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# The Benefits of Freedom of Association for Development\*

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## Key Facts and Overview of Case Studies

### Key issues in freedom of association:

ILO Convention 98 was ratified by Turkey in 1952, but ratification of Convention 87 was not possible until 1993. However, although C. 98 was ratified in 1952, real collective bargaining with right to strike could not materialize until 1963, the year in which right to strike was recognized.. Apparently ratification of C. 87 had to wait until 1993 due to concerns about its comprehensive coverage on the right to strike as well as the public servants' right to organize. The stages in freedom of association and industrial relations in Turkey are as follows:

- 1947-1963 period: Adoption of multi-party democracy by Turkey in 1946 led also to the recognition of labor union rights. Labor Unions Act of 1947 , the first trade union legislation of the Republic of Turkey, covered only blue-collar workers and had to operate under compulsory arbitration with no right to strike.

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\* Sendika özgürlüklerinin ülkemizin ekonomik ve sosyal gelişmesine olumlu etkilerini yansıtan aşağıdaki örnek olaylar Prof. Dr. Toker Dereli tarafından hazırlanmış ve ILO'nun 1 Haziran 2010 tarihinde İtalya'nın Torino şehrinde düzenlenen uluslararası sempozyuma sunulmuşlardır. Henüz hiçbir kaynakta yayınlanmamış olan bu örnek olayların değerli meslektaşım ve bölüm arkadaşım Prof. Dr. Gülten KUTAL adına çıkarılan bu Armağan Kitabında neşredilmelerini uygun buldum.

Thus, the 1947-1963 period represented a limited “ freedom of association” era under government guidance and control; however, to establish unions, no prior permission of government was required.

- 1963-1980, the liberal era: In 1963 Act no.274 on labor unions and Act no.275 on collective bargaining covered white-collar as well as blue-collar workers. Right to strike and effective collective bargaining were in place; although C. 87 was still not ratified, most union freedoms were recognized and implemented. In this period, there was a limited right for public servants to organize (1965-1970); but no right to bargain collectively. No significant controversy with the ILO over C. 98 occurred during this period.
- 1980-1983 to present: Industrial relations legislation was modified considerably by the National Security Council (transitional military regime of 1980-1982), and Act no. 2821 on Labor Unions and Act no. 2822 on Collective Agreements Strikes and Lock-outs were adopted in 1983. During successive ILO conferences this legislation was contested by the Committee of Experts and debated in the Applications Committee, based on the allegation that various provisions of these Acts violated the principles of C. 98 and, for that matter indirectly, of C. 87. In the past years, several amendments to Acts no. 2821 and 2822 were made with a view to bring these provisions into conformity with ILO norms, but there is still ongoing controversy over various items.
- Although there are various other problems of concern to the ILO, outstanding issues which must be addressed with high priority in the amendment of Turkey’s industrial relations legislation in view of C.87 and C.98 are the following:
- The requirement that the acquisition of the worker’s membership to as well as his(her) resignation from the union must be authenticated by the public notary (Act no. 2821); and restrictions on certain public servant categories regarding their membership to public servants’ unions, (Act no 4688).

- Dual criteria for a union's authorization for collective bargaining; the requirement that in order for a labor union to obtain authorization for collective bargaining at an establishment or enterprise, it should first represent at least 10 per cent (at present 1 per cent) of workers in the industry branch in which it has been established, and second, more than half of the workers at the establishment or enterprise concerned. The underlying motive was the creation of a neater union structure with fewer unions, so the authorization complications caused by the so-called "union inflation" could be eradicated. The dual criteria requirement allegedly violates C. 98, so revision in Act no.2822 was necessary to bring this issue into conformity with the relevant ILO norms.
- Concerning strike bans in certain activities and establishments: (C. 87): In view of the ILO some restrictions on the right to strike go beyond the limits of "essential services". Furthermore, the requirement to refer a dispute to compulsory arbitration in cases where industrial action is suspended up to 60 days by the government for reasons of national security or public health leads to a definite strike prohibition in the final analysis. (Acts no. 2822 and 6356).
- Concerning public servants' right to organize, to bargain collectively and to strike, (C.87,98,151): According to its subsection 6, C.98 shall not apply to public employees engaged in the administration of the State, construed as meaning that public employees who do not exercise the authority of the State are to be covered by C.98. To be consistent with this principle, a large number of public personnel in Turkey deemed as "public servants" under Act no:6857 should be treated as employees according to the ILO, (like their counterparts in the public and private sectors) and therefore be given the right to organize their labor unions, to bargain collectively and to strike. For public servants in the narrow sense of the word (i.e. those exercising the authority of the State), appropriate measures should be taken to enable them to conclude binding collective agreements by ensuring their access to adequate dispute settlement mechanisms (mediation

and arbitration). In successive meetings of the Application Committee over the years, the government has referred to a prospective public personnel reform through which the categories of public servants would be distinguished carefully from those who do not exercise the authority of the State, but this reform has not yet materialized.

ILO Committee of Experts raises a few other questions relating to freedom of association legislation in Turkey (i.e. that legislation is too detailed, carries too many points which should be left to the autonomy of union administration, and foresees too many time intervals to be observed in collective bargaining, etc.), but compared to the main criticisms above, they seem to be of secondary importance. Several draft bills were prepared to deal with these problem areas in the past decade.

Of these, the draft bill of 29 March 2009 lifts certain restrictions which exist in the present legislation. First and foremost, it removes the “10% + 51%” double criteria. It brings the requirement to check membership data also by the statistics of Social Security Organization. To settle “the authorization for collective bargaining” issue, it has foreseen two alternatives. According to the first alternative, the union affiliated to one of the most representative union confederations (with 80000 members at least according to one version) will be empowered to conclude the collective agreement if it represents more than half of workers in the establishment or enterprise concerned. The second alternative foresees the successive reduction of the 10 percent requirement over the years to result in a “zero” condition by the year 2013, a proposal likely to be more acceptable to the ILO Committee of Experts than the first alternative. Constrained by the Constitution, however this proposal maintains the condition of recourse to the Supreme Arbitration Board as the final step of resolving the dispute in cases where strikes or lock-outs have been suspended by the government for reasons of national security or public health, but it brings the requirement for the government to obtain the advisory opinion of the Supreme Arbitration Board before taking the suspension decision. Recourse for a court injunction is still available. Among other proposals for change in this draft bill, an important dimension deals with the restriction of certain strike bans, with a view to limit them only to essential ser-

vices (with the exception of strike bans in banking, education and notary services). The report of the Committee of Experts for the year 2007 gave the impression that ILO saw the said proposals as positive developments. This draft bill referred as the “Bursa consensus” was submitted to the Parliament as a final legislative proposal on 21 May 2008. The Confederation of Employers of Turkey (TİSK) has given its consent to this final text pending in the Parliament while Türk-İş and DİSK have also hinted their approval, albeit with some reservations.

