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Türk Sendikalar Hukukunda İşyeri Sendika Temsilcilerinin Güvencesi Ve Değişiklik Önerileri

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Özet:

Hukukumuza 1936 tarihli ve 3008 sayılı ilk İş Kanunu ile giren "işçi temsilciliği" için daha o dönemde özel bir güvence getirilmesi gerektiği tartışılmaya başlanmıştır. İşçi temsilcilerinin, kendilerini seçen arkadaşlarının hak ve menfaatlerini korurken işverenle sürekli temas halinde bulundukları, bu nedenle de sık sık çekişmeler, hatta uyuşmazlıklar yaşamaları ihtimali göz önünde bulundurularak, işverenin kendilerini her an işten çıkarmakla tehdit etmemesi için bir güvence getirilmesi gerektiği kanaatine varılmıştır. 1961 Anayasası sonrasında oluşturulan 274 Sayılı Sendikalar Kanunu'nda ise işçi temsilciliği yerine "işyeri sendika temsilciliği" müessesesi getirilmiştir. O dönemde de önemine binaen sürekli tartışma konusu olan "temsilcilik" kurumu ve güvencesi, 1983 Tarih ve 2821 Sayılı Sendikalar Kanunu'yla yeniden düzenlenmiştir. Daha sonra 2002 tarihli 4773 sayılı "İş Kanunu, Sendikalar Kanunu ile Basın Mesleğinde Çalışanlarla Çalıştırılanlar Arasındaki Münasebetlerin Tanzimi Hakkında Kanunda Değişiklik Yapılması Hakkındaki Kanun"la 2821 sayılı Sendikalar Kanunu'nun 'işyeri sendika temsilcilerinin teminatı'nı düzenleyen 30.maddesinde değişiklik yapılmıştır. Günümüzde, toplu iş hukukuna ilişkin mevzuatın ve bu arada sözü edilen 30.maddenin değiştirilmesi halen tartışılmaktadır. Bu amaçla önceki dönemde, "2821 Sayılı Sendikalar Kanunu'nun Bazı Maddeleri ile 625 Sayılı Özel Öğretim Kurumları Kanunu'nun Bir Maddesinin Değiştirilmesine Dair Yasa Tasarısı Taslağı"nın 12.maddesinde yeni bir düzenleme kurgulanmıştır. İşyeri sendika temsilciliğinden yeniden işçi temsilciliğine geçmek gereği ve konumuz olan 'temsilcilerin güvencesi' meselesi, günümüz tartışmaların odağını oluşturmaktadır. İşyeri sendika temsilcileri görevlerini yerine getirmeye çalışırken, iş sözleşmelerinin feshi tehlikesiyle karşı karşıya kalabilecekler ve bu durum da onların temsilcilik görevlerinin gereğini yapamamaları sonucunu beraberinde getirecektir . Böylesine hassas bir noktada görev yapan temsilcilerin korunması da bir zorunluluktur . Söz konusu koruma elbette ulusal kanunlar aracılığıyla yerine getirilecektir. Ancak, bu konu temel ifadesini "İşletmelerde İşçi Temsilcilerinin Korunması ve Onlara Sağlanacak Kolaylıklar Hakkında 135 Sayılı ILO Sözleşmesi"nde bulmaktadır. Bu nedenle çalışmamızda öncelikle kısaca söz konusu sözleşmeye değinilecek, daha sonra 4773 Sayılı Kanun'la 2821 sayılı Sendikalar Kanunu'nda yapılan değişiklikten önceki durumdan bahsedildikten sonra mevcut düzenleme incelenecek ve son olarak önerilerde bulunulacaktır.

