

THE COLLECTIVE BARGAINING AGREEMENT, STRIKE, LOCK-OUT AND ARBITRATION SYSTEM IN TURKEY

by

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The collective bargaining agreement (collective labour agreement), strike, lock-out and arbitration system in Turkey, is regulated by law no. 275 of "Collective Bargaining Agreement, Strike and Lock-out", enacted in 1963 in the light of the Constitution of 1961.

In fact, the Constitution of 1961, prepared with the aim of encompassing all the institutions of democracy and with a social point of view, has placed the rights of the labourers, of concluding a collective bargaining agreement and to strike, among the fundamental rights and has secured the regulation of the right to strike to a special law. Thus, this is the law no. 275, enacted on 15.7.1963, having taken effect in principle on 27.7.1963.

I will, in this paper attempt briefly to remind you of the system of the referred Law and then to indicate the problems of importance in practice and the defects of the system.

I. A GENERAL SURVEY OF THE SYSTEM OF LAW

NO. 275

The purpose of Law no. 275, is to regulate the means of solving the collective disputes arising between the employers and their employees (labourers).

If the arising dispute is one in which one of the parties infringes upon a right of the other party, then the dispute is called a dispute of rights. Examples of this type are, when the employer pays in-

complete wages to the employees or when the employees harm the machinery owned by the employer.

When there is no dispute of rights, but one of the parties, because he is not satisfied with the existing conditions of work, wants to modify these conditions economic and socialwise, then the dispute is called a dispute of interests. An example of this would be, a demand to increased wages.

Though a dispute of rights can be settled through the natural judicial procedure and the implementation of the existing provisions, it is impossible to resolve a dispute of interests, as a consequence of its nature, by the provisions in effect. The disputes of interests which are of no consequence when viewed separately, carry, when they present a collective nature from the viewpoint of the employees, a considerable weight as far as the society is concerned and various measures have been looked into to resolve these.

Untill Law no. 275 was in existence, the disputes of collective interest were resolved by arbitration councils set up by the State. Law no. 275, has granted, with certain restrictions and conditions, to each one of the parties, the right of forcing the other party to negotiate, and to come to an agreement through economic pressure. The possibility granted to the employees, is, to quit work collectively, that is to say, to strike; the means that the employer has, is, not to allow the employees to work, that is to say, lock-out.

But, in any case, the parties have to negotiate, bargain and try to appeal to reason and persuade, before they can start their economic warfare. This phase is called the "collective bargaining". If an agreement is reached at the conclusion of the collective bargaining, then the dispute is said to be settled through a "collective labour agreement". This agreement will cover one or more establishments or a branch of employment.

In the phase of collective bargaining (negotiation) the parties can not plunge into warfare even though they may not have reached an agreement. They are under the obligation to demand that a Conciliation Board, formed of two independent mediators appointed by the parties and a third independent or neutral mediator,

examines the dispute. But the parties are free as to accept the decision of the Board. If the parties agree to accept the recommendation (a decision by majority vote) of the Board, then again the dispute would have come to an end. A Conciliation Board decision, so accepted, has the force and effects of a collective labour agreement.

If the conciliation phase has not come to a positive conclusion, this fact has to be recorded in a report by the Conciliation Board.

Now, either of the parties can resort to strike or to lock-out, as the case may be in order to impose its point of view on the other party. But the other party has to be informed of such a decision within 6 working days from the date of receiving the report. A decision to strike or to lock-out can not be implemented before the 6 working days elapse after this declaration.

Under certain conditions (state of war, the existence of a collective labour agreement) and in certain establishments (related to health, to protect and save life and property etc.) strike and lock-out are prohibited. Sometimes the administration can forbid a strike or lock-out, (The Council of Ministers can delay a strike or a lock-out up to 90 days in situations related to national security or public health; the Martial Law Command can prohibit). Activities and behaviour repugnant to prohibitions or limitations of strike and lock-out, are considered offences.

For circumstances when a decision of strike or lock-out can not be reached, the possibility of resorting to "Statutory Arbitrator" has been foreseen. This is a compulsory (obligatory) arbitration system, that is to say, Arbitration Boards (Provincial Arbitration Board, Supreme Arbitration Board) functioning as organs of the State are empowered to resolve a dispute upon the presentation of the issue by only one of the parties. That the other party is not willing to submit the issue is of no importance. Whereas, both in matters when to reach a decision to strike or lock-out is prohibited or allowed, the parties can consent to submit the unresolved grievance to voluntary arbitration for settlement. But to resort to this means, the parties have to come to an agreement. It is possible to go to statutory arbitration only in matters in which

a decision to strike or to lock-out can not be taken. But upon the presentation of the issue by only one of the parties, the Board can look into the dispute. The final decisions of the arbitration boards are binding whether the parties have gone to the Statutory Arbitrator or to private (voluntary) arbitrator; the parties have to abide by these decisions. These decisions are considered as "collective labour agreements" in disputes of interests.

