

UNION AVOIDANCE IN TURKEY: THE STATE AND EMPLOYERS vs. UNIONS

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INTRODUCTION

Although the retreat of trade unionism in many parts of the world has usually been attributed to changing economic and political conditions, state suspicion and employer hostility towards trade unions has been a widespread feature of industrial relations scene since its early days. The concept of union avoidance consists of two different but not unrelated dimensions: union suppression and union substitution (Gall and McKay 2001, Dundon 2002, Gall 2002, Logan 2006, Heery and Simms 2008: 34).). While the former refers to employers' strategy of depriving workers of their rights through a wide array of methods including intimidation (anti-unionism), the latter is concerned with policies and actions that may reduce propensity to unionize among employees (non-unionism). Although various forms of anti-unionism exist in the developed world, it is mainly in the developing world that union suppression constitutes an acute problem of violation of labour rights.

It is against this background that the paper aims to examine union avoidance policies of employers and the state and labour's response to these policies in the Turkish context. In the paper, we first sketch out the general framework of freedom of association in the context of the state's role in industrial relations. Then, we proceed to discussing union avoidance strategies of employers and the government, which has resulted in preventing workers from joining a union, or to disempower or destroy existing unions.

TRADE UNIONISM IN TURKEY

The current industrial relations system was established in Turkey in the early 1980s during the military regime while the economic restructuring was underway. The backbone of the system was the new labour legislation encompassing the Trade Unions Act 1983 (TUA) and Collective Labour Agreement, Strike and Lock-out Act 1983 (CLASLA), as well as the 1982 Constitution. The new legislation imposed extensive restrictions and administrative controls on unions, which have remained in force without major changes and constitute the main legal framework of the present industrial relations system in Turkey. Throughout the 1980s, the Turkish state actively intervened in industrial relations in the direction of controlling and weakening or trade unions and the system of collective bargaining. Trade unions in Turkey have suffered major membership losses since the early 1980s and have been unable to resist deunionization. They find it difficult to deal with the partial retreat of the state, the effects of structural adjustment and increased exposure to the competitive global economy.

Although Turkish unions are organised on the basis of industry, and union structure is centralized, collective bargaining occurs at workplace not industry level. According to the CLASLA, an authorized union may conclude a collective agreement covering only one establishment, or it may conclude a multi-employer agreement provided it meets the bargaining requirements in each of the establishments covered (Dereli, 1998: 275). Collective bargaining is restricted as to be recognized as a bargaining agent, a union must represent more than half of the employees in an enterprise and 10 percent of all employees in the sector.

As a matter of fact, the EU pressurizes Turkey to establish full trade union rights including the elimination of restrictive thresholds and provisions relating to the right to strike and to collective bargaining in particular for public sector employees and public services

According to the Ministry of Labour and Social Security (MLSS) 2008 Statistics, there are 3.179.510 union members out of 5.414.423 workers who are under the MLSS

jurisdiction. Out of 1.691.299 public servants who are employed under a different jurisdiction, 930.397 are unionized. But public servants still have neither the right to bargain collectively nor the right to strike. While 3.179.510 workers are organised in 94 trade unions, collective agreements covered only 891.848 workers. It should be kept in mind that the official union membership figures are inflated as a result of union competition. The percentage of the labour force covered by collective agreements is a much better indicator of unionization in Turkey. On the basis of this indicator, the unionization rate seems to be around 6 percent and it drops to a mere 3 percent in the private sector (Bakır and Akdoğan 2009: 89-90).

In recent years, Turkish trade unions have suffered serious setbacks arising from deregulation, privatization and the economic and financial crises. The existence of a big 'informal sector' is also an important barrier to unionization. This sector contains a large number of small and medium-sized enterprises that provide low quality, low wage jobs and enjoy flexible employment practices. The predominance of SMEs seems to be a major cause of weak private sector labour movement.

The Turkish trade union movement is divided into rival confederations with political and policy differences. There are two types of labour 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 Public Servants Trade Unions Act. They are called *memur sendikaları* (public servants unions). Unions are split on both a sectoral and ideological basis. There are 94 labour unions, most of which are affiliated to three divergent and rival labour confederations (Türk-İş, DİSK and Hak-İş) and there are 73 public servants' unions, most of which are affiliated to six rival public servants' confederations (Türkiye Kamu-Sen, Memur-Sen, KESK, BASK, Hür Kamu-Sen and Hak-Sen).

