenda of meetings of ILO Application Committee which is responsible for following and controlling of application of ILO Conventions.

However it was seen that law draft which was sent to Turkish National Assembly did not produce solutions to ILO's criticised topics and remove barriers in front of trade unionist organization in Turkey. Number of workers in Turkey in 2012 is 11 million according to Social Security Institution data. Number of workers who are organized in trade unions is 885,000. Number of workers who are covered by collective agreements is 580,000. As it is seen rate of trade unionization in Turkey decreased to 5 %. If number of unionized workers in public with inclusion of municipalities as almost 360,000 is taken in to consideration, rate of unionization in private sector decreased to 2 %.

Especially after Ministry of Labour's starting to use data of Social Security Institution in 2009, affect of this case to trade unions appeared more clearly. Many trade unions couldn't overcome sectoral thresholds. Therefore publication of sectoral statistics was halted.

Because of % 10 sectoral threshold as an output of September 12 law, 52 trade unions which are members of confederations like TÜRK-İŞ, DİSK, HAK-İŞ, were exceeding threshold, today almost all of trade unions except 18 of them are faced with being unauthorized risk by new arrangement.

Therefore solution suggestions create more complicated situation instead of dissolving problem. The main reason of this is decreasing number of sectors to 3 % by an arrangement as Merge of Sectors (it was decreased from 28 to 18 and then it was increased to 21 in subcommittee) without a scientific justification. This threshold actually means bringing 20 % threshold to some sectors according to old system.

This law draft is behind of liberality objectives and contradictions to ILO Conventions No. 87 and 98 in it continue and it includes contradictions to governing party AKP's official opinions that were declared in its party program, 61st Government Program and AKP 2010 referendum booklet.

It was seen that criticised topics in 2821 and 2822 were not changed, moreover new incongruities and banns were emerged with law draft. These are as following;

1. **Limitation of trade unionist organization right:** Especially establishment and membership of a trade union should be a right for everyone in accordance with international conventions in which Turkey is a party. Not approval of trade unionist organization rights of domestic workers, apprentices and interns is another deficiency. This deficiency is carried out.

2. **Changing trade union concept:** Using establishment concept instead of trade union concept and emptying internationally accepted trade union concept is another important issue of draft law. Foreseeing only organization as confederation with parent organization concept is another deficiency of the law. Not taking place of organizations as federations is seen as an arrangement against ILO norms.

3. **Organization Constraint in one Sector:** Trade unions' doing their activities in one sector constraint and although ILO Convention No 87 was denoted as justification of law change contradiction to it continues and establishing trade union in the base of occupation is blocked in law draft.

4. **Sectoral problem:** Number of existing sectors decreased from 28 to 18 in draft. This arrangement, as one of the most important subjects of law draft has always been changed in almost all of the drafts since 1999. Artificial person of this article is to define activity fields of trade unions.

When we look at main justification of article, following statement was used: "18 sectors in which trade unions can be established and commit their activities were regarded by considering practices in the world".

So there is no justification for this requirement. Some sector definitions which are unprecedented in the world as shipping industry and sugar sector were done in existing situation in Turkey. They should be fixed. But conformity of present operations' to international conventions is controversial. It cannot be claimed that both Law No. 2821 and sectoral system structure in Law No. 2822 is converted in a democratic way. Standards of ILO were not determined according to international cohesiveness and uniformity principles. This standards show separation and connection of occupations. Also other standards carry similar objectives. EU doesn't have any similar criteria in this field. When we look at the case of member countries, there isn't any command regarding organization of trade unions in one sector. In other words, imposed sectoral organization of trade unions in Turkey is anti-democratic. Even if protection of sectoral base is seen meaningful related to historical process of Turkey, mentioning an international standard about its criteria and presenting this as becoming contemporary is not correct. In fact if occupation standard of ILO was shown as justification, why were not sectors determined according to this standard? Why was this number defined as 18? They were not explained in justification of draft.