Anahtar Kelimeler: *sendikalar kanunu, işyeri sendika temsilciliği, işçi temsilciliği*

Abstract:

The need for specific safeguards (protection) of the "workers' representative", which came to the fore with the introduction of the first Labour Code (Act) no. 3008 dated 1936, has been a matter of debate since. With the Trade Unions Act no. 274 legislated after the 1961 constitution, " A trade union representative body was established instead of the workers' representation. The matter of "stewardship" and its protection, which had been a matter of debate at that period, in regard to their importance was reformulated by the Trade Unions Act no. 2821 dated 1983. Later, by the "Act on Amendments in Labour Code, Trade Unions Act and Act on the Regulation of Relationship between Printed Media employers and employees", an amendment has been made in Article 30 of the Trade Unions Act no. 2821 which regulated the 'protection of the trade union representatives'. Today, it is still a matter of debate to amend the legislation on Collective Labour Law and in the meantime to amend the aforementioned Article 30. The need of transition to "the workers representation" from " the trade union representation" and the " protection of the steward" are at the focus of the present debates. Trade Union representative, while fulfilling their duties may be faced with the risk of termination of their employment contract and this situation will lead to the result that they cannot fullfill their duties. Protection of the stewards who function at such a critical position is a requirement. Definitely the protection has been provided by the international conventions. However, this matter finds its elemental expression by the ILO Convention concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking , C 135. In this study, the Convention 135 will be touched upon briefly; later the present legislation will be examined after mentioning the situation before the amendment made by the Act no. 4773 in the Trade Unions Act no. 2821; and finally some suggestions will be offered.

Keywords: *trade union law, trade uninon represantative, union steward*

I. In General:

The need for special protection of the "workers' representative", which came to the fore with the introduction of the first Labour Act/Code no. 3008 dated 1936, has been a matter of debate since. Once for all, the conclusion that the workers' representatives must have protection/safeguards against the threat of being fired by the employer, since they are always in contact with the employer while protecting the rights and benefits of the ones who elected them, considering that there is always a possibility that contentions and even conflicts may occur (Saymen, 1954: 216-217).

With the Trade Unions Act no. 247 legislated after the 1961 constitution the "union representative" was established instead of workers' representative. The matter of "stewardship" and its protection , which had been a matter of debate at that period in regard to their importance (Taşkent, 1993: 259) was reformulated via the Trade Unions Act no. 2821 dated 1981. Later with the "Law on Changes in Labour Act, Trade Unions Act and Act on the Regulation of Relationship between Printed Media employers and employees", an amendment was made in Article 30 of the Trade Unions Act no. 2821 which regulated the 'protection of the union representative'. Today, it is still a matter of debate to amend the legislation on collective labour law and in the meantime to amend the aforementioned Article 30.

For this purpose, a new regulation was fictionalised in Article 12 of the "Draft act about mending some Articles of the Trade Unions Act no. 2821 and an Article of the Private Education Institutions Act no. 625". The need for returning to "workers' representative" from "trade union representative "and the" protection/safeguard of the steward" are at the focus of the present debates.

The duties of the trade union representatives are explained as "The trade union representative and the chief steward listen to demands of the workers and solve their complaints, maintain the cooperation between the workers and the employer, maintain the work harmony and work peace, pursue the rights and benefits of the workers and help the implementation of the working conditions defined in the labour acts and collective agreements" in Article 34 of the Trade Unions Act no. 2821. According to the provision, the trade union representative, whose duties will continue as the union's authority remains, shall do their duties on condition that they do not hinder their work in the business and they do not go against working discipline. In this respect, the relationship between workers and employers in the working life to be moderate and reaching a solution that can satisfy both social parties depends mostly on the active and constructive efforts of the stewards (Demir, 1999: 163).

Trade Union representatives, while fulfilling their duties may be faced with the risk termination of their labour/employment contract and this situation may lead to the result that they neglect their duties' necessities[1]. Protection of the stewards who function at such a critical position is a requirement (Okur, 1985: 157). The protection in question is of course will be administered via the international conventions. However, this matter finds its elemental expression in the "ILO Convention concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking (C135)[2]. Therefore, in this study, the convention in question will

1 "...there is the risk for the active and energetic worker's representative to give himself up while helping his friends. The representative fearing this risk will not perform his duties duly and the aim the law seeks does not accrue; for the worker's representative has not been established to be the puppet of the employer.". See.Saymen, s.216