Although trade unions in Turkey are directly affected by the recent process of economic restructuring, they have not usually been able to develop strategies and policies in response to challenges posed by globalization. Turkish trade unions have faced enormous problems as a result of employers' deunionization activities, the spread of new management techniques, privatization and reduction of labour rights. Governments have also moved to restrict privileges enjoyed by organized labour for many years especially in the public sector. The organizing challenges faced by Turkish unions are also enormous, which include the need to make significant inroads into the informal sector and harder to organize segments of the economy. Furthermore, the union movement lacks a capacity to mobilize workers in modern sectors of industry where it is mostly organized. As a result, Turkey has been able to implement IMF-induced structural adjustment programs without causing widespread discontent among organized labour.

In addition, historical legacies are important in accounting for unions' lack of initiatives in the Turkish context. In addition, economic conditions and the political and institutional context impinge on union weakness. The role of trade unions in Turkey cannot be fully understood without a consideration of the long tradition of a strong and dominant state active in industrial relations. In consequence, the unions still expect the state to intervene directly and solve their problems.

METHODS OF UNION AVOIDANCE IN TURKEY

Although employers mainly exploit loopholes in the legislative frameworks in their union avoidance strategies, it is macro economic and political structures that enable them to pursue anti-union policies. It is also the case that employers' union avoidance policies sometimes backfire and result in strengthening of union organization. There are four main policies of anti-unionism: dismissals, exploiting inter-union rivalry, strike postponements and abuse of strike ballot. It should be born in mind that we exclude initiatives of non-unionism through policies associated with HRM.

Dismissals: Dismissal for union membership and union activities is the best-known suppressive union busting strategies in Turkey. Employers, in particular in private sector, first use 'fear stuff' and instil a 'fear' of managerial reprisals to possible unionisation (Dundon, 2002: 236). Although freedom of association is guaranteed by the Constitution and TUA, the remedies and safeguards are inadequate¹. Therefore employers generally pay compensation to the workers who have job security and are dismissed for union membership, instead of reinstating them. Furthermore these workers are put in the blacklists which are circulated to all employers in order to warn them about 'trouble-makers'. Due to inefficient provisions on freedom of association, 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 *DISK* between 2003-2008 (Bakır and Akdoğan 2009: 93). Out of 11,173 applications for wrongful dismissal, the courts awarded reinstatement in 17 per cent of all the cases (*Türk-İş*, 2006: 10). But only 3 per cent of these were implemented as employers preferred paying compensation to reinstating workers. It would not be an exaggeration to argue that private sector employers tend to dismiss workers for their union activities and membership in order to destroy and weaken trade unions. Many workers also face discrimination because of their trade union membership such as being transferred to other workplaces, often in other cities, or other discriminatory measures and pressure on workers to leave the union is often implemented. In other words, moral harassment and mobbing against trade unionists and union members whom the employer wants to shed are often used as a cheaper and discreet union busting strategy.

Inter-union rivalry: Fragmentation on the labour side exacerbates the inter-union rivalry. Since trade unions compete with each other to be authorized for collective bargaining, inter-union rivalry has been more destructive rather than constructive in Turkey. The hawkishness of rival unions both endangers the whole collective bargaining process and alienates many potential union members. Inter-union rivalry often leads to unions adopting a confrontational attitude simply to avoid being criticised by other rival unions for cowardice (Süral, 2004: 47) and may be used as a union busting strategy by employers. By supporting 'appropriate'² and 'moderate' trade unions, employers may control the workers and suppress the rival and more aggressive trade unions as was the case in Paşabahçe glassware plants. The employer used inter-union rivalry to undermine *Kristal-İş*, a left wing affiliate of *Türk-İş* and supported the rival and moderate union, *Çimse-İş* explicitly in 2003. *Çimse-İş*, a right wing union affiliated to *Türk-İş*, had the majority of the workforce as its members. Although this union is traditionally organized in cement and ceramic sector, it expanded towards glassware sector by the support of the employers and was authorized for collective bargaining in Paşabahçe in 2003. Following the signing of collective agreement, 407 of its members who were not content with the agreement left *Çimse-İş* and joined *Kristal-İş*. 300 subcontracting workers who were employed contrary to Labour Code, also joined *Kristal-İş*, but the employer responded by trying to force them to resign from the union. When the workers rejected this pressure, all subcontracting workers and more than 50 permanent workers were dismissed, and new workers were employed in their place. *Kristal-İş* complained about alleging anti-union discrimination and brought the case to the Labour Court that decided reinstatement of

¹ 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 (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).

² "What is meant by 'appropriate' may be a union prepared to eschew traditional bargaining in favour of 'business unionism' or 'social partnership'" (Gall, 2004: 44).

