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

Introduction

Turkey opened entry talks with the EU on 3 October 2005. The journey to full membership of the EU is expected to last about ten years. The first and one of the most important phases consists of a screening of Turkey's present state of readiness to meet the obligations flowing from EU membership, in order to see what work must be done before accession. The analytical examination of the *acquis communautaire* was completed in October 2006. The *acquis communautaire* is divided into 35 chapters, the 19th of which concerns social policy and employment. In the screening process on social policy and employment, the EU particularly stressed social dialogue in terms of trade union rights. Turkey has conducted bold and significant legislative 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 EU standards and 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.

In this article, the integration of Turkey within the EU is discussed from the perspective of trade union rights. 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.

* This article is an extended version of a paper submitted to the 6th International Conference in Memory of Prof. Marco Biagi, held on 17-19 March 2008 in Modena, Italy.

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.

A brief overview of the Turkish industrial relations system

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[6] (TUA) and the Collective Labour Agreement, Strike and Lockout Act[7] (CLASLA).

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 2007, there were 3 091 042 trade union members organised in 94 unions, representing a union density of 58.40% (MLSS, 2007).[8] 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,[9] the real union density rate (around 12-13%) is much lower, and below the EU average.[10]

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 92 labour unions organising in 28 sectors and three divergent and rival labour confederations (see Tables 1 and 2).

6 Act No: 2821 of 5 May 1983.

7 Act No: 2822 of 5 May 1983.

8 *Official Gazette* 17 July 2007, No: 26585.

9 As of 2007, the total workforce in Turkey is 25 766 000 while total employment is 23 361 000 (http://www.tuik.gov.tr/PreHaberBultenleri.do?id=621) [last accessed on 17 January 2008].

10 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.

Table 1 – Trade union rights by type of workforce

		Type of constituency		
		Workers	**Employers**	**Public servants**
Organising model	Basic	Industrial	Industrial	Industrial
	Higher	Confederation	Confederation	Confederation
No. of organisations	Basic	92	52	66
	Higher	3	1	6
Union density rate (%)		58.40	n/a*	52.89
Right to organise		Yes	Yes	Yes
Right to bargain collectively		Yes	Yes	No
Right to strike		Yes	Yes	No

Source: *Official Gazette* 7 July 2007, No: 26575; *Official Gazette* 17 July 2007, No: 26585.

* not available

The oldest, biggest and centrist labour confederation is Türk-İş;[11] the left-wing (former Marxist and militant) one is DİSK; and the conservative (former Islamic and religious) one is Hak-İş.[12]

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 66 public servants' unions and 6 rival public servants union confederations[13] (see Tables 1 and 2). The union density among public servants is rather high, at 52.89% in July 2007, when it is taken into consideration that public servants do not have the right to bargain collectively or to strike (see Table 1).

11 Mustafa Kumlu, the new leader of Türk-İş, was elected in December 2007. He is being widely criticised for having good and close relations with the ruling party AKP. Therefore, it needs some time to determine whether Türk-İş will follow the same centrist route or change its route towards the conservative or right-wing.

12 For the transformation of Hak-İş from Islamist side to conservative wing see: Burhanettin Duran and Engin Yıldırım (March 2005) 'Islamism, Trade Unionism and Civil Society: The Case of Hak-İş Labour Confederation in Turkey' *Middle Eastern Studies 41(2): 227-247.*

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.