2 "The recognition of this agreement, was accepted via the "Law on the recognition of the Agreement no. 135 on the Protection of Worker's Representatives in Enterprises and Conveninces to be Provided" no. 3845 dated 25.11.1992 and its enforcement was accepted via the Decree of the Council of Ministers no. 93/3976 dated 08.01.1993 according to the Article 3 of Law no. 244 dated over the Ministry of Foreign Affairs Act no. EİUE-II/3563-7884 dated 17.12.1992". See Şen, M.: Türkiye Cumhuriyeti'nin Onayladığı İş ve Sosyal Güvenlik Hukuku Alanındaki Çok Taraflı Uluslararası Sözleşmeler, Ankara, 2003, s.307

be touched upon briefly; later the present regulation will be examined after mentioning the situation before the amendment made by the Act no. 4773 in the Trade Unions Act no. 2821; and finally some suggestions will be offered.

II. The Regulation in the ILO Convention 135

The union representatives should benefit from a special assurance compared to other workers in terms of their duties' . In the introduction chapter of the ILO C 135, it was referred to the terms of the Right to Organise and Collective Bargaining Convention, 1949, which provides for protection of workers against acts of anti-union discrimination in respect of their employment. Also it is mentioned that the C. 135 was constituted and approved considering the need for admitting extra provisions concerning the workers' representatives. Accordingly, both the representatives who are elected or assigned by the unions or by the members of these unions are included in the scope of ILO C 135; and the representatives elected freely by the workers of the enterprise in accordance with the national legislation and the provisions of the collective agreement, and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned (Art. 3). Under the circumstances, although it is not our main concern, ILO's construct of labour relations include not only the union representative but also workers' representative; and this establishment bears particular importance. Owing to this particular importance, ILO Convention no. 135 both sets forth protective provisions against termination of labour contract for employees who function as "workers' representative", and forbids discriminatory acts of the employer against these employees (Sümer, 1997:20).

According to Article 1 of the convention "the workers' representatives. in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements." Accordingly, if the protection granted to the representative for dismissal due to other union activities was found adequate, the agreement would have referred to other agreements on union activities and the expression effective protection in Convention no. 135 would not be necessar (Ekmekçi, 2001: 56). Thereby, the need for the representatives to enjoy from a different and a more effective protection, compared to other workers, was expressed.

III. The Previous Regulation in the act no. 2821:

1. In general:

Before the act no. 4773, efficient "Employment security" in Turkish law was only included in Article 30 of the Trade Unions Act no. 2821. After the amendment to Article 30 via the Act no. 4773, the possibility of workers' representatives to enjoy from the "effective" protection prerogative to their duties, expressed in ILO Convention no. 135, has abolished and the security has been equalised for all workers.

The regulation of the Unions act no. 2821 before the amendment via the act no. 4773 was as below:

Article 30 – *The employer cannot terminate the contract of employment of the union stewards unless there is justified reason and unless he expresses these reasons clearly and explicitly. The steward or his union has the right to bring a suit against the employer in labour court in one month as from the date of the notice of termination. The trial is carried through in two months applying fast-hearing procedures. The court verdict is final.*

If the court adjudicates that the steward should be reemployed, wages and all other rights of the representative during the period of stewardship as from the date of termination are paid by

the employer. This provision is effective in case that person is reassigned as steward. The worker, awarded to be reemployed has to start working in six workdays. The envisaged indemnity is not paid to the worker who does not start working in this period.

Along with the court verdict to be definite, the rights of the worker resulting from the law and the labour agreement are reserved.

2. The Reason for Termination of Contract of Employment of the Union Steward in the Previous Regulation:

As it is seen, the old Article 30 included the provision "The employer cannot terminate the contract of employment of the union stewards unless there is justified reason and unless he expresses these reasons clearly and explicitly". What was meant by the term "justified reason" had been a matter of debate at that time and a concensus had not been achieved in terms of the doctrine.

