



BİRLEŞİK METAL-İŞ

BİRLEŞİK METAL İŞÇİLERİ SENDİKASI

UNITED METALWORKERS' UNION



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SUBMISSION TO UN OHCHR UNIVERSAL PERIODIC REVIEW OF TURKEY by BİRLEŞİK METAL İŞ UNION (35th Session, January 2020)

1. DİSK - Birleşik Metal İşçileri Sendikası (United Metalworkers' Union) is based in İstanbul, Turkey. Birleşik Metal İş union is recognized by the Turkish Ministry of Family, Labour and Social Services as a competent trade union in metal sector in Turkey. The union is affiliated to DİSK Confederation in Turkey and also affiliated to IndustriALL Global and IndustriALL Europe in international level. Address: Tünel Yolu Cad. No. 2 34744 Bostancı-İstanbul Tel: 0090216380 8590 Fax: 00902163736502 email: international@birlesikmetal.org

A. FREEDOM OF ASSOCIATION

2. Even though Turkey has ratified ILO Convention 98 and 87 concerning Freedom of Association and Right to Collective bargaining, Turkey's trade union legislation and its application falls short of conforming with the requirements of these Conventions. Many aspects of the law are in violation of both Conventions and when this is coupled with problems in the application, it makes it almost impossible for the majority of workers to exercise their freedom of association.

3. Union membership: According to Law No:6356, trade union membership request can only be made through the governmental website, E-state system. In this system, someone who wants to become a member of a union has to log-in to this government website and go to Turkish Ministry of Family, Labour and Social Services section and make their membership application from there. In this way all membership applications practically happen through the government website. The Turkish Ministry of Family, Labour and Social Services is able to follow who becomes a member of a certain union or changes their union affiliation. Also, if a union member resigns from his/her union or changes union, the union can follow this online from this website too. Recently there has been examples where Ministry of Labour shared this information with some employers as well. It is possible too, especially in rural areas for employers to buy the passwords of their workers and change their union affiliation without the workers even knowing it. One such example occurred in İzmir where a textile company bought passwords for all of their employees and changed their union without their knowledge. In other examples where an employer has suspected ongoing efforts at organizing in their workplace, they can ask workers to go online and show them if they are union members or not. There are examples of workplaces which ask workers to provide their e-state passwords during the recruitment process. There is an example in the Soma area, where after a huge mine accident in which 301 miners died, workers started to change union. One mining company responded by trying to maintain affiliation with a union close to them by asking for the e-state passwords of workers during the

recruitment process in addition to health reports, social security documents etc. Union membership should be between the worker and his/her union. The Turkish Ministry of Family, Labour and Social Services shouldn't be keeping the records of who is member of which union. Every union should be able to keep their own membership records themselves. The current membership system is a violation of ILO Convention 87. The e-state system also prevents undocumented workers, migrant workers, informal employees, domestic workers, unemployed people, freelancers and retirees from joining a union¹² because the website only permits workers registered in the social security system as actively employed to join unions.

Recommendation: Trade union legislation needed to be amended in order to allow unions keep their own membership records by themselves and every category of worker should be able to join unions. The law should allow workers to choose their representative union in a workplace through a secret ballot as recommended by ILO Committee on Freedom of Association.³

4. Unionization Level: In reference to Article 2(1)(ğ) of Law No 6356, the inclusion of sector base in the definition of trade union is also criticized by the ILO Committee of Experts.⁴ Sectoral classification of the unions by law makes it impossible for certain categories of workers such as domestic workers to exercise their freedom of association. Every worker should be allowed to choose their union freely regardless of any legal obstacle based on sectoral classification of the union. Disputes about determination of branch of activity of any workplace lead to lengthy and unnecessary court proceedings which are exploited by employers as a way to prevent unionization. For example, since 2017 there has been an ongoing court case in the DIAM Vitrin workplace where the company challenged Birleşik Metal İş union's majority certificate given by the Turkish Ministry of Family, Labour and Social Services by claiming that their workplace is in the paper/wood sector not in the metal sector. For reasons of the ongoing court case the collective bargaining process is on hold. In some workplaces which have both a production facility and an office or a store, organizing based on sectors make it impossible for some sections of the workers to join the union because the office and production plants are mostly registered in different sectors. Every union should be able to choose in which sectors they want to organize. Determination of the sector of union by law is a violation of ILO Convention 87 and 98. **Recommendation:** Trade union legislation should be amended in the way that every union can itself freely choose which sectors they want to organize in, and workers should be able to join any union they wish without any sectoral restriction.