If a dispute of rights have been decided upon by an arbitrator, this decision of the arbitrator is exactly similar to a court's verdict. We also have to point out that Law no. 275 grants the right to strike and lock-out, not only in disputes of collective interests, but, also, though with certain restrictions and limitations, in disputes of collective rights. That the right of strike and lock-out has been granted in disputes of rights the natural place of settlement of which should be the courts, has been explained in the report of the Interim Commission for the referred Law, through the reasoning that it takes very long in the courts.

But, whether, disputes of interests or of rights, only those disputes to which the Union of the Federations, representing the majority of the labourers in the establishment or branch of employment, is a party, have the nature of a collective labour dispute as far as the employees (labourers) are concerned. Only these labourers' organisations can engage in collective bargaining and can sign collective labour agreements or decide upon an official strike or be confronted by a decision of lock-out. Unless a labour union or federation, representing the majority of the labourers in a branch of employment or establishment is formed, the institutions of collective bargaining, collective labour agreement, strike and lock-out of Law no. 275, are doomed to fail.

II. THE DEFECTS RELATED TO COLLECTIVE LABOUR AGREEMENT IN THE EXISTING SYSTEM

1. A fundamental defect in the existing system pertaining to collective labour agreement is that the provisions of the Law do not make possible an implementation in accord with the purpose.

In fact, various provisions of the Law rest upon the differentiation between the collective labour agreement covering one or more establishments (collective labour agreement for an establishment) and a collective labour agreement covering the establishments within a branch of employment (collective labour agreement for a branch).

If the proposal to conclude a collective labour agreement for a branch, that is to say, an invitation to collective bargaining, is being issued by the labourers, Law no. 275, in article 9/1 indicates that the labourers' federation or union, that is to say the labourers' federation representing the majority of labourers working in that branch of employment or labour union formed upon the basis of branch of employment, competent to conclude the agreement, may issue an invitation to the employers' federation for that branch of employment, to employers' organisations (unions) not members to such federations, and the employers not belonging to such federations or organisations. On the other hand, there is no explicit provision in the Law indicating whether the competent labourers' organisation has to issue an invitation to employers' federations, employers' organisations not member to these federations, and employers not belonging to such organisations, all at the same time. A decision (no. 965/14) dated 26.11.1965 of the Ninth Department of Law of the Court of Cassation, reflects the point of view that there is no such obligation. This opinion, enables the concluding of a separate agreement for a branch of employment with each employer, through separate invitations, on different occasions. And this is what is being done in practice.

Even though this interpretation and implementation can be considered in compliance with article 9/1 which talks of competence but not of the obligation to issue invitations, and article 9/3 which regulates the competence of the uninvited employers' organisations or employers, to participate in the concluding of a collective labour agreement, it can not be reconciled with the concept of collective labour agreement for a branch and the essence of the Law. Because, this interpretation and implementation creates the result of concluding two collective labour agreements of the same nature in every establishment under separate names

and of having numerous agreements for a branch in one branch of employment. Whereas, the differentiation of collective labour agreement for an branch - collective labour agreement for an establishment can only have a meaning, if the agreement for a branch performs the function of determining the uniform conditions, or at least the minimum norms of work conditions in a branch.

When one accepts, in order to correct the defects pointed to above, that the competent labourer's organisation has to invite the employers' federation in the branch of employment, employers' organisations not member to these federations and employers not belonging to these, all at the same time, so as to reach a single collective labour agreement for a branch, and will issue the invitation accordingly; other problems arise, and to reach a collective labour agreement for a branch with those invited, looks awfully difficult or even out of question. In other words, if some of the employers' federations, employers' organisations and employers invited, attend the collective bargaining and some do not; if some of those attending the collective bargaining are willing to come to an agreement and some are not; it is impossible to understand how the following phase, that is to say mediation, and when this fails, the strike or lock-out will materialize and how a collective labour agreement for a branch will be reached.

In fact, how will the various employers' federations, employers' organisations and employers that have no legal relationship with each other appoint an independent mediator to the Conciliation Board? What will happen if some do and some do not accept the decision of the Conciliation Board at the conclusion of the mediation? Will the decision to strike taken by the labourer's organisation cover the establishments belonging to those who have accepted the decision of the Conciliation Board? How will a common mode of behaviour be possible if the employers on the other hand, want to perform a lock-out? And will the minority, who at the end would still be unwilling to collectively negotiate and bargain, be able to continue to prevent reaching a collective agreement? Here is a whole lot of questions whose answers one can not encounter in the law.