The first opinion was as "the termination of contracts of stewards by the employer can only be according as Art. 17 of the Labour Act (Art. 25 of the new Labour Act no. 4857), and in all terminations except this one, the cancellation would be declared null and void, and reemployment would be adjudicated for the steward (Şahlanan, 1995: 238-239)". Similarly, it was argued that it was not possible to terminate the contract of employment of the steward except for the reasons accounted in the laws (Demir, 2001: 1569). In this respect, it was claimed that the provisions of the Article 17 of the Labour Act (old Labour Act no. 1475) and Article 45/1 (Odaman, 2003:219) of the Collective Agreements, Stike and Lock-out Act constituted an example for the termination of the contract of employment. Thusly, the reemployment of the representative would have been possible in cases where the employer's termination did not depend on the aforementioned articles.

According to the other view, it was not correct to conclude that the employer could only terminate the steward's job contract as per Article 17, and the termination other than this condition would be invalid (Eyrenci, 1984: 161; Taşkent: 267). Both termination with notice and the termination without notice by the employer was included in this provision. Accordingly, it would also be possible to terminate the union steward's contract via notice of termination with notice that contained "justified" reasons in terms of principle of good faith in employment relation, in addition to "conditions against ethics and good faith rules" included in the Labour Law (Narmanlıoğlu, 2001: 264-265; Sümer:133). Also, it was argued that any occasion that could be counted as "justified" would give the employer the authority to dismiss the steward and in the mean time the steward would enjoy from protection in Article 30 of the Unions act in every case he himself terminate the contract in terms of the Article 344 of the Code of Obligations (Tuncay, 1999:88).

It was also claimed that it would cause problems in terms of confirming the liabilities of expressing the "justified reason" clearly and explicitly and it would complicate to audit whether the reasons alleged during the trial were the same as the reasons the termination was based on, for the contract being done in writing was not regulated in the old version of Article 30 (Uçum: 193-194).

3. Procedural Clauses of the Previous Regulation:

In the previous version of Article 30, it was expressed that "The steward or his union has the right to bring a suit against the employer in labour court in one month[3] as from the date of the notice of termination. The trial is carried through in two months according to fast-hearing procedure. The court verdict is final."Accordingly the court verdicts were not subject to Court of Cassation appealing .

3 In favour of foreclosure, Şahlanan, s.241 ; Taşkent, s.268 ; Eyrenci, s.163 ; Narmanlıoğlu, s.268

In such a trial the burden of proving that the termination was based on a "justified reason" shall rest on the employer. It was accepted that the employer is bound to the reason declared in his statement related to the termination and he would not alter this reason later on or he would not allege a new reason (Şahlanan, 241; Taşkent, 268; Eyrenci, 165). The court of cassation indicated that the court might only decide upon the return of the union steward to work, and it would be contrary to the law that the court had reached a "conditional" verdict expressing that the plaintiff would get all his wages and other rights as of the date of termination provided that he started working in six workdays[4].

In the previous period, there had not been any possibility to "bring the controvery to a private arbitrator" which is valid in the termination of steward's contracts, included in Article 20 of the Labour Law today.

4. The Result of the Case:

In case the court concludes that the reason declared was not "justified", or there had been any reason expressed, or the reason had not been expressed clearly and explicitly, the reemployment of the steward had been concluded. In such a situation paying of the wages and all other rights of the steward during the period of stewardship as from the date of termination was in question. The steward who had been conluded to be reemployed had to start working in six workdays. Here, the thing mentioned was not applying for reemployment but was starting working. Therefore, according to one view, there was a possibility for the employer not to employ the steward applying for the job in six workdays (Demir, 1999: 199; Şahlanan: 244). According to the opposite view, it was not obligatory for the provison to be understood in such a way, and also such an interpretation was not suitable for the purpose. It had been claimed that it was important for the "requirement to start working" to be envisaged in the law; otherwise, the act would have mentioned the "requirement to appeal to the employer" (Narmanlıoğlu: 277-278). The start of the six workdays, which is the foreclosure, had been set as the pronouncement or notification of the conclusive court decision (Narmanlıoğlu: 275; Şahlanan: 245).