¹ ILO Committee of Experts 2016

² EU Progress Report 2016, EU Progress Report 2015

³ "It is not necessarily incompatible with Convention No. 87 to provide for the certification of the most representative union in a given unit as the exclusive bargaining agent for that unit. This is the case, however, only if a number of safeguards are provided. The Committee has pointed out that in several countries in which the procedure of certifying unions as exclusive bargaining agents has been established, it has been regarded as essential that such safeguards should include the following: (a) certification to be made by an independent body; (b) the representative organizations to be chosen by a majority vote of the employees in the unit concerned; (c) the right of an organization which fails to secure a sufficiently large number of votes to ask for a new election after a stipulated period; (d) the right of an organization other than the certificated organizations to demand a new election after a fixed period, often 12 months, has elapsed since the previous election." (See the 2006 Digest para. 969; 1996 Digest, para. 834; 300th Report, Case No. 1741, para. 55; 302nd Report, Case No 1826, para. 407; 328th Report, Case No. 2136, para. 525; and 332nd Report, Case No. 2252, para. 879.)

⁴ ILO Committee of Experts 2014

5. Protection Against Anti-union Discrimination: The failure to ensure an effective protection against anti-union discrimination is contrary to ILO Convention No:98.⁵ Dismissals because of union membership are the most common form of anti-union discrimination in Turkey. In the organizing effort of POSCO Steel factory, 100 workers were dismissed because of joining Birleşik Metal İş union; in DIAM Vitrin company more than 100 Birleşik Metal İş members were dismissed for joining the union; in Renault company more than 500 workers were dismissed for joining Birleşik Metal İş union. These are just a few examples out of many cases. Only in Birleşik Metal İş union's organizing efforts between January 2016 – June 2017, 875 workers were dismissed because of their union affiliation.⁶ The European Court of Human Rights decided in a 2017 decision (Tek Gıda İş Sendikası v. Turkey)⁷ that an employer's refusal to reinstate dismissed employees and the award of insufficient compensation to deter the employer from any future wrongful dismissals constituted a violation of freedom of association in Turkey. The ECtHR also ruled that the compensation provided after union dismissals was not a sufficient deterrent against wrongful dismissals in Turkey and that therefore the government had not fulfilled its positive obligation to guarantee freedom of association.

Recommendation: The Turkish government should take necessary steps to enforce measures to fight anti-union discrimination and sanctions against anti-union discrimination should deterrent. Companies should not be allowed to just pay compensation. The law needs to be amended in a way which forces employers to reinstate the workers with back pay when courts rule that dismissals are based on union activity, as recommended by ILO Committee on Freedom of Association.⁸ Cases concerning anti-union discrimination contrary to Convention No. 98 should be examined rapidly.⁹

B. RIGHT TO COLLECTIVE BARGAINING:

6. Prohibition of Strikes: Article 63 of Law No:6356, gives the cabinet of ministers the authority to postpone strikes based on national security or public health for 60 days. But because the law doesn't give the right to stage a strike after this 60-day period elapses, this postponement is in effect a prohibition of strikes. Between 2015-2019, 9 strike decisions which covers in total 235 workplaces and 169705 workers were postponed with a cabinet decree. Three of these decisions were strikes by Birleşik Metal İş Union.¹⁰ The ILO Committee on Freedom of Association and Turkey's own Constitutional Court found these strike postponements a violation of the right to collective bargaining. Also pursuant to Article 3 of Convention No:87, the activities of workers' organizations should be protected from interference by the State.¹¹

Recommendation: The Article 63 of Law No:6356 should be cancelled so that postponement of a strike should not only occur as a result of a court ruling and only in case of a real national emergency.