Table 2 – Workers, public servants and employer confederations in 2007

Name	Type of confed-eration	Year of establish-ment	No. of affili-ates	No. of members	Member of	Ideology
Türk-İş (Confederation of Turkish Trade Unions)	Workers confed-eration	1952	33	2 153 272	ITUC, ETUC	Centrist, pragmatic
DİSK (Confederation of Progressive Trade Unions of Turkey)	Workers confed-eration	1967	17	416 379	ITUC, ETUC	Left-wing (former Marxist and militant)
Hak-İş (Confederation of Righteous Trade Unions of Turkey)	Workers confed-eration	1976	7	382 726	ITUC, ETUC	Conservative (former Islamic and religious)
TİSK (Turkish Confederation of Employers' Associations)	Employer confed-eration	1961	22	8 300	IOE, Business Europe, BIAC, UMCE	Liberal
KESK (Confederation of Public Workers Unions)	Public servants confed-eration	1995	11	231 987	ITUC, ETUC	Left-wing
Kamu-Sen (Confederation of Public Labour Unions)	Public servants confed-eration	1992	12	350 727	-	Nationalist
Memur-Sen (Confederation of Civil Servants Unions)	Public servants confed-eration	1995	12	249 725	-	Conservative
BASK (Confederation of Independent Public Servants Unions)	Public servants confed-eration	2002	11	5 718	-	Independent, conciliatory
Hür Kamu-Sen (Confederation of Free Public Servants Unions)	Public servants confed-eration	2005	n/a*	65	-	n/a*
Anadolu Kamu-Sen (Confederation of Anatolian Public Servants Unions)	Public Servants' Confed-eration	2006	n/a*	9	-	n/a*

*Not available. These confederations are described as *fascia confederations* and there is no exact information about their ideology and number of affiliates.

Source: *Official Gazette* 17 July 2007, No: 26585; *Official Gazette* 7 July 2007, No: 26575.

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 2006, collective agreements covered only 891 848 workers,[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. The right to strike and lock-out will be analysed in detail later.

Trade union rights in the process of European integration

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. Consequently, labour and trade union rights in Turkey are criticised in the annual progress reports. These rights are examined under both economic and social rights while Chapter 19 of the reports is, of course, entitled Employment and Social Policy. It is briefly stated that:

> (…) Turkey[16] fails to implement fully the ILO conventions in particular as regards the right to organise, the right to strike and the right to bargain collectively. Turkey still maintains its res-

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.

> ervations on Article 5 (the right to organise) and Article 6 (the right to bargain collectively) of the revised European Social Charter. (…) Turkey needs to adopt legislation guaranteeing full trade union rights in line with EU standards and the relevant ILO Conventions (…). (Commission of the European Communities, 2007: 20)

As can be recognised here, the EU cross-refers to the ILO standards concerning trade union rights. In other words, ILO Conventions determine the fundamental principles of the European Social Model.

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 standards. Turkey had ratified 56 ILO Conventions by 2007, 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,[17] 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 2004 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 a few amendments to the 1982 Constitution, TUA and CLASLA, although some changes are still pending implementation in terms of conformity with the ratified ILO Conventions.

The regulations concerning trade union rights contained in the 1982 Constitution, TUA, CLASLA and PSUA will be analysed below.

Public Servants Unions Act No. 4688: neither the right to bargain collectively nor the right to strike

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 au-

16 Turkey joined the ILO as a member in 1932, but its actual participation dates from the establishment of the Ministry of Labour in 1945.

17 As can be seen in ILO Convention No. 87.

> thorities 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 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 (see Table 2). Finally, PSUA No. 4688, dated 15 June 2001, was adopted in line with the principles embodied in Article 53 of the 1982 Constitution. A summary of the basic provisions of Act No. 4688 is contained in what follows (Dereli, 2006: 370-377).

Public servants unions shall be formed according to eleven service branches;[18] founding a union on the basis of occupation or establishment is not legal. Unions are based on the principles of voluntarism and multi-unionism. Therefore, more than one union may be established in a service branch. Unions and confederations shall be established freely and without any prior permission from the authorities. Nevertheless, having worked as a public servant for a minimum of two years is necessary to become a founder of a union (which is contrary to Article 2 of ILO Convention No. 87 and should be amended).

A provision which has some restrictions on union membership and which was also contrary to Article 2 of ILO Convention No. 87 was amended recently. The term 'public servant' referred only to those who were permanently employed or who had completed their period of probation. However, this provision was amended on 4 April 2007 so as to allow public servants working under fixed-term contracts to join public servants unions.