Subsequent draft bills prepared by other stakeholders as well as by the Ministry of Labor failed to receive the support of social partners. As a result of successive failures, the Ministry of Labor and Social Security remarked that efforts, from now on, should focus on passing from the Parliament the text agreed upon through the social dialogue in Bursa. In spite of that statement, however, the government has submitted to the Conference Committee a new draft on Act No.2821 in June 2010 Conference for consideration by the Committee of Experts.

A new package of amendments to the 1982 Constitution (published in the Official Gazette , 13 May 2010) has repealed the Constitutional ban on the worker’s simultaneous membership to more than one union in the same branch of activity, removed the restriction on the coexistence of more than one collective agreement in the establishment ,(thus paving the way for a possible multilayered collective bargaining structure), abolished the union’s liability for damages inflicted by the strikers’ or union’s intentional or faulty conduct , as well as the prohibition on work slowdowns, general, political and sympathy strikes and lock-outs. Except for the last point, one should note, however, that these amendments deal with matters not specifically criticized by the ILO. But , more important than these, the Constitutional amendment gives public servants’ unions the right to conclude binding collective agreements with the Administration, but not the right to strike. If the parties fail to come to an agreement in the negotiations stage, the decision of the public servants’ arbitration board shall become binding as a collective agreement. As for the collective bargaining rights of public servants, the ILO will likely continue insisting on the recognition of the right to strike for those public servants not engaged in the administration of the State.

Following continued debate and controversy, the present Act of Turkey no.6356 on Unions and the Collective Labor Agreement was passed in the year 2012 .bringing certain ameliorations on some of the above-mentioned critical points that were subject to criticism in the past.

Social dialogue efforts to bring Turkey's industrial relations legislation into conformity with ILO freedom of association norms have preoccupied the country's legislative agenda for at least twenty years now. These efforts some of which were fruitless and entirely misplaced seem to have reached a critical point . Settlement of the matters of grave concern both for the ILO and the actors of the Turkish Industrial relations system explained in the above paragraphs is also a precondition for the opening of negotiations over the chapter on Social Policy in Turkey-EU relations. The painstaking debates in many recent Conference Committee meetings were so frustrating that even the basic ILO tradition of settling differences through Social Dialogue was evaded by remarks of ILO's group spokespersons emphasizing that if agreement was not possible by dialogue on such matters based on conflict of interest, the government, by exercising its political will, should pass the pertinent legislation once and for all. Yet Turkey, a country which has a fairly developed industrial relations system, has accumulated sufficient experience on social dialogue. It is likely that the ILO authorities as well as the social partners will still keep their reservations on some matters (e.g. the unsettled issue of personnel reform in the public sector; the ongoing denial of collective bargaining rights for a large segment of public servants; for bargaining ; strike bans in some sectors not deemed to fall into "essential services" in the strict sense, etc.), but these matters seem to qualify as secondary in nature and may be addressed in later amendments. The outcome will most probably represent the preferred alternative, of social partners, more viable and desirable than the lopsided outcome of the government's political will.

According to the statistics of the Ministry of Labour, by July 2009 there were 3.232.679 members organized in 93 unions,(excluding public servants' unions), representing a union density of 59.90 per cent of the potentially unionizable work force (which was a total of 5.398.296 workers –public and private sectors combined- declared to the Ministry by employers for the determination of unions' collective bargaining rights.)

Obviously a union density this high is likely to be an inflated ratio. Because of the procedural difficulties involved in monitoring memberships due to workers' slitting from union to union, and even if the actual number of wage earners in the informal sector (which is about 42 per cent of the total employment) is considered as well, a more realistic ratio could be estimated to stand around 30 percent. And if compared to total employment which is about 21 million, union density would fall down to about 8 per cent. A total of 262.786 workers were covered by collective agreements, according to the Ministry of Labor data of 17 July 2009. Statistical data of more recent origin reveal amore realistic ratio, i.e. a labor union density of 12 percent (for workers only), and a collective agreement coverage of 7 percent

Despite the presence of some ongoing problems outlined above, "freedom of association" has contributed positively to social and political development of Turkey as well as to democracy and governance at the workplace. Indeed, over the years the actors of the Turkish industrial relations system seem to have accumulated a considerable amount of experience in social dialogue through collective bargaining as well as in the official consultation mechanisms like the Economic and Social Council and the Tripartite Consultation Board

***Main Priorities of National Development Plan and Extent to which they relate to Decent Work:***

Main priorities of Turkey's 9th National Development Plan (2007-2013) were the following: 1. growth and employment, 2. improvement of Turkey's economic competitiveness, 3. amelioration of the work environment, 4. improvement of income distribution, social inclusion, eradication of poverty, and struggle against informal (unregistered) economy.

Although all these goals, identified by the national plan in this order of priorities, have a linkage to "decent work" in a broad sense, amelioration of the work environment is directly related to "decent work". Here the Plan places special emphasis on the development of corporate governance systems which will, in turn facilitate the financing of enterprises, minimize the scope of informal employment as well as strengthen the economy's competitiveness. Under the "employment growth" target,

the development of a labor market based on “flexicurity” and reduction of employment costs (social security contributions, taxes, etc.) are given special consideration.

***Priorities identified in most recent Decent Work Country Programme and any outcomes related to freedom of association:***

Presently there is no formal Decent Work Country Programme in Turkey. There is, however, a Memorandum of Understanding reached in the meeting in Lisbon on 10 February 2009 and signed by the Undersecretary of the Ministry of Labor and Social Security, Mr. Ahmet Erdem; director of the ILO Regional Office for Europe and Central Asia, Ms. Petra Ulshoefer; and Ms. Gülay Aslantepeler Director of the ILO Office in Ankara, wherein the said parties reaffirmed their decision to elaborate and implement a national decent work program with the cooperation of social partners in Turkey.

Priorities identified in this Memorandum of Understanding are as follows:

1. Technical support to the child labor problem in the framework of the Convention 182,
2. Enhancement of social dialogue,
3. Youth employment,
4. Improvement of women employment and gender equality.

The reason why a formal Decent Work Country Programme for Turkey has not yet materialized was the employers’ (TİSK) request for additional time to deliberate further on the details of the said programme. The government also shared a similar idea. (Interview with Ms. Gülay Aslantepeler, İstanbul, 28 February 2010). Since, according to the said Memorandum of Understanding, “the ILO commits itself to providing support both technically and by mobilizing resources,” the adoption of an official programme in the near future is likely. Of the priorities indicated, “enhancement of social dialogue” is directly related to freedom of association. Because, according to the agreement, the national programme will be adopted with the cooperation of the social partners in Turkey, social dialogue will be the backbone for its implementation.



## Case Study 1:

### Turkey's 2003 Labor Act

Achieving the right regulatory balance between labour market flexibility and employment security has been the subject of debate between Turkish government, employers and trade unions for a number of years. Related issues, such as job creation, job security and social inclusion, continue to be the subject of dialogue between the social partners.<sup>1</sup>

#### **New labor legislation based on social dialogue and mutual trust**

The agreement signed by the government and social partners led to the adoption of a modern Labor Act in 2003. Its implementation has become an exercise of co-responsibility between the social partners.