⁵ ILO Committee of Experts 2018

⁶ http://birlesikmetal.org/basin/ba_2017/ba_2017-10-06.docx

⁷ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-172454%22%5D%7D>

⁸https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70002:0::NO:70002:P70002_HIER_ELEMENT_ID,P70002_HIER_LEVEL:3947478,2 Paragraph: 1171

⁹https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70002:0::NO:70002:P70002_HIER_ELEMENT_ID,P70002_HIER_LEVEL:3947257,2 Paragraph: 1145

¹⁰ <https://t24.com.tr/haber/iste-son-16-yilda-yasaklanan-grevler,792984>

¹¹ ILO Committee of Experts 2016

7. Double Threshold Requirement for Collective Bargaining: Double threshold practice laid down on Article 41 of Law No:6356 for the authorization to conclude collective bargaining agreements is contrary to ILO Convention No:98¹² For negotiating a collective bargaining agreement in a workplace, the required threshold to reach 1 percent membership in the sector is unnecessary. 40 percent and 50 percent workplace level thresholds are too high as well, especially considering the unionization level in the country.¹³

Recommendation: The country-wide sectoral threshold of 1 percent should be lifted and workplace and enterprise level thresholds of 40 percent and 50 percent should be reduced. In cases where no union reaches this threshold, collective bargaining rights should be granted to all unions, at least on behalf of their own members, as recommended by the ILO Committee of Experts on the Application of Conventions and Recommendations.¹⁴ Minority unions should have the right to represent at least their members. In cases where collective bargaining rights will be given to exclusively one union, the majority union should be determined by a secret ballot.

C. RIGHT TO COLLECTIVE ACTION:

8. In May 2015, a wave of strikes occurred in the main industrial centers of the Turkish automotive industry. Over 20.000 metal workers at Renault, Fiat, Ford, Türk Traktor and some supplier companies downed tools in order to protest against a union which did not represent their interests.¹⁵ After these wildcat strikes around a thousand workers from various factories were dismissed for playing a leading role. Although the restrictions in the Constitution on politically motivated strikes, solidarity strikes, occupation of work premises, go-slows and wildcat strikes were abolished with 2010 constitutional amendments, the right to strike laid down in Article 58 of Law No: 6356 is still subject to very strict procedural rules. These rules violate ILO Conventions No:87-98 and the case-law of European Court of Human Rights.

Recommendation: Trade union legislation should be amended in a way which allows various forms of collective actions such as wild-cat strikes, down-tools, go-slows, solidarity strikes, occupation of work premises, working to rule and sit-down strikes and similar actions to be considered a lawful part of workers' fundamental rights.¹⁶

D. FREEDOM OF PEACEFUL ASSEMBLY

9. May Day demonstrations: The government of Turkey does not allow unions to celebrate May Day in the central Istanbul square they wish. Every year during May Day celebrations, many people are detained and injured because of violent police attacks and use of tear gas. In 2019, 137 people were detained in İstanbul;¹⁷ in 2017, more than 200 people were detained;¹⁸ in 2015, 140 people were detained¹⁹ during İstanbul May Day celebrations. The government ban on May Day celebrations in İstanbul Taksim square constitutes a violation of freedom of peaceful assembly, and the European

¹² ILO Committee of Experts 2018

¹³ EU Progress Report 2015-2016 , ILO Committee of Experts 2016 - 2018

¹⁴ https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3963858 Observation (CEACR) - adopted 2018, published 108th ILC session (2019)

¹⁵ UNEXPECTED WAVE OF STRIKES IN TURKISH AUTOMOTIVE INDUSTRY, <http://disk.org.tr/wp-content/uploads/2015/06/Unexpected-Wave-of-Strikes.pdf>

¹⁶ <https://www.ilo.org/dyn/normlex/en/f?p=1000:70007:::NO::> Paragraph: 784

¹⁷ <https://www.middleeastmonitor.com/20190502-turkey-detains-137-demonstrators-in-istanbul-on-may-day/>,