Therefore, it is essential that matters, related to concluding agreements for a branch of employment, should be re-regulated through legislation.

2. The fact that the position of the collective labour agreement for an establishment has not been regulated, as opposed to collective labour agreement for a branch, is a second important defect.

Though Law no. 275 has enacted provisions resting on the differentiation of collective labour agreement for a branch - collective labour agreement for an establishment, it has no provision that foresees the difference between the two types of collective labour agreements as far as quality and content are concerned. So the position of collective labour agreement for an establishment lacks clarity as opposed to collective labour agreement for a branch. Since there is no provision in the law to create a difference of quality, one can say that both the collective labour agreement for an establishment and for a branch will include all the provisions stipulated by articles 1 and 2 of law no. 275. In fact, this opinion has been reflected in the doctrine and one can see that this is the tendency in practice too. Questions such as, whether an agreement for an establishment can be concluded while there already is an agreement for a branch, and what would the effect of an agreement for a branch, concluded while an agreement for an establishment is in effect, be, upon that agreement for an establishment, are questions whose distinct answers are not in the law. Therefore while Law no. 275 is being amended (or changed), whether the differentiation of agreement for a branch-agreement for an establishment, should be kept, has to be decided upon and if this distinction is to be adhered to, then the question of the position of agreements for an establishment, facing agreements for a branch has to be clarified.

3. Another defect is the difficulty in concluding agreements for undertakings.

Law no. 275 has foreseen the possibility of concluding a single collective labour agreement at the level of an establishment, covering more than one establishment all belonging to one employer,

but has not regulated the provisions that would enable the reaching to such an agreement.

In the first place, in order for one labour union to be competent to conclude a collective labour agreement covering more than one establishment belonging to one employer, that union has to represent the majority of the labourers at each establishment. Unless this condition is realised one could encounter at each establishment collective labour agreements concluded with a different labour union. Although the employer can, issue an invitation to all competent unions at various establishments, for a collective bargaining (art. 9/2,2) it is very difficult or even impossible to reach a single collective labour agreement with these different and independent unions. The defect come accross in the situation of concluding an agreement for a branch between the employers' organisations and employers not member to any organisation, confront us here too, in the situation of the existence of different unions, when the one employer owning more than one establishment wants to conclude an agreement at the level of the establishment covering more than one establishment. In fact, if, of the labour unions invited by the employer to attend the collective bargaining, some attend and some do not, and if of those unions that attend the collective bargaining, some are willing to assent and some are not, it is impossible to figure out how the mediation and when this fails the strike or lock-out will ensue and how the employer will achieve the concluding of a single agreement at the level of the establishment (undertaking), covering all his establishments.

Anyway, even if the same labour union represents the majority in all the establishments belonging to the same employer, there is no compulsion foreseen in the law, for either the union or the employer to propose an agreement to cover all these establishments. If, in spite of this, the union or the employer want to issue an invitation for a single agreement to cover all the establishments, but if these establishments happen to be situated in different provinces (cities), then also, there is no provision in the law to indicate which Regional Directorate of Labour will be the directorate to organise the collective bargaining. Also, in case

an agreement can not be reached in the collective bargaining and mediation is no solution, there is, another problem whose answer is not clear in the law. This question is, whether the labour union has to take a single decision to go on a strike, covering all the referred establishments, or, separate decisions to go on a strike for each establishment.

Whereas, there is a vital need for provisions providing the reaching to a collective labour agreement covering all the establishments in the same branch of employment of an undertaking and even establishing the compulsion of concluding a single agreement covering the entire undertaking, in undertakings like banks and insurance companies which have numerous branches in different parts of Turkey and the employees of which work in a centralized system, and are recruited, as a rule, from branch to branch. In fact, if separate collective labour agreements are concluded for each branch of a bank that has branches in various cities and towns of Turkey, both the employer and the employees will encounter numerous difficulties in determining the position of an employee who is recruited from one branch to another.

4. Another important issue is the problem of how the labourers who do not belong to a union will avail themselves of a collective labour agreement.