Nevertheless, Act No. 4688 still has a wide range of restrictions on membership. Some of the public servants who must not join unions are as follows:[19] members of the armed forces; directors of civil administration; chairs and members of higher judicial organs; judges and prosecutors; civilian officials and public servants in the permanent staff of the Ministry of National Defence and the Turkish armed forces; and rectors of universities and deans of faculties. The consequence is that hundreds of thousands of public servants are deprived of their rights to organise. The ILO supervisory organs have raised their opposition regarding these restrictions, particularly to the exclusion in terms of the right to organise of civilian personnel employed by the

18 Service branches are as follows: office, banking and insurance; education, instruction and science; health and social services; local government services; press, broadcasting and communications; artisan and cultural services; public works, construction and rural services; transportation; agriculture and forestry; energy, industry and mining; religious affairs and foundation services.

19 See Article 15 of Act No: 4688 for the full list of public servants who must not join unions.

armed forces and the Ministry of National Defence. According to the ILO Committee of Experts, restrictions should be limited only to personnel in positions of trust (Dereli, 2006: 371). Subsection 6 of Convention No. 98 excludes only the category of people exercising authority in the name of the state or engaged in the administration of the state. Therefore, a criticism has been raised against Turkey in the Conference Committee since the late 1980s. The Freedom of Association Committee stated in its 2006 report that:

> A distinction must be drawn between, on the one hand, public servants who, by their functions, are directly engaged in the administration of the state (…) and, on the other hand, persons employed by the government, by public undertakings or by autonomous public institutions. Only the former category can be excluded from the scope of Convention No. 98. (ILO, 2006: 178-179)

Consequently, a comprehensive personnel reform is needed in the public sector in order to distinguish public servants from public sector workers. In other words, employees who are classified as public servants but who should be classified as public sector workers because of the nature of their work should have their status changed. In this way, the number of public servants, which was 1 617 410 in 2007 (*Official Gazette* 7 July 2007, No: 26575) may be drastically reduced to nearly 500 000 (Dereli, 2006: 377).

The most controversial provisions of PSUA are those concerning *collective consultative talks*, which is restricted to financial issues, salaries and other allowances, compensation and bonuses. PSUA prefers this term instead of using *collective bargaining* or *collective agreement*. In other words, public servants have only the right to collective consultative talks, not the right to collective bargaining.[20] Therefore, even if the social partners to these talks[21] fully agree on a protocol, they are not able to sign a collective agreement. A protocol signed by the social partners does not have binding force. A protocol must be under-signed by the Council of Ministers for appropriate administrative, executive and legal action; furthermore, both the Council of Ministers and the Grand National Assembly are empowered to make final adjustments to the protocol (see Figure 1, at end).

Collective consultative talks between the social partners have been undertaken on five occasions since 2002 but, so far, just one protocol has been signed, in 2005. Even here, the protocol has not been applied entirely: 26 out of 34 articles have not been implemented by the government (ILO, 2007a: 106). So, it is possible to say that PSUA, contrary to ILO Convention No. 98, creates only an illusion of collective bargaining, as well as a distinction between workers and public servants. Consequently, a

20 MLSS has recently interfered in the statutes of KESK and its affiliates. One of the reasons given for this interference is that KESK's statutes referring to the terms of collective bargaining and the right to strike are, according to MLSS, not compatible with the term 'collective consultative talks' as used in PSUA (ITUC, 2007: 5).

21 The social partners in negotiation are the authorised unions with the largest membership in their respective service branches, the confederations to which they are affiliated, and the Public Employers' Committee, composed of eight public officials under the chair of the Minister of State.

status as second class trade unionism is engendered for public servants in terms of their trade union rights (Koray and Çelik, 2007: 440). Although the provisions of PSUA are in line with the terms of ILO Convention No. 151, Convention No. 151 only substitutes and complements ILO Conventions Nos. 87 and 98. In other words, the terms of Convention No. 151 are implemented only if more favourable provisions do not exist in other international conventions.

Public servants do not have the right to strike, which is also contrary to Article 6 of the revised European Social Charter. This restriction on the right to strike is one of the most important reasons for Turkey's reservation on Article 6. Therefore, should the social partners fail to reach agreement at the end of the negotiation process, one of the parties may call on the Conciliation Board. However, the decisions and recommendations of the Board do not have legal force (see Figure 1) and have never been implemented up to now.