¹⁸ <https://www.reuters.com/article/us-may-day-turkey/turkish-police-fire-tear-gas-at-may-day-demonstrators-in-istanbul-idUSKBN17X1I4>

¹⁹ <https://www.theguardian.com/world/2015/may/01/turkish-protesters-clash-police-may-day-rally-istanbul>

Court of Human Rights has also ruled that the ban on May Day demonstrations in Taksim Square is violation of Article 11 of European Convention on Human Rights.²⁰

Recommendation: The Turkish government should allow unions to celebrate May Day demonstrations in any area they wish and should punish police officers and other public servants who use violence against unionists during May Day demonstrations.

10. Police Intervention in peaceful demonstrations during organizing efforts: In December 2017, after 100 workers were dismissed in the POSCO steel factory during union organizing efforts, Birleşik Metal İş union wanted to organize a demonstration in front of the plant, but local police prevented any demonstrations and detained more than 20 workers and unionists including entire board of union's headquarters and union's local office staff.²¹ This happened several times on different occasions when the union tried to organize a protest in front of the factory. Also at the Renault plant in 2016 after dismissals of workers' representatives during the Birleşik Metal İş Union organizing effort, police attacked the workers with tear gas. Court cases were opened against 36 unionists and union member workers and ended in February 2019 with workers and unionists received 5 months of postponed prison sentence for exercising their freedom of peaceful assembly.²²

Recommendation: The Turkish government should organize trainings for members of the security forces to make sure that they respect freedom of association and freedom of assembly. In cases where members of the security forces violate workers' right to freedom of association and assembly, the authorities have a duty to conduct effective investigations with a view to implementing an effective penalty system against public officers who are responsible for violations and, where appropriate, prosecuting them in criminal proceedings capable of bringing perpetrators to justice.

11. Purged Public Servants: Around 130 000 public servants have been purged since 2016.²³ 549 of them were academics who were dismissed for signing a petition calling for a peace.²⁴ When public servants are purged from public service by decree, a special code is assigned to their social security system records which means that they are banned from working as public officials again. It also means that future employers can see that they were removed from their posts. For this reason it is very difficult for these employees to find alternative employment. The passports of purged public servants and their family members are also cancelled and they are denied a new passport, in violation of their freedom to travel.

Recommendation: Decrees which purge these public servants should be annulled, their passports should be returned to them, and they should be restored to their public duty in cases where there is no evidence that they have participated in 2016 coup attempt.

12. Rights of Migrant Workers: In Turkey today there is a growing number of refugees and migrant workers both because of the conflict in Syria and also because many workers migrate to work in Turkey, especially to take up jobs in the field of domestic work. Since these workers are undocumented, they cannot benefit from their most basic rights such as the minimum wage, freedom of association or even regular payment of their wages. When their rights are violated, these workers are afraid to apply to authorities because they work without a work permit in most cases. It is also

²⁰ <https://www.legislationline.org/documents/id/17684>

²¹ <https://www.gazeteduvar.com.tr/gundem/2017/12/26/birlesik-metal-is-baskani-adnan-serdaroglu-gozaltina-alindi/>

²² <http://www.industriall-union.org/industriall-and-industriall-europe-condemn-sentencing-of-renault-workers-in-turkey?fbclid=IwAR1ALvAiMNIWjxornFTG-mX6fOJWp6Yp2oUswZNXtzmJPU7dc17RNnoM>

²³ <https://www.amnesty.org/en/latest/news/2018/10/almost-130000-purged-sector-workers-still-awaiting-justice-in-turkey/>

²⁴ <https://barisicinakademisyenler.net/node/314>

common practice for domestic workers that their employers take their passport as a way of keeping them under their control. This is a major violation of human rights and actually a criminal offence in Turkey.

Recommendation: The Turkish government should create a mechanism whereby migrant workers can complain about violations of their most basic rights or crimes committed against them in their workplaces without fear of deportation. The government also should ensure that, regardless of their work status, every worker including undocumented migrant workers can join unions or form associations.