Law no. 275 has accepted the principle that only the labourers who are members of a labourer's organisation party to a collective labour agreement and who are working in establishments to which the agreement applies, can benefit from that collective labour agreement; and has foreseen the possibility for the other labourers who do not belong to the referred labourer's organisation but who are employed in the same establishment, of availing themselves of the collective labour agreement, by paying monthly solidarity contribution (Law no. 275, art. 7/3) to the labourer's organisation. This provision has not introduced a reservation to the effect that the approval or consent of the labourer's organisation is necessary for the payment of the monthly solidarity contribution. But on the other hand, article 21 of the Trade Union Act no. 274, has stipulated that in order to extend the rights secured by the employer's organisation through its own activities for its

members, to those who do not belong to that organisation, the written consent of the referred organisation is essential. Whether the stipulation of the above mentioned article 21 is applicable to those labourers who want to avail themselves of the collective labour agreement by paying solidarity contribution, in other words, whether benefiting from a collective labour agreement by paying solidarity contribution is dependent upon the consent or approval of the labourer's organisation, has been one of the controversial areas in the implementation of Law no. 275. In relation to this issue, the Ninth Department of Law of the Court of Cassation has accepted the point of view that it is not enough to be ready to pay solidarity contribution for a labourer not belonging to the labourer's organisation that has concluded a collective labour agreement, in order to benefit from that agreement; it is also necessary to acquire the consent of the labourer's organisation in accord with article 21 of Law no. 274 (decision no. 8458/7983 of 3.12.1964 of the 9th Dept. of Law of the Court of Cassation). However, the same Department, by affirming two court decisions not regarding the employer's making a raise in wages of the labourers not belonging to the union party to the collective labour agreement, as availing them of the collective labour agreement (decision no. 1317/1723 of 12.2.1968 and decision no. 3846/8402 of 28.5.1968 of the 9th Dept. of Law of the Court of Cassation) has considerably narrowed down the concept of availing of the collective labour agreement. On the other hand, the Ninth Department of Law of the Court of Cassation, agrees, that, those labourers who had not belonged to the union concluding the agreement, while the collective labour agreement was being concluded, and who no longer are members, will continue to avail themselves of the collective labour agreement, and that for this to materialize there is no need for the consent of the union and in fact they don't even have to pay solidarity contribution. This opinion has been affirmed by the General Council of Law of the Court of Cassation (decision no. 9-1052/298 of 23.11.1966 and dec. no. 9-636 of 25.9.1968 of the General Council of Law of the Court of Cassation).

We had defended the opinion that, the consent of the labourer's organisation is not essential in availing oneself of the col-

lective labour agreement by paying a solidarity contribution. Again, according to us, those that have quitted the labourer's organisation after the concluding of the collective labour agreement can avail themselves of the agreement only by paying the solidarity contribution. The opinion of the Supreme Court, in our opinion, is not in compliance with the system of Law no. 275 and can not be supported as it also creates the consequence of encouraging the labourers to join a union in order to avail themselves of a collective labour agreement and then quit it after the concluding of the agreement. In the light of article 7 of Law no. 275, article 21 of Law no. 274 can not be implemented and one can not accept that article 6 of Law no. 275 enables those that have quitted the union to avail themselves of a collective labour agreement without paying a solidarity contribution. The referred article 6 stipulates that those that quit the union remain bound by the collective labour agreement, that is to say, they are subject to the ban on strike. To avail oneself of the collective labour agreement without becoming a member to a union is only possible by adherence to article 7/3.

The Constitutional Court in the decion, docket no. 1970/346, decision no. 1971/24 dated 2.3.1971, expressed the reasoning that article 21 of the Trade Union Act, no. 274, can not be applied in cases of availing oneself of the collective labour agreement by paying solidarity contribution, and thus decided that this article is not unconstitutional. In the dissenting opinions it was stated that article 21 can also be used in cases of availing oneself of a collective labour agreement by paying solidarity contributions and therefore, this provision, that compels one to enter a union, is unconstitutional.

The fact is that, either the consent foreseen in article 21 of Law no. 274 will not be applicable to cases of paying solidarity contribution in order to avail oneself of the collective labour agreement and thus the provision will not be regarded as unconstitutional, or the consent will be regarded as essential in this case too, and thus this provision will be considered unconstitutional.

That must be why paragraph 2 added onto article 21 in the amendment through Law no. 1317 of 29.7.1970 to Law no. 274 says,

"provisions of Law no. 275 are reserved". By this statement the law maker has attempted to clarify the issue that to avail oneself of the collective labour agreement by paying solidarity contributions, is not dependent upon the consent of the labourer's organisation party to the agreement.

Issues such as, what happens when the union does not determine the amount of the solidarity contribution; whether it is required that those, who have quitted the labourer's organisation party to a collective labour agreement subsequent to the concluding of the agreement, should pay a solidarity contribution in order to go on benefiting from the collective labour agreement; whether it is possible to bring provisions by a collective labour agreement contrary to the provisions of the Law, related to solidarity contribution, should also be pinned down to distinct solutions in the Law.