If the steward had not fulfil his liability "to apply", the employer would not have been obliged to reemploy him, and at the same time paying of the wages and returning all the rights would not have been possible(Narmanlıoğlu: 275; Şahlanan: 245; Eyrenci: 167). According to different views, the sanction for the steward not starting to work in six days after the court decision was dismissal and the loss of the wages deserved until that day and other rights(Tuncay: 89-90). The steward applying after the six workdays passed might demand the rights from the date of application to the end of his duties, and he might not demand the rights for the time he had not worked.

It was regulated that the termination would be counted as null and void, all the wages and rights as of the date of dismissal to the end of the steward's duties would be paid by the employer and this provision would apply on the condition that the steward might reassigned provided that the six workdays period had been complied with. It was a matter of debate whether the termination , by itself, would cause the provisions of cancellation at the end of duty for the steward, or not. According to one view on this matter, the right of the employer to prevent the steward from working was reserved but, the debt of paying the wages of the steward during his tour of duty would continue. The contract of employment would end by itself when duty for the steward ended (İnce, 1983:132). According to another view, it had been claimed that the termination is completely abolished if the employer let the ste-

4 Supreme Court 9.Civil Dept., 02.04.1985, E.85/3203, K.85/3548, YKD., February-1986, S.2, s.223-224

ward to work; however it would mean that the termination provisions were postponed until the end of the tenure of duty suspended and would enure at the end of the tour of duty by itself if the employer prevented the steward from working despite the return decision (Şahlanan: 243-244). According to another different view though, the contract of employment would be considered as not terminated and the ermployment relation would be accepted as continuing between parties. Therefore, it would not be possible for the termination procedure, which had been adjudicated null and void, to enure by itself at the end of the tour of duty (Narmanlıoğlu: 274-275).

In the last clause of the first paragraph of Article 30 of Trade Unions Act no.2821 it was expressed that the compensation envisaged by the court would not be paid to the steward who had not started working in six workdays. From this clause of the old version of the Article, the meaning "a compensation would also be adjudicated provided that the steward started working in six days, and if the steward did not started working he would not demand the compensation" could be inferred (Narmanlıoğlu: 279). In the doctrine, it had been expressed that the expression "compensation" was redundancy which did not suit in law making techniques (Akyiğit, 1994:112). Because, what had been intended was the expression "wages and all other rights, mentioned in the provision would not be paid" (Eyrenci: 167; Şahlanan: 244; Tuncay: 89).

5. Protection of the Union representative in case of Changing the workplace

According to Article 34 of Unions Act, the union, with absolute right to bargain collectively, assigns a union steward among the members who work in the workplace. Accordingly, if the worker does not work at that workplace his stewardship ends too[5].

In Article 30, in its previous version, there had not been any provision that the employer could not change the workplace of the union representative or he could not do a fundamental change in the steward's work.

For this reason, the employers had been transferring the workers, whom they had not been able to dismiss due to powerful protection in Article 30, to another workplace or and thus they had been ending their stewardship; and then they had been terminating their contract. According to the view in the doctrine at that time, even though the right to transfer had been given in contract of employment or work agreements, it was not possible to change the workplace of the union steward in order to avoid the provisions of Article 30 (Demir: 1571; Şahlanan:239-240). It had been mentioned that it was not possible to say that the provision did not provide protection against this kind of dismisals (Şahlanan:240). However, when the employer was granted the right to transfer, the worker, as a rule, would be liable to obey the demands of the employer of this kind. The worker who did not comply with the requirements of an assignment that changed the workplace or would be accepted as terminating the contract himself and would bear the consequences (Taşkent, 1981: 147-148). But this situation was not suitable for the purpose of the establishment and did not yield results suitable for equity. It had been claimed that these kinds of practices would mean "fraud against law" (Eyrenci: 162). It had been argued that, there was an abuse of the administrative rights by the employer and this would not have been protected by the law; and it had been also expressed that the worker should demand for return as per Article 30 of the Labour Act by going to law instead of going to work (Taşkent:271). It had been expressed that adding a provision that the workplace of the union representative could not be changed into work or collective agreement would be beneficial. As for the Court of Cassation, it concluded in a case that "there is neither any provision in

5 For Legislative Session no. 274 see Okur, s.159 vd.

labour acts as to return of a steward whose work or workplace had been changed nor any court had been given the authority"[6]. At that time, it had been argued that the appropriate way to avoid the disadvanteges was a legal amendment (Demir: 1571; Taşkent: 1571; Tuncay: 88).