Following the approval by the EU of Turkey's candidate status during the 1999 Helsinki Summit, two main amendments were made in the 1982 Constitution: in 2001 and 2004. The amendment package included several significant changes, but one of the most radical changes was made to Article 90 of the Constitution on 7 May 2004: a new provision was inserted in Article 90 to the effect that, in case of conflict between international conventions on fundamental rights and freedoms (including the right to organise and bargain collectively) and domestic laws, the provisions of the international conventions are to prevail. In other words, Article 90 was amended to strengthen the status of the international conventions signed by Turkey. Article 90, as amended, reads as below:

> International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. 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.

The adoption of this amendment was 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.[22] In other words, actual implementation is full of problems of controversies and conflicting interpretations. Consequently, some of the cases referring to the unions of public servants have been brought in front

22 The Court of Cassation (Danıştay) ruled on 27 November 2005 that the collective agreement signed by Tüm Bel-Sen (a public servants union organising in local government services) and Ulukışla municipality is valid. In doing so, it referred to ILO Conventions No: 87, 98 and 151, as well as Article 90 of the 1982 Constitution. This is the most important (and unique) higher court decision referring to international conventions in Turkey. For the details of this decision see: Mesut Gülmez (2006) 'Karar İncelemesi: Kamu Görevlilerinin Toplu Sözleşme Hakkı ve Danıştay Kararı' *Çalışma ve Toplum* 9(2): 99-108.

of the European Court of Human Rights (ECHR). Notwithstanding that the ECHR has ruled in favour of the unions, the trade union rights of public servants continue to be violated in many respects.[23]

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;[24] 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 2007 to 96. 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

23 Despite the decision of the Court of Cassation mentioned in the above footnote, the Ministry of Interior did not change its approach and continues to put pressure on local governments not to implement collective agreements. Taking another application of Tüm Bel-Sen, ECHR noted that '(…) the cancellation of that agreement, which had been in effect for two years, constituted interference with the applicants' freedom of association. (…) The decision to cancel an operative collective bargaining agreement with retrospective effect almost three years after its conclusion constituted a violation of the rights of Tüm Bel-Sen and the applicants under Article 11.' Visit: http://cmiskp.echr.coe.int/tkp197/view. asp?item=4&portal=hbkm&action=html&highlight=tum%20%7C%20belsen&sessionid=4689271&skin=hudoc-pr-en [last accessed on 17 January 2008].

24 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. The draft bill on TUA has fewer branches of activity in order to make a more rational classification and pave the way for stronger unions. The number of sectoral activities have been axed from 28 to 18 by removing sugar and shipbuilding, joining leather to textiles and woodwork to paper and mergers between press, publishing and broadcasting, communications and journalism; inland, rail, sea and air transportation; and warehouse and storage.

and have both positive and negative individual freedom of association (Süral, 2004: 13). 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.[25] The ILO has stressed that:

> 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. However, the new Turkish Penal Code No. 5237, which came into effect in June 2005, introduced new provisions protecting against anti-union discrimination. With this Code, the criticism of the ILO on protections against anti-union discrimination seems to have been attenuated (Dereli, 2007: 91). Article 118 prohibits acts of anti-union discrimination and provides dissuasive sanctions, as stated below:

> Any person who uses force or threats with the aim of compelling a person to join a trade union or not to join, or to participate in union activities or not to participate in them, to resign from a trade union or from his/her position in the union management, shall be punished with imprisonment from six months to two years. A judgment of imprisonment for one year to three years shall be given in cases where a trade union's activities are obstructed by using force, threats or other unlawful acts.

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)[26]

25 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.

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

Another point criticised by ILO and within labour circles in Turkey is the basic requirements, in particular to be a Turkish citizen and to be able to read and write Turkish, for founders of trade unions (TUA, Art. 5). However, the draft bill amending TUA[27] no longer refers to a condition of nationality but requires that, in order to establish a trade union, a person must be in full possession of civil rights and must be able to read and write.

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 resignation which had led to fraud allegations as regards the majority status of trade unions before the 1980s (Dereli, 2006: 249-250). However, the draft bill amending TUA abolishes the requirement for the intervention of a public notary.