The introduction of the new Labour Act in 2003 was a step towards addressing these issues. The main motives for the reforms were:

- (1) a perceived need on the part of employers for more flexible regulation that would better respond to the changing needs of Turkish business, influenced by globalization and the opening up of the economy,
- (2) the need to align Turkish labour laws with ILO conventions and European laws following Turkey's international commitments;
- (3) the desire of labor unions to bring stronger employment protection for their members (freedom of association) and workers in general, and
- (4) the attempt to stimulate job creation, by eliminating the outdated rigidities of the previous legislation whilst maintaining job security for workers.

It was proposed by the Employers' Confederation and the then Minister of Labour that the tripartite constituents appoint a 9-member committee of academics to draft the legislation and it was subsequently agreed that each of the tripartite constituents would be equally represented on the committee. During the drafting process, each member consulted with the organization that he was appointed to represent regarding developments in the drafting process. The first draft dealing only with job security and representing the first phase of the committee's work, was submitted in

<sup>1</sup> Eurofound, 2009: [www.eurofound.europa.eu/pubdocs/2009/15/en/1/EF0915EN.pdf](http://www.eurofound.europa.eu/pubdocs/2009/15/en/1/EF0915EN.pdf)

May 2001. The second phase involved introducing flexible working arrangements into the new Labor Act, which took a further year to finish.

### **Outcomes:**

Various compromises had to be made where the social partners could not reach agreement. One important issue on which disagreement arose regarded provisions on the establishment of a “severance pay fund” versus the alternative text that involved the reduction in the existing severance pay system. Employers insisted that severance pay levels be reduced, given new job security provisions and the unemployment insurance system in effect since the year 1999.

With the exception of amendments in relation to severance pay, this draft, debated extensively before and during the Parliamentary process, was enacted by the legislature as the new Labor Act of Turkey, no. 4857, on 10 June 2003.

The previous legislation on job security enacted as Act no. 4447 in 2001 was incorporated into the 2003 Labour Act with some revisions. Also, Article 14 of the repealed Labor Act no. 1475 of 1971 on severance pay would remain in force until further revision in the future could be made in the form of the proposed “severance pay fund”.

The social partners were unable to achieve consensus on all aspects of the draft bill. Employers resented the introduction of stronger job security for workers in the absence of downward adjustment to redundancy payments. At the same time, workers raised issues in relation to temporary agency work, transfer of the employment contract and flexibilisation of working time and working arrangements. Consequently, some articles of the existing labor legislation remained unchanged and employers’ and labor organizations agreed to delete certain proposed changes altogether, thereby causing voids in the general fabric of the new law. For example, the proposal to establish an ‘elected workers’ representatives system’ in establishments where there were no union shop-stewards, aiming to pave the way for EU type ‘works councils’, was deleted from the text upon the active lobbying of labor unionists who contested it by arguing that it would undermine their organizing drives, and thus ‘freedom of association.’ The legislature also made a few changes to the draft bill.

The general structure of the original draft was mostly accepted, notwithstanding these alterations and ongoing controversy regarding temporary agency work and redundancy entitlements. Consequently, most of the proposals regarding “flexicurity” remained, resulting in a modernised labour law for Turkey.

In addition to its provisions on job security (Articles 18-21) drawn up in line with ILO C 158, the basic dimensions of Act no. 4857 include:

- More detailed provisions on discrimination, which is now subject to a fine for violations, and requires equal treatment for workers regardless of their contracting arrangements (as well as gender, race, religion, language, etc).
- Where there is no written employment contract, employers are required to provide workers with a written document that sets out general and special working conditions, as foreseen under EU law.
- An employee may not be engaged more than once on a fixed term contract, unless there is an essential reason for doing so. Otherwise, the contract shall be deemed to have been made for an indefinite term from the very beginning (Article 11).
- An employee working under a fixed-term contract must not be subjected to differential treatment in relation to a comparable employee working under an open-ended contract. The Article has also clarified the meaning of the “comparable” employee.
- The new Act provides a definition of part-time employment (Article 13), which was missing in previous legislation.
- Article 14 on the other hand, has brought the concept of “work on call” as a special version of part-time work. Other important items which pave the way for more flexibility are:
  - “compressed work week” (Article 63) “Provided that the parties have so agreed, weekly working time (45 hours) may be distributed over the days of the week in different forms on condition that the daily working time shall not exceed 11 hours. In this case, within a period of two months, the average weekly working time of the employee shall not exceed normal weekly working time. This equalizing period may be increased to four months by collective agreement.”

- “compensatory work” (Article 64) “In cases where time worked has been considerably lower than the normal working time or where operations are stopped entirely for reasons of suspending work due force majeure or on the days before or after national and public holidays or where the employee is granted time off upon his request, the employer may call on compensatory work within two months in order to compensate for the time lost due to unworked periods Compensatory work must not exceed three hours daily, and the maximum daily working time(11 hours) in any case.”
- “short-time work and its pay” (Article 65, later incorporated into the Unemployment Insurance Act) “In cases where work is suspended or shorter hours are worked at the establishment for at least four weeks due to a general economic crisis or force majeure, employees shall be paid short-time work benefits from the Unemployment Insurance Fund for the corresponding unworked time....” and
- flexitime (Article 67) “...Depending on the nature of activity, the beginning and ending times of work may be arranged differently for employees.”
- Act no. 4857 also brought increases in favor of the worker on annual leave with pay and maternity leave.
- Further, the chapter on occupational safety and health is particularly important as it paved the way for detailed regulations on safety training, the establishment of occupational health and safety boards and related services bolstered by better protected employee rights.
- And last but not the least, Act no. 4857 established the “triparti-

#### **Governance and Social Development**

*By combining flexibility and employment protection, the new Labor Act of Turkey has become a key element in*

- *promoting democracy and governance at the workplace,*
- *protecting fundamental human and employment rights*
- *improving equality,*
- *contributing to a positive business environment*
- *safeguarding workers' employment conditions under flexible arrangements.*

**Sources:** Refik Baydur, Zirvede 15 Yıl,, Ankara: Sinemiks, 2006, pp.387-408.  
T.Dereli, et al, Flezibilization and Modernisation of the Turkish Labour Market, The Netherlands:Kluwer Law International,2006.  
*MESS İşveren Gazetesi, April 11,2009*

te consultation committee” in Article 114 as a new mechanism for social dialogue. This committee has proven an effective avenue for consultation, as mentioned above in efforts to ameliorate the industrial relations legislation.

### **Benefits:**

Of all the dimensions summarized above, the one that is most favourable to labour is clearly the enhanced job security brought for workers. As there is no requirement for absolute reinstatement, most (perhaps all) cases seem to result in payment of compensation to the worker dismissed for no valid reason. The flexible working arrangements, on the other hand, encouraged employers, both domestic and foreign, to increase investments and to expand employment. While some of the new dimensions bring minimum mandatory standards, some are relatively binding which may be improved upon by collective arrangements or may be put into practice only upon the consent of the worker, and yet some belong to the domain of employer initiative.