5. Defects related to the determination of competence to conclude a collective labour agreement is one of the most important problems of the collective labour agreement system. The essence of the matter is related to the certification of the members of a union and therefore has more to do with Law no. 274 than Law no. 275. As expressed at a Seminar, the union wanting to claim the competence for a collective labour agreement through showing a higher membership, makes the labourer sign a few blank membership forms and later, after the member quits, makes a re-entry for the same labourer by filling in blank forms. More important than that, there are various irregularities in membership registers, new membership forms are being prepared by forging signatures on registration forms. In fact, a union that has the greatest number of members in an establishment, as a result of a dispute in competence, feels forced to resort to the same behaviour in fear of losing that competence. It was pointed out by the union authorities attending the Seminar, that the provision "resignation can be realized by individual determination of personality by the notary public and by ratification of the signature of the person resigning" stated in article 9 of the Law no. 1317 of 29.7.1970, amending the Trade Union Act no. 274, to correct the defects in this area, has not put an end to the irregularities. It was explained that 2300

membership forms have been issued for an establishment employing 2000 labourers; that some of the labourers who had been announced to have resigned from one union and to have joined another, had been dead since months, and some had gone to Germany; and that forged birth certificates have been presented to the notary public.

In order to erect the collective labour agreement system on a sound basis, it is necessary to establish firm principles to determine whether the labourer's organisation represents the majority of the labourers. But, I would like to point out that, I do not consent to the proposals to determine competence by voting which has been qualified as referendum. Because voting necessarily creates an atmosphere of elections. Various labourers' organisations will, to win the elections, enter personal quarrels and may also make promises which they themselves know could not materialize. These quarrels, besides creating an atmosphere of unrest in the establishments, will either result in the labourer's organisation, in a psychosis of keeping to its promises, evading the atmosphere of mutual understanding essential for collective bargaining, or the labourer's organisation will fall into difficult circumstances facing the labourers, because it could not keep to its promises.

6. The mediation system stipulated by Law no. 275 has been deviated from its purpose in practice, and has been transformed into an institution constituting an unnecessary phase.

That is to say, mediation foreseen by Law no. 275, is a method to be implemented when the collective labour agreement has not reached a satisfactory conclusion, or in order to be able to use the right of strike or lock-out in a collective dispute of rights, and so as to benefit from compulsory arbitration in cases in which to decide to strike or lock-out is prohibited. The principle accepted is that an independent board should examine the dispute and propose a formula for conciliation.

As a consequence of this principle, the parties each have to have one independent mediator at the meeting for conciliation and these two independent mediators have to select a third independent (neutral) mediator. If there is no agreement in appointing this third

independent mediator who will act as the chairman to the Conciliation Board, the courts are asked to appoint him.

Thus, the Conciliation Board is a special board that is set up anew for each dispute and the appointment of which is essentially reserved to the parties.

The Law demands that all the three mediators should be independent. Whereas in practice, one can encounter cases in which the parties send as mediators those they trust to be loyal to them or even send at the conciliation phase, to the conciliation board, as independent mediators those who already participated in the collective bargaining as the representatives of a party. This situation is repugnant to the purpose aimed by mediation in the law. Because the Law accepted the principle that the dispute which could not be resolved by the parties should be re-viewed once more by an independent board objectively and the board should propose a formula of conciliation to the parties. That the two members of the conciliation board are not independent but even act in the capacity of representatives of the parties, causes the conciliation to become a continuation of negotiations between the parties under the chairmanship of the third mediator. When the third mediator, even if independent, lacks the necessary knowledge, experience and capacity to persuade, the meeting for conciliation is then considered an unnecessary phase without any moral authority, but an essential road to a strike or lock-out.

The Law essentially aimed at regulating a conciliation procedure in the form of an investigation — mediation, wanted to establish an independent board, accepted that it could put forth a proposal; but has not foreseen measures that would enable the board to have moral authority and to carry out the necessary investigation. Also no measures have been taken for the proposal to be put forth by the board, to make an impact on public opinion. Anyway the structure of the board does not allow its proposal to be effective either. Therefore in practice conciliation is being implemented not in compliance with the aim of the law but in the form of conciliation — mediation.

Thus, it is necessary either to amend the provision of the law related to conciliation in keeping with practice and in this way

save the law from being continually violated, or, to take measures to secure a practice that would materialize in accord with the investigation — mediation.