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

27 The draft bills prepared by a committee composed of academics representing the related parties on trade union rights, which are aimed to simplify and replace TUA and CLASLA, have been presented to the social partners for their views and proposals. The latest meeting was held on 29 May 2007, with the participation of the main labour and employer confederations. However, it has not been possible to submit the draft bills to the Grand National Assembly thus far.

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.

The draft bill of amendment to CLASLA contains two alternative proposals for determining which trade unions are 'authorised'. The first stipulates that the majority union in a given workplace shall be recognised as the competent union for collective bargaining if the union concerned is affiliated to one of the three most representative trade union confederations. The other alternative proposal envisages the gradual elimination of the 10% representation requirement in the branch of activity concerned without any condition for affiliation (Committee of Experts, 2006; Dereli, 2007: 102).[28] Türk-İş is the biggest supporter of the 10% threshold system, but this is strongly rejected by DİSK and Hak-İş. Thus, consensus between the labour confederations has not been reached so far.

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). However, there is no amendment to these provisions in the CLASLA draft amendment bill.

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. Thus, the draft bill amending CLASLA deletes the 'production of lignite used for thermal power plants', 'petro-chemical works starting from naphtha or natural gas' and 'banking and notaries' from the definition of essential services.

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 collec-

28 http://webfusion.ilo.org/public/db/standards/normes/appl/appl-displaycomment.cfm?hdroff=1&ctry=0660&year=2006&type=O&conv=C098&lang=EN [last accessed on 17 January 2008].

tive 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 3). 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 (Aydın, 2005: 386; Çelik, 2005: 251).

Table 3 – Postponed strikes (2000-2005)

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.

Social dialogue(less) between the social partners: dialogue falling on deaf ears

Social dialogue is one of the principles underlying what is known as the European Social Model and a significant component of the *acquis communautaire*. Therefore, a strong social dialogue and its resulting social pacts should serve as a means of strengthening Turkey's capacity to manage change and to prepare for EU membership (Süral, 2007: 143). However, Turkey has again been criticised with regard to social dialogue in the 2007 Progress Report. Here, it was stated that:

> (…) There is some progress regarding bipartite social dialogue in certain sectors; however, overall, social dialogue is weak and tripartite social dialogue mechanisms, in particular the Economic and Social Council, remain ineffective. (…) Turkey (…) needs to reinforce social dialogue mechanisms, including at tripartite level. (Commission of the European Communities, 2007: 20, 53)

Turkey has a variety of institutions and mechanisms contributing to social dialogue from enterprise level to the national level. The Economic and Social Council, the Tripartite Consultation Board and the Work Assembly are the major institutions of social dialogue.[29] Some administrative bodies of various state agencies also have a tripartite body, such as the Minimum Wage Commission, the General Assembly and the Board of Directors of the Social Security Institution, the General Assembly and Board of Directors of the National Productivity Centre and the General Assembly and Board of Directors of the Public Employment Organisation. Turkey has given priority to developing social dialogue, and has restructured some institutions and mechanisms, but they are not effective and active as is the case in Europe; the development of social dialogue has focused only on the institutionalisation of tripartite bodies in Turkey. Turkish tripartism can be described with a strong predominance of government. Thus, the lack of a culture of social dialogue can be ascribed to the tradition of state interventionism and legalism in industrial relations (Yıldırım and Çalış, 2005: 4).

In practice, social dialogue in Turkey has some important weak links. The first of these is that decisions approved by all parties can be ignored by governments. The distribution of power between the social partners is not particularly even and there is a severe fragmentation and rivalry on the labour side due to the political and ideological diversity between the labour unions (see Table 2). Secondly, governments are reluctant to provide sufficient information to the social partners. Thirdly, the tripartite bodies have more government members than do the representatives of the social partners as a consequence of strong state control over the industrial relations system in Turkey (Yıldırım and Çalış, 2005: 4-5). The composition of the Economic and Social Council is a typical example of the predominance of government (see Table 4), as is also the case in Czech Republic (Rychly and Pritzer: 30). In addition to these weak links, social dialogue lacks one main condition – the strong and enduring political will of all the parties (Rychly and Pritzer: 3). In other words, the labour and the employer sides are not willing participants and do not believe in social dialogue, somewhat because decisions generally have not been taken on the basis of a bottom-up approach due to the centralised decision-making tendencies (Öke, 2006: 3).