The experience of the past few years shows that, although it has increased the work load of labour courts, the part of the new Labour Act on employment security is working with reasonable efficiency.

However, it is not possible to make a similar positive assessment with regard to the application of flexible working arrangements. Since in the Act most flexibility measures were predicated on the consent of the worker, initially labor unions seemed reluctant to give their approval in collective negotiations. However in workplaces where there was no collective agreement (the bulk of Turkish economy), the employers were able to get the worker’s consent by way of individual employment contracts or by including a clause for flexible arrangements in the rules of work they posted in their establishments.

There was a notable tendency, however following the shocks of the recent crisis, to make more use of the provisions on “short-time work” in which both the duration and amount of short time work benefits were increased by an amendment in 2009. This amendment made it possible for many firms to make use of short-time work extensively and led to the protection of thousands of jobs. (MESS İşveren Gazetesi, no.844, March

2010) On the other hand, it is difficult to estimate the employment-creating effects of other flexibility provisions due to the obfuscating impact of increased unemployment resulting from the recent crisis.

**Lessons learned:**

The way this reform was launched shows how the high degree of trust between the social partners was of utmost importance in achieving consensus on many issues over which they could not agree for many years. As a successful form of social dialogue at this level, this was the first and the only venture of its kind in Turkey. It is believed that a similar method might yield positive results on the proposed legislative reform on freedom of association. Yet the awareness-raising phase was not sufficient in this effort, as evidenced by the initial resistance of some unions to the new flexibility measures.

Themes: Social Development, Democracy and Governance, Contribution to a Positive Business Environment

Stakeholders involved: workers, employers, and the government

## Case Study 2:

### Partnership for worker's training: joint MESS-Türk Metal Training Project

Cooperation between trade unions and employers in Turkey has led to a considerable boost for vocational training at the sectoral level, bringing benefits for workers and businesses alike.<sup>2</sup> A good example of the benefits of this sort of cooperation is the joint training project between MESS (Metal Employers' Association of Turkey) and Türk Metal (Metal Workers' Union of Turkey).

#### A training relationship based on social dialogue

The joint training agreement between MESS and Türk Metal Union, consistent with the principles of freedom association, in particular Convention 87/3 which provides for labour and employer organizations to organize and administer their activities (including training activities) freely.

Beginning in 2000, the project represents the largest and most significant venture of its kind, taking into account the number of participants, the size of the employers and the duration of the program. By providing ongoing skills development and training for workers, the training project makes an important contribution to the ongoing competitiveness of the industry.

### Background

Together, Türk Metal and MESS represent a significant tranche of workers and business interests in the metals industry. Türk Metal is the largest union in the sector, representing about 45% of its workers, with a membership of 282,000. MESS represents about 300 employers, which represent about 65% of the metals and electronics sector.<sup>3</sup> Most of its members are large-scale enterprises, including manufacturers of cars, household appliances, electronics and other metal products.

<sup>2</sup> Mustafa Kemal Öke, *Capacity building for social dialogue at sectoral and company level: Turkey*, Paper for the European Foundation for Living and Working Conditions, 2007: [www.pedz.uni-mannheim.de/daten/edz-ma/esl/07/ef072214en.pdf](http://www.pedz.uni-mannheim.de/daten/edz-ma/esl/07/ef072214en.pdf).

<sup>3</sup> MEGEP/SVET, *Strengthening the Role of the Social Partners and Social Dialogue in the Vocational Education and Training System in Turkey*, Policy Paper, 2006: <http://svet.meb.gov.tr/svet/general/Labour/SocialPartnerSocialDialoguePolicyPaperOct06.pdf>

Over time, many Turkish unions have developed considerable expertise in providing successful training for their members, to the extent that this has become a major function of the trade union movement in Turkey. This is in great part because trade unions in Turkey are required by legislation to spend at least 10% of their revenue on training and education for members. There is no corresponding statutory obligation on employer associations, but many have chosen to engage in training programmes voluntarily, in recognition of the benefits that these provide for their members.

### **Process**

*“The project was started officially in 2000, but talks to initiate such a project had begun in 1998, With their large membership base, both MESS and Türk Metal are very strong organizations financially, probably the strongest in the country, and by far this is the biggest project of its kind in Turkey. MESS is committed to training activities of all kinds, as evidenced by the number of its programs and publications on education and training. Türk Metal has a legal obligation to spend money on training anyhow.”* (Interview with İsmet Sipahi, 29 March 20010.)

### **Outcomes**

The main objective of the agreement between Türk Metal and MESS is to provide a mechanism for continually improving the productivity and competitiveness of the industry as well as to provide ongoing skills development for employees.

MESS agreed to provide funding for educational/ training services, i.e. instructors, etc. Training is provided by the MESS Training Foundation and affiliated academics. *“MESS Training Foundation was established in 1986, much earlier than the commencement of this project. This shows the deep commitment MESS attaches to training activities. I joined MESS Training Foundation as director in 2004, after I had resigned from my post as Director of İŞKUR ( Turkish Employment Organization, Interview with Necdet Kenar, Director of MEE Training Foundation, 30 March 2010) “The initial agreement in 2000 had foreseen the sharing of training expenditures between MESS and Türk Metal (50-50 per cent). The amounts appropriated by MESS and Türk Metal just for the year 2009 were 8,131,985.92 TL (about 5,421,324 U.S. dollars), 4,065,992.96 TL by MESS and 4,065,992.96*



*TL by Türk Metal. Besides, Türk Metal provides the training facilities in the Büyük Ankara Hotel which it owns.” (Interview ,İsmet Sipahi).*

Regular collective bargaining between Türk Metal and MESS members has led to many collective agreements in the sector containing clauses that provide paid absence of leave for workers to participate in the training program.

The training programme is provided to workers over 3 days and has been conducted at a number of sites, including the MESS Training Centre in Gebze and a Türk Metal venue in Ankara. Each training is attended by 75 workers, who attend sessions on a wide range of topics including industrial relations, labour law, economics, global developments, total quality management and consumer rights. *“The training will continue until all Türk Metal members are covered. The number covered so far (March 2010) has reached*

**Contribution to social development and a positive business environment**

This joint training project , by actively creating an enhanced level knowledge and understanding among employees at MESS-affiliated establishments as well as in suppliers’ factories, on matters relating to the:

- improvement of communication between managements and workers,
- strengthening the role of the labor union in factories,
- developing an awareness on fundamental human and labor rights, and
- peaceful resolution of conflicts, makes important contributions to a positive business environment , social development and democracy.

*61786 workers. Of course Türk Metal has members in other establishments, those not affiliated with MESS. Seeing the benefits of Türk Metal-MESS joint project, those workers in non-MESS employers’ establishments have requested Türk Metal to provide the same training for them. As a result Türk Metal has been offering them the same program separately. So far the coverage of this separate program has reached 15 thousand workers.” (Interview with Türk Metal President Pevrul Kavrak,31 March 2010). Training also includes modules that help to enhance labour-management relations, including communication and dispute resolution, while recreational activities, such as sport and museum visits, team-building and individual motivation .are encouraged.*

Separate training programmes have been provided in relation to sustainable development and leadership. In the summer, training programmes

are also designed especially for the wives of Türk Metal members.