III. DEFECTS RELATED TO STRIKE AND LOCK-OUT IN THE EXISTING SYSTEM

1. Possibility of strike and lock-out in disputes of rights: By article 19/2 of Law no. 275, the possibility of strike and lock-out in collective disputes of rights has been granted to one of the parties, of a labourer's organisation or employer bound by a collective labour agreement, claiming that the other party has infringed upon the collective agreement or has acted repugnant to laws and regulations.

Although the acceptance of strike and lock-out as means of pressure to resolve a dispute that is called a dispute of interests, that can not be settled by the existing legal principles, complies with the structure and nature of these institutions; to regard strike and lock-out as permissible in a dispute that could be settled in a court in accordance with the existing legal principles, that is to say in a dispute of rights, has not been very sagacious. In fact, this anxiety has been also felt by the law makers and it was manifested in the report of the General Assembly Interim Commission as: "Since it would take too long to secure a result from appealing to a court with the aim of establishing an existing right, this would and does give rise to various abuses by the employers. To prevent these abuses is only possible by granting the right to go on strike in this issue too. But, since the function of manifesting a right is a function of the judiciary, in is impossible to regard the right to go on a strike as being a right above the judicial power of the Turkish Courts. Therefore, our Commission has accepted the right to go on strike in this issue, too, but also granted the right to issue an injunction to detain a strike, to the courts."

In our opinion, this reasoning is not sufficient to justify the acceptance of the possibility of strike and lock-out in a dispute of rights. In the first place, the duty of the State, is to create the

possibility for the judiciary to distribute justice at the required speed; it is not to grant the possibility of going on strike and lock-out in disputes of rights, saying that it takes too long in the courts.

It must be pointed out that, when a dispute of rights is settled by economic pressure, this does not indicate that the party winning the warfare is right, but that it has the power to win the warfare. For example, if in a strike carried out against an employer who violates the rights of the labourers, the strike is unsuccessful because the employer does not lose his ground till the very end, or resorts, on the other hand to a lock-out, this does not mean that the employer was right in the dispute. Or, that the employer gives in to a strike gone on by the labourers, who in their belief that their rights were being violated went onto a strike against the employer who had not really transgressed the rights of the labourers, does not mean that the employer was unjust in that dispute. In this way, the party that is essentially right and whose righteousness might later be declared and be decided upon by the court, is allowed to suffer loss unjustly, opposed by the party who has superior power to fight and yet there is no possibility to secure compensation for this damage. This can not be reconciled with the idea of law.

That the court can detain a strike or lock-out of rights by issuing an injunction, is not enough to eliminate these disadvantages.

While amending Law no. 275, this subject has to be scrupulously covered, measures have to be looked into so that it does not take too long in the courts and effective sanctions have to be introduced for those who do not abide by the court decisions. Also, to keep strike and lock-out as sanctions for those who try to avoid the quick settlement of the dispute in the courts or those who do not abide by the decision, can be considered. But to leave strike and lock-out as are today, in disputes of rights, would not be appropriate.

2. The date to go on a strike and to order a lock-out : That the dispute can not be settled by peaceful means has to be recorded in the report of the conciliation board. Subsequent to this decision to call a strike or order a lock-out being taken and for the implemen-

tation of this decision to be considered an official strike or lock-out, this decision has to be transmitted to the other party in writing within 6 working days from the date of the report of the conciliation board. According to article 23 of Law no. 275, unless 6 working days have elapsed from the date of the intimation, the decision to call a strike can not take effect.

In spite of the fact that the law indicates that a decision to call a strike and to order a lock-out can not take effect unless 6 working days have elapsed from the date of the intimation, it has no provision that clarifies whether the strike can be called any time after this period is over or not. Therefore, different opinions have been expressed in the doctrine related to the date of commencement of a strike or lock-out and various implementations have been born through court decisions.

The Ninth Department of Law of the Court of Cassation had, in this respect, accepted the point of view that the labourer's organisation could put the decision to go on strike into effect any time, but in subsequent decisions, has come to the conclusion that, if the date for the strike to take effect has not been intimated by the written report, then, the strike has to commence on the 7th working day, at the end of the 6 working days waiting period. The Ninth Department of Law of the Court of Cassation has, in compliance with this point of view, reversed a decision of a court and upon the court's decision to insist, the General Council of Law affirmed the decision to insist with the reasoning, "the system of Law no. 275, does not accept a limitation that requires the using of the right to strike upon a certain date and by intimating the date of implementation beforehand" and has accepted that the decision to go on a strike can be put into effect anytime after the 6 working days are over.