29 For the details on the formal tripartite structures, see: Valk and Süral (2006): 48-52.

Table 4 – Composition of the Economic and Social Council in 2007

Social partners	Members	Number of members
Chair	Prime Minister	1
Government	Ministers and their under-secretaries	15
Labour	Türk-İş, DİSK, Hak-İş, Kamu-Sen	12
Employer	TOBB, TİSK, TESK,[1] TZOB[2]	12
Total		40

1 The Confederation of Turkish Trades and Crafts Workers.
2 The Unions of Turkish Chambers of Agriculture.

Another problematic issue in the social dialogue is that the main tripartite bodies do not meet regularly or work efficiently. For example, the Economic and Social Council should meet four times per year in plenary session, according to Act No. 4641 on the Establishment and Working Principles and Procedures of the Economic and Social Council, but it generally meets less often or, sometimes, no plenary is held at all, as was the case in 2004. Another striking example is the Work Assembly, which has been held only nine times since being established in 1946. The roles of the main tripartite bodies are consultation and the exchange of information, not decision-making. In other words, the tripartite bodies are a kind of talking shop in which statements are delivered and inconclusive discussions take place, instead of an influential body where the social partners make serious efforts to reach consensus on difficult issues within their fields of competence (Official Journal of the European Union, 2004: 4).

Collective agreements are also the main vehicles to maintain social dialogue at workplace level. However, collective agreements cover less than one million workers, as mentioned above, so this mechanism is not sufficient for workplace social dialogue. Occupational health and safety committees, paid annual leave boards, joint discipline and grievance committees and union representatives also act to maintain bipartite social dialogue in workplaces. However, these committees do not hold regular meetings and are not sufficient for an effective bipartite social dialogue.

One of the most important attempts regarding social dialogue was the adoption of Labour Act No. 4857 in 2003, which was accepted as a big step towards a harmonisation of the *acquis communautaire*. The draft law was prepared by a nine-member committee of academics representing employers, trade unions and government. The trade unions had some reservations, in particular on flexibility measures and severance pay, whereas the employers lobbied the political parties hard for the adoption of a new Labour Act. Consequently, the social partners failed to reach a compromise and the new Labour Act was adopted at the end of a *social dialogue(less)* process.[30]

30 For the debates on the process of adoption of Labour Act No: 4857, see: Koray and Çelik (2007): 457-461.

Briefly, in spite of the progress achieved in recent years, there are still substantial challenges as regards ensuring a genuine social dialogue in Turkey. These challenges generally stem from a lack of a culture of co-operation between the government and the social partners, as well as between capital and labour. Social dialogue attempts are, rather, based on the need for the harmonisation of EU regulations than on the eager enthusiasm of the social partners.

However, in spite of all these inadequacies and shortcomings, there are reasons for optimism (Süral, 2007: 151). The awareness of the importance of social dialogue among the social partners has begun to increase and some projects have been launched to reach an active and autonomous social dialogue. The most important one is the social dialogue project *Strengthening Social Dialogue in Turkey*,[31] funded by the EU and jointly implemented by the International Training Centre of the ILO in Turin, Italy, and the Ankara-based DeLeeuw International Management Consulting on behalf of MLSS. Under the project, launched on 1 February 2006 and ending on 28 November 2007, an information database on social policy, labour law and statistics, etc. was established, thematic working groups were installed, awareness-raising conferences were organised in the major regions of Turkey and training on social dialogue issues was given.

EU integration is one of the most important motive forces for strengthening the social dialogue in Turkey. However, it should not be forgotten that legislation alone is not sufficient for a strong social dialogue; legislation only draws a general framework for dialogue and it is nearly impossible to reach a well-functioning dialogue in practice without strengthening trade union rights and combating anti-trade union practices. The social partners should also learn to listen to different views and the need for respect for each other, instead of dialogue falling on deaf ears.

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.

31 For more information about this project, visit: http://ab.calisma.gov.tr/web/sd/Home/tabid/121/TabId/121/language/en-US/Default.aspx?alias=ab.calisma.gov.tr/web/sd [last accessed on 17 January 2008].