By the end of 2009, 56,000 union members had received this training. Türk Metal and MESS are aiming for a target of 120,000 Türk Metal workers. *“According to the statistics of the Ministry of Labor, presently there are 671.015 workers in the Turkish Metal industry. This means 9.2 per cent of that industry’s workers have already been subject to the so-called “lifelong learning” initiative of the MESS-Türk Metal program. Since the target is to reach all Türk Metal members in MESS –affiliated establishments, about half of this figure has already been covered by that training.* (İsmet Sipahi)

### **Benefits:**

MESS-Türk Metal joint training project is considered to be one of the most successful collaborations of its kind in Turkey. Feedback from both employers and workers has been positive. *“The intangible benefits are related to higher levels of morale and motivation as well as improved communication between workers, managers and the union. Having face to face interactions with participants during my visits to training sites definitely shows improved communication, conflict management and higher morale.* (İsmet Sipahi). *“Arriving at reliable figures on work accidents would require statistical data and research in workplaces of affiliated employers, before and after the beginning of the project, but your suggestion encourages us to inquire about such data as well.”* (Interview ,Necdet Kenar)

*“Concerning the reduction of industrial conflict: the outcome is really positive. While there were strikes before 2000 (the last one in 1998), there has not been any strike activity since the year 2000.”* (Interview with İsmet Sipahi)

### **Lessons learned:**

Financial strength and size of the social partners emanating from freedom of association seem to have made such a big venture possible. The trust based on a long-standing partnership and collective bargaining between the social partners may lead to other training activities between them. *“As a matter of fact, based on the lessons learned from the above exercise, there are two other joint projects which MESS and Türk Metal have agreed to launch. The first is the “occupational competency certification project” designed with a view to offer courses leading to the awarding of official*

*occupational certificates “ in the metal industry. This is consistent with the norms of the newly established Institute for Occupational Competencies of Turkey. The certificates to be awarded will be valid nationally and EU-wide. Second, MESS and Türk Metal have agreed to start a project on vocational training which will aim to offer vocational training to Türk Metal members in MESS\_affiliated establishments . This training will be carried out in workplaces, and MESS will be responsible to provide technical instructors and the necessary equipment. (Interview with İsmet Sipahi)*

Source: Interviews with İsmet Sipahi, Secretary General of MESS,(22 February, 29 March 2010) and Dr Necdet Kenar,Director of MESS Training Foundation,(18 February and 29 March 2010,) and Pevrul Kavrak, President of Türk Metal (31 March 2010).

### Case Study 3:

#### Employee Ownership in Kardemir; the Role of Trade Unions

The trade union led buy-out of the Kardemir steel mill provides a positive example of how trade union intervention can help to address the adverse effects of privatisation or the closure of publicly owned enterprises.

#### Background

In 1994, the government decided to close down the publicly-owned steel mill in Karabük, on the grounds that it was unprofitable. This decision provoked a strong reaction in the local area and a large-scale campaign was launched by community organisations, the Chamber of Commerce, the Association of Manufacturers and the Özçelik-İş Union,(now named the Çelik-İş Union) which represented about 5,000 employees at the steelworks. The campaign lasted for seven months: initially protests were started and shaped by the union, but these were later joined by community organisations and local people. All in all, thousands of local people participated in the protests.

#### A privatization method unique for Turkey

“Union and employee reactions to the proposed shutdown by the government of Karabük Iron and Steel Works resulted in the creation of a new employee-owned and managed company; a win-win relationship from which all the stakeholders have benefited.”

**Source:** *H.Y.Ersöz, et al, Özelleştirme ve Çalışanların Mülkiyet Sahipliği:Kardemir Örneği, İstanbul, Alfa yayını,2004.*

This public pressure led to the government agreeing to sell the steelworks to a worker-led consortium for a nominal sum. The contract concluded on 30 March 1995 assigned 35% of company shares to employees (in lieu of severance payments), 40% to local associations of manufacturers and small-scale retailers and 25% to local citizens and the retired employees of the enterprise. Each employee was given the right to purchase shares depending on his/her wage level and seniority. This was the first time in Turkey that a public enterprise had been privatised by selling more than half of the corporation shares to employees.

## Outcome

Since the buy-out, the new company, Kardemir has been operating under the workers' control and unions have continued to play an active role in the administration. This is the first time in Turkey that a labour union - ÖzÇelik-İş, later changed to Çelik-İş - had actively participated in the sale process and subsequent company management. In Kardemir, the employees are the major partners of the enterprise; they own the sizable part of the shares and consequently, elected employee representatives constitute the majority (four of the seven members) in the executive committee.

## Benefits

A number of benefits flowed from the employee-led buy-out for workers and the local community. In particular, thousands of jobs were saved as a result of the employee-led privatisation. No redundancies were made at the time of privatisation, although employees with at least 25 years' service took early retirement and not all of these workers were replaced. (However, by ending the practice of widespread sub-contracting in 1998, 850 workers became permanent employees and union members.)

### **Democracy and Governance Privatization through employee ownership has contributed to the:**

- The survival of the company and protection of jobs and fundamental human and employment rights in Kardemir.
- strengthening the role of the Union in the enterprise
- changing the conflictual industrial relations environment to one based on cooperation.

**Source:** H.Y.Ersöz, et al, *Özelleştirme ve Çalışanların Mülkiyet Sahipliği: Kardemir Örneği, İstanbul, Alfa yayını, 2004.*

It has been suggested that improved employee relations have been a critical element in the company's survival, helping to increase productivity and profits. Under the new system, where employees are both owners and workers, an active spirit of labour-management cooperation has been encouraged, an attitude which positively influences day to day management and collective negotiations. Collective agreements have maintained similar clauses on wages and working conditions, although workers agreed to accept a freeze on pay rises in the first year after privatisation. Another indication of ongoing cooperation and goodwill is that there have been no strikes since the steelworks was privatised.

Notwithstanding the benefits that workers have gained from the privatisation of the steel works, there are ongoing challenges associated with the management of the steelworks. In particular, the lines between trade union representatives and management are not as clearly drawn as they were previously, as trade union officials may be required to fulfil functions related to both employee representation and management. However, the union continues to negotiate with management in relation to wages, hours and conditions of employment- as well as grievance procedures. If managed correctly, its dual function can provide workers on the shop floor with a stronger voice in relation to business and management issues. Another challenge is that, as the performance of Kardemir has progressed, there is the likelihood of employee shares to be purchased by outsiders in which case employee representatives may lose the control of company management. But even if this happens, the initial Kardemir model of employee ownership will still qualify as a beneficial form of privatization which has eventually saved the company and the workers' jobs.(Interview, Halis Ersöz, April 2,2010)

### **Lessons Learned:**

Although Kardemir experiment can be used as a successful method of privatization warding off the danger of factory shutdowns, one should note that this effort was launched with the broad-based support of local people and industrialists, civic organizations as well as the union and employees. It must also be recalled that, due to lack of sufficient publicity and outside support, the attempted buying of Et ve Balık Kurumu, the big state conglomerate processing meat and fish products, by the HAK-İŞ Labor Confederation elicited strong reactions from many diverse groups in 1995 which were instrumental in thwarting the Union's bidding

Kardemir has had some financial problems during 2001 and 2008 crises, but so far the company has proven robust enough to endure these situations. Profits have not been especially high, but Kardemir remained active as the producer of various forms of iron and steel, especially for the construction industry of Turkey, and has paved the way for other exercises in employee ownership.