159 workers. This decision was also approved by the High Court³. However, at the end of a long lasting (three year and three month) case procedure⁴, none of the workers was reinstated (Çelik and Aydın 2006: 86).

An important part of union rivalry involves unions which are politically closer to the government. There has recently been a sudden intensification of inter-union rivalry, particularly between *Türk-İş* and *Hak-İş* affiliates (supported by the government). For example, a *Hak-İş* affiliate, *Tarım Orman İş* (The Agriculture and Forestry Workers Union) has begun poaching workers from a rival *Türk-İş* affiliated union, *Orman-İş* (The Forestry Workers Union). As a result, *Tarım Orman İş* has been able to increase its membership from 837 to 18.000 in just three months. It is alleged that some bureaucrats in the relevant Ministries, several AKP deputies and activists are behind this.⁵ In addition, it is claimed that municipal workers in Denizli and Amasya have been under pressure to resign their union, *Genel-İş* (The General Services' Workers Union), a *DISK* affiliate and join *Hizmet-İş* (The Municipal and Public Services' Workers Union), a *Hak-İş* affiliate.⁶ It can be suggested that the AKP government may have a desire to strengthen *Hak-İş* in order to create a friendly labour organization that will not oppose the government on every occasion. The AKP government may implicitly encourage *Hak-İş* as leverage against *Türk-İş*.

Strike Postponements. The current AKP government has further changed the distribution of power in industrial relations against labour to a great extent in recent years (Uçkan 2007: 121). For example, the postponement of legal strikes, accepted as a legal borrowing case from US Taft-Hartley Act, has been a telling feature of Turkish industrial relations under the AKP government (Aydın, 2004: 365-421). When we look at recent strike statistics, one can see a downward trend, though a small upward tendency for 2004 can be observed. Turkey has not usually been a strike-prone country since the 1980s with the major exception of the period between 1989 and 1994. Despite the insignificance of strikes, the AKP government did not hesitate to use its legal powers to postpone strikes deemed 'damaging national economy'. It is also important that strike postponement usually amounts in practice to strike prohibition in Turkey. A legal strike may be postponed by order of the Council of Ministers for sixty days if it is likely to be prejudicial to national security and public health⁷. However upon the expiration of sixty day postponement period workers can not go on the strike, in other words, following the postponement period collective agreement should be concluded by either parties or the Supreme Arbitration Board. Therefore, strike postponements greatly erode the right to strike in Turkey.

The government twice postponed a strike in the glassware sector for 60 days by 5.000 workers tied to *Kristal-İş* (The Glass, Cement, Ceramic and Soil Industries Workers' Union) on the grounds of 'threatening national security and public health' in 2003 and 2004. The union protested to the government and accused it of implementing policies dictated by employers.⁸ The union took the case to the Council of State, which ruled that the postponement was a breach of relevant laws. The Minister of Justice defended the

³ Pasabahce Case was also criticized by the Committee on Freedom of Association, ILO. For the report of committee see:
<http://webfusion.ilo.org/public/db/standards/normes/libsynd/lsggetparasbycase.cfm?PARA=7891&FILE=2308&hdroff=1&DISPLAY=INTRODUCTION> (accessed on 17.01.2009).

⁴ Concerning the procedure of trial TUA provides that the court must apply fast-hearing procedures and conclude the case within two months. If the decision is appealed, the Court of Cassation must render its definite verdict within one month (Art.20/III). But due to the heavy work load of Labour Courts in Turkey, the trials generally take quite longer than foreseen in the article

⁵ <http://www.evrensel.net/04/07/28/sendika.html> (accessed on 02.08.2004).

⁶ <http://www.birgun.net/index.php?sayfa=61&inid=devami=2253> (accessed on 27.08. 2004).

⁷ "...assessments of the degree to which a strike imperils public health or national security are likely to be subjective in many disputes, and the interpretation of the concepts of public health and national security is subject to misuse". Aydın, 2004: 383.

⁸ *Kristal-İş*, 390.

government's decision by using the same arguments put forward by the employers who successfully lobbied the government arguing that the strikes would damage the economy, as they would risk losing their export markets. Eventually, the government postponed the strike once again. *Kristal-İş* took the issue to the international arena. The (then) International Confederation of Free Trade Unions (ICFTU) Secretary General lodged a formal complaint against the government for the strike postponement. More significantly, Guentur Verheugen, the then EU commissioner responsible for the enlargement, in his reply to *Kristal-İş*'s letter regarding the issues stressed, 'the candidate countries should respect basic human, cultural and social rights as specified in the Copenhagen criteria. The right to strike is one of the fundamental social rights'.⁹ Notwithstanding these criticisms, the government did not waver to postpone another strike in the tire industry for 60 days on the grounds of 'national security' in 2004.