Turkey, as a candidate country in the EU integration process for more than forty 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.

References

Aydın, Ufuk (2005) 'From the Taft-Hartley Act to Turkish Industrial Relations – Postponement of Legal Strikes: A Legal Borrowing Case' *Comparative Labor Law and Policy Journal* 25(3): 365-390.

Bakırcı, Kadriye (2004) 'Unfair Dismissal in Turkish Employment Law' *Employee Responsibilities and Rights Journal* 16(2): 49-69.

Commission of the European Communities (2007) *Commission Staff Working Document, Turkey 2007 Progress Report* Brussels.

Çelik, Aziz (2005) *AB Sosyal Politikas*ı İstanbul: Kitap Yayınevi.

Çelik, Aziz and Kuvvet Lordoğlu (2006) 'Türkiye'de Resmi Sendikala ma İstatistiklerinin Sorunları Üzerine' *Çalışma ve Toplum* 9(2): 11-29.

Dereli, Toker. (2006). *Labour Law and Industrial Relations in Turkey* in Roger Blanpain (Ed.) The Netherlands: Kluwer Law International.

Dereli, Toker (2007) 'Uluslararası Çalışma Örgütü (ILO) Perspektifiyle Türkiye'de Sendika Özgürlükleri ve Yeni Yasa Tasarısının Değerlendirilmesi' *Sicil* 2(6): 87-105.

Duran, Burhanettin and Engin Yıldırım (March 2005) 'Islamism, Trade Unionism and Civil Society: The Case of Hak-İş Labour Confederation in Turkey' *Middle Eastern Studies 41(2): 227-247.*

Gönenç, Levent and Selin Esen (2007) 'The Problem of the Application of Less Protective International Agreements in Domestic Legal Systems: Article 90 of the Turkish Constitution' European Journal of Law Reform VIII(4): 485-500.

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

Gülmez, Mesut (2006) 'Karar İncelemesi: Kamu Görevlilerinin Toplu Sözle me Hakkı ve Danı tay Kararı' *Çalışma ve Toplum* 9(2): 99-108.

ILO (2006) *Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* Geneva: ILO.

ILO (2007a) *Conference Committee on the Application of Standards Extracts From the Record of Proceedings* Geneva: ILO.

ILO (2007b) *Report of the Committee of Experts on the Application of Conventions and Recommendations* http://www.ilo.org/ilolex/gbe/ceacr2007.htm [last accessed on 15 February 2008].

ITUC (2007) 'Internationally Recognised Core Labour Standards in Turkey' *Report for the WTO General Council Review of the Trade Policies of Turkey* Geneva: ITUC.

Koray, Meryem and Aziz Çelik (2007) *Avrupa Birliği ve Türkiye'de Sosyal Diyalog* İstanbul: Belediye-İş.

Official Gazette 7 July 2007, No: 26575.

Official Gazette 17 July 2007, No: 26585.

Official Journal of the European Union 7 December 2004 (2004/C 302/17).

Öke, M. Kemal (2006) *Social Dialogue at Sectoral Level in Turkey.*

Rychly, Ludek and Rainer Pritzer (2003) 'Social Dialogue at National Level in the EU Accession Countries' *InFocus Programme on Social Dialogue, Labour Law and Labour Administration* Working Paper No: 12. ILO: Geneva.

Süral, Nurhan (2004) *The Evolving Structure of Collective Bargaining in Europe 1990-2004* research project co-financed by the European Commission and the University of Florence.

Süral, Nurhan (2007) 'A Pragmatic Analysis of Social Dialogue in Turkey' *Middle Eastern Studies* 43(1): 143-152.

Valk, Peter van der and Nurhan Süral (2006) 'Turkish Social Dialogue: Structure, Practice and Attitudes' in Roger Blanpain (Ed.) *Flexibilisation and Modernisation of the Turkish Labour Market* The Hague: Kluwer Law International: 41-80.