**(New Developments:**

Although not necessarily negating the general theme of the above case, it is interesting to note a radical change that has occurred in the management structure of Kardemir. Following the buy-out of the company's shares in March 2010 by three local families active in the steel industry, the four workers' representatives appointed by the union have lost their posts in the executive board. Disillusioned by this allegedly collusive practice by the new owners of the company and the Çelik-İş Union, Kardemir workers have begun joining the rival union, Türk Metal. (Interview with Pevrul Kavlak, 30 April 2010) Of the 2830 Kardemir employees, about 2000 have terminated their membership in Çelik-İş and joined Türk Metal recently. (Press reports, 21 June 2010). The new Kardemir management, fearing that Çelik-İş might lose its bargaining status, reacted by firing 29 workers and harassing many others. As a result, considerable unrest and even some violence followed while the official Capital Markets Institute took the issue under scrutiny from a legal point of view. Türk Metal Secretary General, Mr. Muharrem Aslıyüce has declared his union's determination to take legal action against the new management on grounds of alleged violation of the principles of freedom of association, which, in view of both the Trade Unions Act and the Penal Code, is punishable by heavy sanctions.

Also recently, at the beginning of the year 2010, the privatization of the big state conglomerate TEKEL, (the tobacco and liquor monopoly) led to a serious controversy between the workers, their union Tekgıda İş and the government. As the conditions surrounding the attempted Karabük steel works privatization (i.e. mass public support, extensive publicity, and union pressure for an important enterprise vital to the community, etc.) were not present in this case, the outcome would be either definite unemployment for the displaced TEKEL workers, or to accept the "temporary employee status" under Article 4-C of the Public Servants' Act. The said status was perceived as depriving workers of freedom association and employment security. Mass protests by TEKEL workers which lasted 77 days in front of the Türk-İş headquarters in Ankara led to considerable unrest, involving some public support as well as occasional clashes with the police. Thus the government had to offer workers the option of either

applying for 4-C positions within a 30-day time limit, or eventual unemployment. The union warned its members to make the required applications for 4-C positions to the relevant authorities. Upon the lawsuit filed by the union, the Council of State (the Administrative High Court), finding the government's decision as a violation of Article 49 of the Constitution on "the right to work", passed an injunction on 1 March 2010 which suspended the application deadline until 1 September 2010, pending the defence of the government before deciding on the merits of the case. The injunction also entailed the extension of the time period for the affected workers to receive "job loss pay", payable to displaced workers of privatized enterprises in view of Article 22 of Act no 4046. Meanwhile the Council of State has referred Article 4-C of Act no. 657 to the Constitutional Court for review on grounds of its alleged unconstitutionality. If the Court's upcoming decision renders 4-C unconstitutional, this case may also represent a significant benefit of freedom of association for social development and governance. In the meantime Tekgıda-İş is planning to launch a mass protest march to Ankara in August with the support of other unions.(Interview with Dr. Engin Ünsal, consultant to Tek-Gıda İş, 6 July 2010).)

**Sources:-**H. Y. Ersöz, S. Özdemir, A. Yavuz, T. Akgeyik, H. Şenocak, *The Effects of Privatisation on Industrial Relations Through Employee Ownership: The Case of Kardemir*, Research project submitted to Istanbul University.

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T.Dereli, *Labour Law and Industrial Relations in Turkey*, The Hague: Kluwer Law International, 2006.

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-Interview with Halis Ersöz(April 2, 2010)



## Case Study 4: Social Dialogue as A Tool to Address the Informal Economy in Turkey.

### Background:

Based on an ILO Resolution adopted in June 2002. Turkey was selected as a pilot country to deal with the theme of Employment Promotion and Addressing Unregistered Employment. With the technical assistance of the ILO and participation of national and local tripartite parties, a programme was launched in 2004 and carried through 2005. Initially Çorum and Gaziantep were selected as pilot provinces, to which in 2005 Bursa was also added under the support of the EU. The following is a summary of the Final Project Report:

#### **A broad-based Social Dialogue project on combating unregistered employment**

Using social dialogue as a tool to address the informal economy, the ILO-EU project created an enhanced level of awareness among the social partners on the benefits of reducing unregistered employment in Turkey. Its recommendations paved the way for a large-scale government action called the KADIM Project.

**Source:** ILO, EU Project

Agreement No: 30-CE- 36386/00-21

ILO Project code: TUR/05/M01/EEC

KADIM Project Official Gazette, No 26309

### **Unregistered Employment in Turkey and Motives Underlying the Project<sup>4</sup>**

Currently unregistered work comprises about 50 per cent of total employment in Turkey.

Unregistered work puts a downward pressure on wages and poses unfair competition for the enterprises which operate in the formal economy. It is also a barrier to sustainable productivity growth and, because of evasions on social security contributions and taxes, a threat to the employees' future well-being and the State's ability to provide social and economic development. It is also seen as an obstacle to the achievements of objectives set out in the EU Employment Strategy.

<sup>4</sup> For another study with similar conclusions, see "Flexibilisation and Formal and Informal Labor Markets, T. Dereli, K. Sengers and P. Donders, "Flexibilisation and Modernization of the Turkish Labor Markets," Kluwer Law International, 2006.

**Process:**

In the province of Bursa and in-depth analysis of registered and unregistered employment was produced, followed by capacity- building workshops and tripartite dialogue aimed at reducing the prevalence of unregistered employment. The project also provided the constituents in Turkey with various comparative approaches undertaken on this issue in other EU countries. The project continued with various activities, assessments and briefings and territorial diagnosis efforts, finally culminating in a high level national conference in Ankara on 5 March 2006. During the process, comparative trade union approaches to unregistered employment in Europe were also presented. In the Ankara high level conference drawing on the Bursa, Gaziantep and Çorum experiences, the Ministers of Labor and Industry as well as the presidents of the main labor and employer's organizations adhered to the adoption of an integrated policy of reducing unregistered work in Turkey. A two day workshop for labor unions held in Bursa in July 2006 dealt specially with unions' role and flexibilization of labor legislation in combating informal economy.