Abuse of strike ballot. Strike ballot is a democratic way providing disclosure of workers' desires and opinions and revelation of the final decision about whether to apply the strike decision taken by trade union. Strike ballot is not obligatory; the request for a strike ballot should be made by one forth of the workers employed in the establishments where the strike is announced according to CLASLA (Art.35). If majority of the workers, whether union members or not, employed on the date the announcement is made decides against a strike in the establishment, the strike shall not be called and the union should either come to an agreement with the employer or refer the dispute to the Supreme Arbitration Board for final settlement. If neither is done, the union's authorization certificate becomes invalid (Art.36). If majority vote for strike is taken, the union should go for a strike. Otherwise, the union's authorization certificate shall be void¹⁰. The provisions on the strike ballot have been criticized by trade unions and sometimes are abused by employers. The criticism on strike ballot argues that union's strike power is undermined and right to strike is barred by letting all the workers of an establishment participate in the voting procedure (Dereli, 2006: 340). In other words, employers may misuse strike ballot as a strike breaking activity in some cases as illustrated by Novamed strike.

The employer followed an extra-ordinary method for union busting in Novamed, a German-based multinational medical company, *Petrol-İş* (The Petroleum Chemical and Rubber Workers' Union of Turkey) launched to organize workers in Novamed in 2005. Although the organising campaign faced some serious difficulties and anti-union repression, *Petrol-İş* overcame these obstacles with the undeniable support and solidarity provided by *IG BCE*, the German chemical workers' union. Having the legal authorization to collective bargaining, *Petrol-İş* started to bargain collectively with the Novamed management. However, it was quite difficult to reach an agreement due to the management's persistent and obstinate attitude. The management persistently maintained the anti-union repression policies and employed more than 50 new workers in order to break a probable future strike (<http://www.petrol-is.org.tr/english/eng01.htm>). As the negotiations were blocked, the union had to decide whether to strike. The union was inclined to apply to Supreme Arbitration Board, but the employer followed an unfamiliar union busting strategy and did not resist to strike. The employer provoked the new workers to join the union, but interestingly not as a strike-breaker, as a strike-supporter. While the union workers voted for compulsory arbitrator instead of going to strike, the factory-employed workers, that had the majority, voted for the strike and won. In the end, those who voted "yes" for the strike kept on working during the strike, while those who voted "no" ended up in a forced strike: If they would not strike, their authorization certificate for collective bargaining would be revoked. In other words, by forcing workers for a strike, the employer aimed to weaken the union and did not foresee that it would be such a long lasting strike (more than one year). Following the strike, Novamed and

⁹ Bumin, Kürşat. "Öyle bir 'grev hakkı' olsun ki, işler yine tıkırında yürüsün", *Yeni Şafak* (02 March 2004): 5.

¹⁰ For the details of strike ballot in Turkey see: Baybora, Dilek. (January 2007). "Strike Ballot in Turkish Labour Law", *İşgüç. The Journal of Industrial Relations and Human Resources*, 9(1), 84-108.

Petrol-İş signed collective agreement covering some 300 workers. Union busting policies implemented in Novamed paved the way for strengthening the union instead of undermining it.

CONCLUDING REMARKS

Structural changes in the economy and labour markets, government policies, unaccountable union leadership have all played an important and facilitating role in the implementation of union avoidance policies by employers. Trade unions find it difficult to cope with the partial retreat of the state, the effects of structural adjustment and increased exposure to the competitive global economy. The large pool of workers in the informal sector has created different labour market conditions. The presence of large unofficial economy in combination with small family run firms and a large percentage of self employment has meant that in practice a large section of the labour force is non unionized and remain outside collective bargaining. The violation of labour rights often emanate from the general weakness of economies of developing countries and an abundant supply of labour. In the context of high unemployment rates, employment security has remained a vital concern for workers, which has facilitated employers' threat of dismissal for unionization.

A lack or weakening institutional support for unions are institutional conditions under which union strength declines. Trade unions are not institutionally protected by employers' hard line policies. Employers' anti-union policies lead to a decline in union influence by de-unionizing organized enterprises or by making it difficult for unions to organize workers of unorganized workplaces. The prospect of labour revitalization depends heavily on labour's relationships with the state because the state influences the amount of political opportunity for the expression of labour action.

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