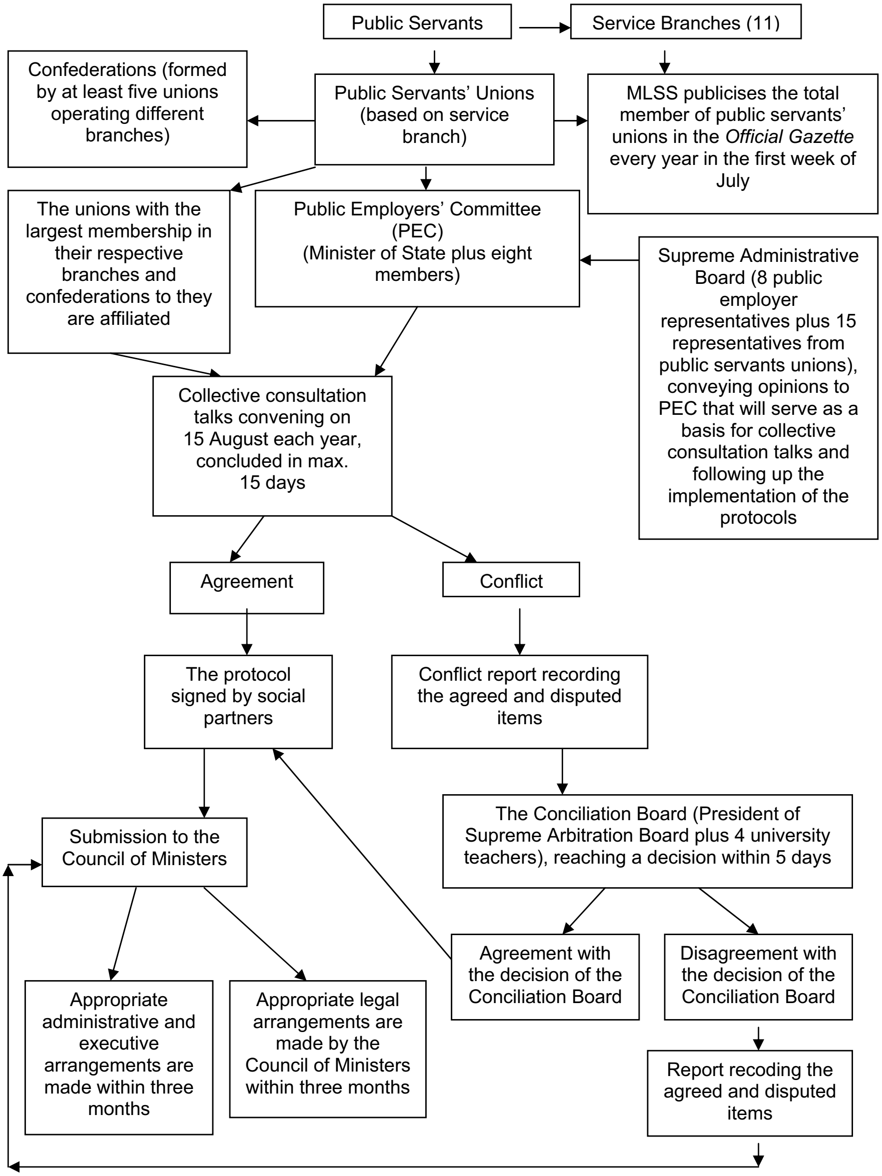
Yıldırım, Engin and Şuayip Çalış (2006) 'Transformation of Turkish Social Policy Making on the Road to Brussels: The Case of Social Dialogue' *Transformation of Social Policy in Europe: Patterns, Issues and Challenges for the EU-25 and Candidate Countries* Ankara: METU.

http://www.tuik.gov.tr/PreHaberBultenleri.do?id=621 [last accessed on 17 January 2008].

http://cmiskp.echr.coe.int/tkp197/view.asp?item=4&portal=hbkm&action=html&highlight=tum%20%7C%20belsen&sessionid=4689271&skin=hudoc-pr-en [last accessed on 17 January 2008].

http://webfusion.ilo.org/public/db/standards/normes/appl/appl-displaycomment.cfm?hdroff=1&ctry=0660&year=2006&type=O&conv=C098&lang=EN [last accessed on 17 January 2008].

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



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