This was followed by a two day tripartite workshop on awareness raising and behavior change, held in Ankara on 20-22 July 2006. It addressed the question of the possible ways of changing the culture of tolerance prevalent in Turkish society on the drawbacks of unregistered work and how social dialogue could be used to effect behavioral change. Another two day tripartite workshop was organized in Bursa on 13-14 September 2006 to establish recommendations and future commitments by the local stakeholders in Bursa. The outcome of this activity was an action plan with 8 concrete activities, accompanied by a timetable and division of responsibilities. On 5-7 December 2006, two one day tripartite workshops were held in Gaziantep and Çorum to review the implementation of action plans, to discuss local initiatives undertaken in these provinces since the inception of the original pilot studies in 2005. Finally a two day high level international conference was held in Ankara on 6-7 February 2007. This activity brought together high level representatives of employers' and workers' organizations of Turkey, as well as government officials, experts from several EU Member States and representatives of the European Commission.

The EU-ILO project continued to support the tripartite partners it had initially covered in Gaziantep and Çorum commencing in 2004 and then expanded its activities to include the province of Bursa, thus drawing upon lessons learned in Gaziantep and Çorum. This project which was essentially an awareness-raising endeavor sensitized the participants to the importance of a balanced and integrated approach, encompassing legal and administrative reforms as well as measures targeting unregistered workers. Measures were designed to complement enforcement and regulation with targeted action, including the promotion of active labor market policies, the identification and reduction of barriers to formalization and the raising of public awareness.

The final report lists the results achieved in conjunction with the objectives of the project, providing means of verification for each objective. Recommendations for objective I which aimed to obtain clear inputs from tripartite partners included reduction of taxes and social security contributions, increasing the effectiveness of enforcement and inspection activities, labor law reform to lift the limitations on freedom of association (e.g. changing the double criteria for collective bargaining authorization so that unions at the local level can accede to the informal economy easily), simplified procedures for registering establishments and workers and increasing the use of flexibility measures in practice.

The project seems to have raised the profile of social dialogue, both locally and nationally, on a new and broad subject, exposing the Turkish social partners to good practices from across Europe. The social partners as well as the key agencies have a common interest in tackling the informal economy although their motives for doing so differ. The Turkish employment Organization (İŞ-KUR) and its advisory body, provincial employment boards, have proved to be valuable partners, providing a forum for tripartite meetings. Recognizing that the rate of unionization in Turkey is low and that unregistered work is concentrated in sectors where employers' and workers' organizations are weakly represented, communication and collaboration with other institutions, i.e. chambers of commerce, small business associations, universities and local media represent important components of the proposed joint action plans. The social partners and local governments have agreed in the three provinces

on a series of policy recommendations which include (a) strengthening the capacity of employers' and workers' organizations, (b) removing the legal barriers to the full development of freedom association and the right to bargain collectively (reforming Acts no. 2821 and 2822 which have been under the scrutiny of the ILO supervisory machinery for years), and (c) reforming existing tripartite institutions both at the national and local levels (specially the Economic and Social Council, and the Provincial Employment Boards).

Recommendations developed by the ILO and tripartite constituents and based on their experiences and lessons learned from the project were outlined in a working paper and presented at the final conference in 2007. These included (a) promoting social dialogue including sectoral dialogue as a method for addressing a wide range of economic and social issues, (b) creating decent job opportunities, (c) improving governance (which also called for the strengthening of İŞKUR and the labor inspection services, reform in labor legislation and the need to regulate private employment services and temporary work agencies, (d) promoting entrepreneurship and fair competition, (e) combating poverty and (e) raising awareness and understanding.

**Benefits:**

The major benefit of the ILO-EU project seems to be the awareness it has created among the project participants on the inherent risks for workers, employers, government and the economy caused by informal employment as well as the vicious cycles which develop. For example, although unregistered enterprises save on certain costs, by operating outside the formal system they have limited access to credit, management development opportunities and new technologies and markets. Informality for the government impacts adversely the financing of social protection and increase costs for those in the formal economy. High levels of unemployment push workers to the informal sector characterized by low wages, workplace hazards and lack of health, disability or unemployment insurance as well as an uncertain future with denial of pension rights. This project was successful in bringing together all relevant actors under a broad and inclusive social dialogue to reduce the prevalence of unregistered employment in Gaziantep, Çorum and Bursa. This case was related to

“freedom of association” in two ways. First, labor and employers’ organizations were actively involved in each stage of the process. Second, it led to various recommendations and proposals, including immediate action to remove the limitations on the freedom of association and collective bargaining in both the formal and informal sectors.

### **Lessons learned and follow-up actions:**

In a legal sense there is no obstacle confronting labor unions to enlist members from the informal sector, but there are challenges and a vicious cycle here : to declare members to the Ministry of Labor and Social Security for collective bargaining authorization, the workers must first have social security numbers which unregistered workers in the formal economy do not own naturally.

#### **Contribution to a positive business environment and social development**

By improving the awareness level on the benefits of reducing unregistered employment, the ILO-EU-KADIM project aims to contribute

- to the creation of a positive business environment
- stronger protection of freedom of association, and
- new roles to be played by labor unions in the informal sector.

So priority must be given to measures which will facilitate the union’s authorization process and convince unregistered workers to enter formal employment in the first place.

The immediate outcome of this awareness raising project was a national level project entitled KADIM (Combat Against Informal Employment) and administered by the Ministry of Labor and Social Security in coordination with high level representatives from the social partners as well as key government and nongovernmental agencies. This new project which targeted all those factors that promote informal employment and illegal use of foreign workers was already supported by the Prime Minister in an Official Communiqué on Informal Employment, dated 4 October 2006, drawing on the lessons learned from the ILO- EU project with a view to extend the scope of activities to every province in Turkey. At present KADIM project is in the implementation stage , following a timetable for each activity foreseen. Activities in combating informal employment were grouped under four main titles: 1.more. efficient auditing, 2.activities of reporting and awareness raising, 3. amendments in regulations and 4. removal of bureaucratic obstacles. It was declared

that in the first year of project activities (from October 2006 to December 2007), 189.576 workplace audits were performed, a total of 731.875 workers were audited, 43.806 workers were detected as employed informally. The government's 2008 program foresaw measures to be taken under the responsibility of the Revenue Administration in collaboration with the Ministry of Labor, Ministry of Finance as well as certain other governmental agencies. In collaboration with these institutions an "action plan" was developed in June 2008 to cover a period of three years (from 2008 to 2010) and including 105 actions with performance indicators, timing and responsible institutions.

## Case Study 5:

### Grievance Arbitration at the BP Plant in Gemlik

The parties of this case which arose from the interpretation and application of an existing collective agreement were the labor union, Petrol-İş- Petroleum Rubber and Chemical Workers' Union of Turkey, and the employer, BP Türk, Turkish subsidiary of the renowned multinational(.Source:

**Improved conflict management resulting from adherence to “freedom of association” principles**

The collective agreement clause on grievance arbitration, based on mutual trust of the social partners, led to the effective and peaceful resolution of an individual labor dispute and contributed to the creation of a positive business environment.