Number of sectors which was decreased to 18 in subcommittee was raised to 22 later. Foods become a separate sector. Commerce, clerical work, education and fine arts sector was divided into two sectors as "commerce and clerical work" and "education and fine arts". Transportation sector was divided into three sectors as "transportation", "ship building and marine transportation" and "harbour, depot, warehouse". Commerce, clerical works, education and fine arts sector was merged again with a resolution in commission. Number of existing sectors was raised to 21.

If objective is creation of powerful trade unionism, number of sectors might be changed to ten and trade unions should have federative organizing and have activities in different sectors possibilities. But there is not any step or intention in this direction.

Another important problem about sectors is bringing a regulation for determination of workplaces' sectors. Firstly, Regulation appears as a type of legislation in which administration can manage unilaterally in administrative law. So if curatorship word is used, organizing and collective bargaining depending on administration curatorship is defined. However preparation of an arrangement like Charter which cannot be changed easily and brings body of rules is seem as a better approach.

Main and subsidiary works separation was done in justification. As it can be seen in justification of article, organizing right of subcontracting workers disappears with elasticity in workplaces. As a depended result of this employers gain an unfair power in organization of workers in this workplace.

A way of being a member of a trade union of main work should be opened to subcontractors in supplementary services, apprentices, interns, on-call employees and to workers who work from their houses. In fact, ILO Experts Committee warned about this kind of employees' organization and mentioned that existing situation was against second article of Convention No. 87. Our critiques were not considered in negotiations of law in commissions.

5. **External Audit for Trade Unions:** Auditing of trade unions by certified public accountant was brought by draft law. This auditing is defined as external interference to trade unions. And also it has contradiction in itself because of bringing certified public accountant auditing to branches despite they don't have financial releasing authority. Also our critics about this were not considered.

6. **Elimination of barriers of organization and Notary requirement:** Elimination of notary requirement for membership and cancellation of membership and bringing e-state system is a positive change. But application of this after a year with a temporary article will delay organizing of trade unions with economic difficulties for a year. Especially benefitting from collective labour agreements and deficient arrangements of being members of trade unions organized in workplaces of sub-contractor workers are barriers of organizing of sub-contractor of workers whose numbers are approximately 500.000 in public services. And sub-contraction will cause increases of occupational accidents and worsening of atmosphere related to occupational health and safety.

7. **Trade Unionist Assurances:** Clarification of legal situation of labour contracts of Trade Union Managers with law draft is a positive development. But changing of text related to trade union representatives in Council of Ministers (although it was accepted in Tripartite Advisory Committee) and arrangement of occupational security of trade union representatives in contravention of ILO's Convention No.135 is not a right approach. Similarly exemption of workers who have not worked for minimum six months in workplaces with less than thirty workers for benefitting from right to indemnity which is for workers who are fired while using their trade unionist rights prevents trade unionist organization. There have been positive developments related to these issues in commissions but still there have not been changed in compliance with ILO's Convention No 135.

8. **Political Banns:** Draft protects arrangements related to political banns as it has been. It should be rearranged in compliance with ILO conventions, politic ways should be opened to trade unions and trade unionists.

9. **New Collective Agreement and Agreement Types:** Framework agreements and group collective labour agreements for collective bargaining system are necessary and positive arrangements. But ways for arrangements related to working conditions, durations and salaries should be opened in this kind of arrangements for application of frame agreements in real manner and as its application in developed countries.

10. **Sectoral Threshold:** Authority is another subject related to collective bargaining system. Licence threshold was decreased from 10% to %3 in draft law. This threshold was decreased to 1% in sub-committee negotiations. But especially a temporary article was arranged and this threshold was increased to 3 % again with this temporary article. This article is one of the most

criticised articles and sectoral threshold is major problem of trade unions, ILO finds it contrary to Convention No. 98 and this threshold should be eliminated totally but for solving this problem in a stable way it should be decreased to contemporary levels in convenience with ILO Experts Committee Convention No.98 and to levels in convenience with ILO's advices. But our resolutions related to these issues were rejected and an arrangement contrary to ILO norms was done.