Thus, upon the emergence of a conflict of precedents between the referred decision of the General Council of Law of the Court of Cassation and the other decisions of the Ninth Department of the Court of Cassation in this area, and upon the demand for a unification of contradictory decisions, the First Presidency of the Court of Cassation has investigated into the matter and has determined that there is a conflict of precedents, but the Head of the Ninth Department

declared that the Department approved of the precedent of the General Council of Law and therefore there was no conflict of precedents anymore and thus decided that there was no need now to refer the matter to the Council for Unification of Contradictory Decisions. And so, the precedent has settled (*stare decisis*) in the direction that, after the 6 working days waiting period is over, the strike can be implemented at any date not previously made known.

It is obvious that the same precedent will apply to lock-out too, which has been regulated by the same provisions, as strike is, in Law no. 275.

This precedent does not accord with the system of Law no. 275. The Law, by requiring that the decision to go on a strike has to be intimated to the other party and that there is a definite minimum waiting period following this notification, does not allow the calling of a strike or ordering of a lock-out at haphazard, on any date. If it were possible to intimate of a decision to go on a strike or order a lock-out today, and then implement this decision nine months later on any day, the system that the law aims to set up will have no meaning whatsoever.

In fact, Law no. 275 has not allowed complete freedom to put economic pressure on the other party by going on a strike or ordering a lock-out, this has been granted only in compliance with certain principles. A law that regulates how the transition from the collective bargaining phase to the mediation phase takes place, how long it would take after the mediation phase is over to issue a strike or a lock-out notice, and accepts that there can be no strike or lock-out if the intimation does not materialize within the required time limit and unless a certain period of time elapses after the intimation, and also thus does not allow complete freedom to put pressure on the other party, can not be expected to reduce its own system to an absurdity by allowing the decision to go on a strike or lock-out to be implemented on any odd date in future without any notification. This would not be an attitude reconcilable with the essence of the Law. It is impossible to encounter the reasons to justify such an attitude in the system or in the wording of the law or in the law makers' chain of thought.

It is obvious that the requirement to know of the date when the decision to go on a strike is to be implemented, can not agree with a social policy that defends the thesis that a strike should be free of all kinds of conditions and reservations. But, this requirement to know of the date when the decision to strike is to be implemented, is not the only point in Law no. 275 that does not agree with this approach. Other provisions in Law no. 275 regulating the implementation of the strike, do not accord with this policy either. But is an obvious fact that Law no. 275 does not lean to this point of view and accepts that a decision to go on a strike can only be implemented with certain purposes and in accordance with certain procedure.

We are glad to make note of the fact that the Constitutional Court in a case for the annulment of various articles of the Trade Union Act no. 274, reflects the point of view expressed above, connected to a problem related to calling a strike as a surprise. According to this decision of the Supreme Court of 26-27.9.1967, docket no. 1963/336, decision no. 1967/29: "Law no. 275 of Collective Bargaining agreement, Strike and Lock-out, by attaching the using of the right to go on a strike to certain preliminary procedure and by requiring the realisation of certain periods for deciding to go on a strike and to implement a decision to go on a strike and by demanding that the employer is intimated, has forbidden abstaining from work on a date unknown and unpredictable for the employer".

This situation manifests the need for an explicit enactment, in tune with the essence and the system of the law, on the issue of the date to go on a strike or a lock-out, while Law no. 275 is being amended or changed.

3. The power of the Council of Ministers to impose a compulsory period of delay on certain strikes or lock-outs : According to article 21 of Law no. 275, if an official strike or lock-out decided upon or gone on is detrimental to public health or national security, the Council of Ministers in this dispute, can delay a strike or a lock-out up to a period of 30 days by an order and can, after obtaining and upon examining the recommendation of the Supreme Arbitration Board, extend the duration of this postponement up to 60 days.

Article 21 was enacted as inspired by the power granted the President by the Taft-Hartley Act in U.S.A., to secure an issuance of an injunction from the courts to the effect of delaying such strikes for a period of 80 days. Another defective aspect of the system, besides the difficulty in determining which strikes or lock-outs are of a detrimental nature to public health or national security, is: since it becomes possible to go on a strike or lock-out which had been delayed up to 90 days with the consideration of their being detrimental to national security or public health, later what about national security and public health on the 91st day? Either national security or public health were not endangered in the first place, and thus the postponement of the strike or the lock-out was without reason, or there is in fact such a danger, in which case, to allow a strike or a lock-out at the end of the period of delay can create irreparable damages.

It is clear that the exceptional mediation procedure foreseen by article 21, in this case, is not a final measure either. That is to say, although the dispute will be referred by the Prime Ministry to the Supreme Conciliation Board, within 6 working days starting from the date the postponement order takes effect, the parties are free as to accept the decision of this Board.

All that we have explained indicates the necessity of taking this issue once more into consideration while the law is being amended or changed.