Petrol İş Yıllık raporu,1987) The grievance initiated by Petrol-İş arose in the Gemlik Plant where petrol was stored in huge tanks for distribution as well as processes like making, blending and canning motor oil were carried out.

Gemlik operations were run under the supervision of a plant manager (B) who, in terms of industrial relations and personnel matters, among other managerial functions, was accountable to the CEO and the Vice President of the Personnel and Industrial Relations Department of BP located in the central office of the Company at Taksim, Istanbul.

A clause in the company-wide (enterprise-level) collective agreement between BP and Petrol-İş dealt with employee transfers and promotions. The said clause read: “Should a vacancy occur requiring a worker’s transfer or promotion to a higher job grade in the plant, competency should be given priority in filling the vacant position. In the presence of more than one applicant having equal competency, the job would then be assigned to the employee who has longer seniority.”

In another clause the collective agreement envisaged a full-fledged grievance procedure according to which, a rights dispute, after passing through relevant stages. would culminate in arbitration at the request of one of the parties. Apparently, the employer had initiated the arbitration process. In Turkey the strong enforceability of private arbitrator’s awards is based on the provisions of the Act on Legal Procedures. In his rulings the arbitrator is bound to respect only the mandatory rules concerning

public order as well as the principle of “fair dealing” and the pertinent wording of the agreement. If an appeal is filed against the arbitrator’s award, the High Court of Appeals may reverse it only for a few procedural reasons (time limit, jurisdiction, etc.), whereas if the labor court’s decision is appealed, the High Court may reverse it also for reasons of merit as well as procedure. Thus, the law has endowed the arbitration decision with a great deal of enforcement power simply because the arbitrator has been co-opted by the joint will and trust of the two parties.

In the specific incident, management at the BP’s Gemlik plant had appointed a young employee, aged 21, to the job of the fork lift operator that had become vacant recently. An older employee, aged 43, whose present job involved climbing the high ladders several times every day in order to measure the depth of petroleum in oil tanks, contested the management’s decision by claiming that he should be given the fork lift operator’s job since for this job he had the same competency as the young man. Because the competencies of the two employees were equal, priority should be given to the “seniority criterion”. As a matter of fact he had a work experience at the Gemlik plant for more than ten years. The union supported his argument and filed a grievance. Social partners represented by the BP and Petrol-İş headquarters in Istanbul agreed on the writer of this case study (A) to act as the private arbitrator in order to settle the dispute.

The arbitrator (A) was briefed by telephone on the case by the Personnel and Industrial Relations Vice President of BP, Mr. Ülkü Erdoğan; next day the manager of the Gemlik plant (B), invited (A) to visit the Gemlik plant and confer with the parties on the spot. The following day (A) took the ferry to Yalova where a car sent by the Gemlik plant manager (B) was waiting to take him to Gemlik.

A was welcomed by (B) as well as the Union President and shop-stewards of the Union’s local branch. (B) was especially very kind in his manners and words to (A), informed him on the development of the dispute and arranged a dinner to honor him along with other managers of the Gemlik plant. He told (A) that the plaintiff was now an aging man having to wear eye correctors and therefore not fitted to do the job of a fork lift operator. However (A) did have the opportunity to hear the complaints of union representatives as well. They insisted strongly that the management’s ac-



tion was definitely contrary to the wording and spirit of the collective agreement and discriminatory in nature since management had the intention of giving the job to the young employee who was the son of the plant foreman. The older man, the grievant, emphasized that he was perfectly well-fitted to perform the tasks of a fork lift operator, that his present job of climbing so many stairs to measure the level of oil several times a day was too tiring for him at his age, and the management's intention was to extend favorable treatment to the son of the foreman. And surprisingly what the grievant understood from the concept of competency was holding a driver's license, since "competency" in Turkish also means having an official driver's license. He said: "as a matter of fact, I haven't been involved in any driving accident, whereas the plant manager has caused several car accidents on the work sites of the establishment". To prove his competency, the senior employee drove one of the forklifts at the worksite and performed several functions on it, e.g. stowing and lifting oil cans and moving the load to special shelves in the plant.

Upon completing his contacts and inquiries at the BP Gemlik plant, (A) left Gemlik for Istanbul, being seen off by the plant manager (B) who again provided him with a chauffeur-driven company car. Reading the whole collective agreement first roughly and its pertinent clauses more carefully, as well as deliberating on the testimonies of social partners, it took (A) two days to reach a decision and write the arbitration award.

(A) gave first priority to the wording and spirit of the collective agreement clause. Apparently, putting a young and energetic man on the job was the management's preferred alternative, but the man with longer seniority could perform the essential functions of the fork-lift operator's job equally well. Thus the merits of the case (collective agreement's relevant clauses, the fact that the competencies of the two applicants were

**Democracy, governance and contribution to a positive business environment**

- This case represents how a collective agreement, based on the autonomy of social partners to freely establish workplace rules between themselves, has contributed to sustaining
  - fundamental human and employment rights,
  - promoting equality in treatment,
  - improving working conditions and labor peace, and
  - strengthening the role of the trade union in establishments.

equal, the principles of good faith and fair dealing) led him to give the “fork lift operator job” to the senior employee. Then he sent his report to the local labor court for registration. To his knowledge, the employer did not contest his award by appealing it to the High Court. Later Mr. Ülkü Erdoğan told (A) in a personal conversation that relations had improved smoothly in the Gemlik plant following the implementation of the arbitration award. He said labor peace had replaced the atmosphere of intense unrest, unfounded accusations and gossip. The younger employee was satisfied with a new job he was assigned to; he was performing his new tasks with enthusiasm and commitment to his workplace.

### **Benefits:**

- *Employee relations improved considerably at the Gemlik plant of BP Türk.*
- *Improvement of communication between the Union, workers and managers*
- *As the dispute was addressed timely and managed effectively, no grievance occurred at the Gemlik plant during the successive two terms of collective bargaining.*
- *Although the Union, due to external forces, had lost its bargaining rights in multinationals operating in this sector, the tacit agreement between the social partners to continue implementing the administrative clauses of expired collective agreements made contributions to sustaining a positive business environment.<sup>5</sup>*

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<sup>5</sup> Due to the global trends adversely affecting labor unions in Turkey and elsewhere, the once powerful Petrol-İş Union lost its bargaining rights in the three big multinationals, BP, Mobile Oil and Shell in the mid-1990's. More frequent use of outsourcing and subcontracting, sale of the Batman plant as well as the widening scope of the so-called “non covered employees” triggered by management pressures, accounted for the declining membership density of Petrol-İş in these companies. However, the social partners continued implementing the expired collective agreements between themselves even in the absence official and binding collective agreements, except for the clauses on wage and effort bargain, until the year 2004 and, after 2004 to present day, through the tacit agreement of social partners, Petrol-İş and oil companies where the union had lost its official authorization certificate. This practice, emanating from the ILO's freedom of association principles, once well entrenched in this sector of Turkish industrial relations, still continues.

Source: Interview with Merih Toprak, head of the collective bargaining department of Petrol İş, 11 March 2010.