11. Length of collective bargaining process: Authority procedure for starting to collective bargaining process is too long in proposed draft law. When authority denial is arranged, same process is carried out for both positive and negative determination and denial to court conditions are arranged. However, because of claiming ministry's statements as more realistic results with foreseen new registration system and new arrangements connected to this system, employer's objection to positive determinations is accepted as for gaining time and abusing this right. Hence, we know that despite employers know that especially in first organization activities cover majority of workplaces, they choose refusal with bad intension and system plugs because of operations of courts in application of both law 275 and 2822 almost for 48 years. Authority determination cases continue even in very small enterprises and sometimes they take 6-7 years. Therefore in spite of visible rights in papers, application of collective agreement right is prevented. Hence, for getting results as soon as possible in employer's refusal case and carrying out operations in accordance with purpose of law, arrangements should be done for carrying out of these processes by an independent committee instead of this authority system. If this cannot be provided, determination should be ensured by voting (referendum) in workplace. Again our suggestions related to this were not accepted by government deputies and authorities in commission meetings.

12. High Board Arbitration: Similarly, there are differences in articles related to High Board Arbitration than existing law. Firstly, continuation of anti-democratic establishment of September 12 is critical point in itself. When result of strike voting is negative, there is a compulsory application to High Board Arbitration according to article text. Compulsory application to High Board Arbitration provision is again an anti-democratic practise. Protection of existing of this arrangement which means intervening to free collective bargaining right shows contradiction to ILO's Convention No. 98.

13. Restraining of strike rights: Not changing anything about strikes is another indicator of deficiency of this draft. Not changing definition of illegal strike, definition of all of the democratic reaction in workplace as illegal strike and all of the obligations and punishments damage application of democratic rights. Similarly holding restrictions in Law No. 2822 during a legal strike supports our opinion. Prevention of using of collective rights or evaluation of searches for democratic rights as illegal strike reflects a repressive opinion. Elimination of arrangements related to banns of political strike, general strike and solidarity strikes may let an estimation of freedom to this kind of strikes. But making definition of legal strike in draft and defining only strikes in cases of conflict of interest show rights strikes as illegal strikes. Although AKP declared that these bans would be eliminated in 2010 Constitution Referendum, continuation of banns is seen. Prohibition of solidarity strikes, demonstrations against government policies are situations against ILO Conventions and European Social Charter.

14. Strike Banns: Arrangements related to strike banns continue in contrary to ILO's Convention No. 98. There are important changes related to strike banns in draft. Especially, elimination of strike banns in lignite production which feed water thermal plants; notary services; intercity sea, land and rail transportation services; enterprises produce vaccine and serum, educational institutes; child care places and rest homes is meaningful. But they are not enough. Especially continuation of strike banns in inner city transportation, production, refinement and distribution of natural gas in petro chemistry works starting with naphtha and natural gas, petrol works, workplaces which are managed by Ministry of National Defence and banking services is not right according to ILO Convention No.98.

Especially, strike banns were enlarged with addition of strike ban in baking sector which was not in draft law in sub-committee and strike banns in military work places connected to Ministry of National Defence and the ones in petro chemistry works starting with naphtha and natural gas by proposals of government deputies. These kinds of works don't affect public benefit and general health. ILO especially mentions main critters about strike ban, public servants use state authority and literally general services in which when works are stopped, life, personal security and health of society will be endanger. Strike banns should be eliminated in accordance with ILO norms.

15. Strike Postponements: Ceasing of strikes by Council of Ministers after application of one side or Ministry of Labour with undefined reasons as social damage or demolition of national fortune is intervention to free collective bargaining right. Intervention to strike right which is trade union's unique gun with an abstract statement constitutes contradiction to Conventions No. 87 and 98, because of contradiction to freedom of collective bargaining system principle. So it should be eliminated.

As a result, although reason of preparation of Law Draft is mentioned as democratization, provision convenience with ILO norms, it doesn't include this kind of approach and objective. Law should be changed in convenience with ILO Conventions No. 87, 98, 152. Democratic and fair mechanisms should be activated related sectoral thresholds and sectors. Arrangements which open ways for trade union structures are required. Anti-democratic articles related to application of strike right should be eliminated. Collective bargaining and strike procedures should be considered again. Strike banns and postponement should be done in relation with objectivity criteria. Mechanisms like right strike and solidarity strike should be activated. Law draft is far from objectives and continues prohibitive mentality of September 12.

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