4. The problem of the labourers' quitting the establishment in case of a strike or a lock-out and the power of the pickets: According to article 24 of Law no. 275: "The employees have to evict the establishment once the decision to strike or lock-out is implemented in an establishment. Yet, the employer is free to decide whether to employ those employees who do not participate in a strike or who give up participating."

This provision, in practice, does not suffice for solving the problems that arise, like, the strikers' occupying the establishment or their obstructing the entrance and the exit by gathering in front of the establishment, their hindering the labourers who want to work during the strike, their preventing the bringing in of the raw

material to the establishment or taking out of the finished products from the establishment. This aspect of the matter has been made manifest in a report prepared by the Ministry of Internal Affairs.

According to article 31 of Law no. 275: "In order to secure adherence to an official decision to go on a strike, to make propaganda without resorting to violence and force and using threats, and to control compliance with the decision to strike, the labourer's organisation that called the strike in that establishment is authorized to place two pickets, at most from among its members, at the entrances and the exits of the establishment. The freedom to work is reserved."

The article while determining the authority (power) of the labourer's organisation that called the strike, also shows the boundaries of the nature, duties and the powers of the pickets. The competent labourer's organisation can impose duties upon the pickets only in compliance with the purpose determined by the law. This purpose is to make propaganda so as to secure adherence to the decision to strike and to control compliance with the decision to strike among the members of the labourer's organisation. The power of the pickets is also limited with this purpose. The Law has not granted the pickets the power to enter the establishment to control the behaviour of the employer, or to prevent those who enter or leave the establishment, and to control these, and to prevent the bringing in of the raw material to and the taking out of the finished products from the establishment.

Though this is the legal picture, there always arises conflicts in practice. This matter has also been expressed in the report prepared by the Ministry of Internal Affairs.

IV. DEFECTS RELATED TO ARBITRATION AND MEDIATION IN THE EXISTING SYSTEM

1. The formation of the Provincial Arbitration Board : Article 19/2 of the Law no. 275 has foreseen that the parties can resort of the Statutory Arbitrator (compulsory arbitration) in cases when to reach a decision to call a strike or order a lock-out is prohibited

by law. Articles 35 and the following of Law no. 275 elaborate on the institutions that can act as statutory arbitrators and the procedure to be adhered to.

Disputes at the level of the establishment and disputes at the level of a branch of employment that do not go beyond the boundaries of a province are to be resolved by the Provincial Arbitration Boards. This board is formed ad hoc for each dispute and two arbitrators for each party join the board together with various official persons, as members. The Law stipulates that the board can meet in full membership, but has foreseen that the board can meet if only one member is absent. A very important problem arises in practice related to this provision. That is to say; one of the parties can render the board ineffectual by not appointing the arbitrators to the board. Although there are attempts to solve this matter through interpretation, the best solution would be to enact an article in the Law related to this issue.

2. The rejection of the members of the Arbitration Boards : There is no explicit provision which regulates whether members of the Arbitration Boards can be rejected or not, in the Law. Although one may be of the opinion that this gap can be filled with the provisions of the Civil Procedure Act, an explicit provision in the Law would clarify matters definitely.

3. The ineffectiveness of the Government Mediator, in the framework of Mediation: According to article 48 of the Law no. 275, "at any phase of a dispute, the Prime Minister or any Minister empowered by him, can undertake the activities of a mediator by issuing recommendations to the parties, all present or to each party separately."

The aim of this mediation is not to offer a recommendation, but through meeting the parties all together or one by one, to lead them to negotiate and to assent. This mediation has no effect on the strike or lock-out. The strike and lock-out can continue while the mediation activities go on.

Thus, Law no. 275 aimed at establishing a system similar to the "mediation" system in France and the fact finding procedure

in England; but by accepting the appointment and empowering of a Minister who already has great responsibilities and no time, has, at the very start, decided upon a measure by which it is very difficult to reach the aim. It might be very wise to re-regulate the whole issue.

V. CONCLUSION

The implementation of Law no. 275 regulating the institution of Collective Bargaining Agreement (collective Labour agreement), strike, lock-out and arbitration, from the time the law took effect, has clearly made manifest that the system of the law has defects and gaps.

Some of these defects and gaps arise from the way the law was prepared and some are created through the interpretations of those who implement the law.

To expect these defects and gaps to be corrected and filled through the precedents would amount to waiting for a long time, and also, the solution of some of the problems can only be realized through changes in the provisions of the Law.

But, while the amendments and changes are under consideration, one has to be very careful that the rights granted the labourers by the Constitution of 1961 are not infringed upon and violated.

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