IV. Regulations in force and Some Problems:

Article 30 of the Unions no. 2821, which regulates the 'protection of the union representatives' has been changed by the Act no. 4773 while bringing ' Job Security' and the protection of the union representatives has been equalised with other workers' union assurances.

Article in question is as below:

Trade Unions Act no. 4857 Article 30- In cases of termination of the contract of employment of indefinite duration of the union representative by the employer the relevant provisions of the Labour Act shall apply.

In case of the termination of the contract of employment of the steward due to his stewardship activities, a minimum sum of annual wage shall be designated by the court as per the first paragraph of Article 21 of Labour Law.

The employer can neither change the workplace nor make a fundamental change in his employment conditions without written consent of the steward. Otherwise the change shall be deemed null and void.

Acoording to the regulation in question, in the termination of the contract of employment of the union stewards, who work on a contract of employment of indefinite duration, the relevant provisions of Labour Act regarding the "job security" shall apply. Accordingly, in enterprises with 30 or more workers, union representatives with seniority over six years of service and who work on a contract of employment of indefinite duration shall have the right toreinstate, or if the employer, despite the court decision, denies reinstate, will enjoy from the compensation and other workers' rights (Demir, 2003: 251). Union representatives, who on work a contract of employment of definite duration will not benefit from the stewardship protection (Demir: 252). According to the opposite view, stewards should be able to enjoy from the provisions concerning the Job Security even though the required conditions in the Labour Act do not accrue (Süzek, 2005: 491-492)[7]. The 'relevant provisions' expression in the Article text, should be interpreted in favour of the union representatives, who face the threat of termination, and a protective interpretation, not a restrictive one, should be made in terms of employment protection of the stewards. A legal regulation must be made in terms of preventing the ambiguities and disadvantages in the provision, on which different views have been offered; and stewards must be left out of this restriction (Çelik, 2008:418).

It is argued in the doctrine in general that while a real job security was existed in the previous version of Article 30 of Act no. 4773 before amendment, the protection has been abolished completely and the protection of the stewards has been equalised to other workers'; and the present regulation is being criticised (Soyer, 2002: 292; Şakar, 2003: 415-416; Uçum/ Okçan, 2004:93; Süzek, 492; Yürekli, 173-174). While the stewards were allowed of reinstatement in the past; with the present regulation, the employers are enabled to have the chance of choosing between reinstatement and compensation. The previous version of Article 30 of Union Law was not only a guarantee provision but an essential provision of protectione (Okur, İHU: SenK.20, No:12).

According to the present version of Article 30, in case of termination of the contract

6 Supreme Court 9.Civil Dept., 18.10.1991, E.91/13747, K.91/13241, Tekstil İşveren Dergisi, S.169, Eylül-Ekim 1992, s.42

7 Aynı yönde bkz.Yürekli, S.: İşyeri Sendika Temsilciliği ve Güvencesi, İstanbul, 2004, s.176

of employment of the union representatives due to stewardship activities, a compensation of a minimum sum of annual wage, not a minimum of four months and a maximum of eight months wage, shall be adjudicated[8]. But charging the steward with burden of proof of the termination has been done due to stewardship activities, writes off this difference in practice.[9]

There are views in the doctrine finding the protection of the stewards and other workers consistent (Çelik: 119) as well as views claiming that stewards and other union workers are not at all in the same position, thus different protection systems will not bring about problems (Ekmekçi:57).

V. Suggestions

The provisions enabling the workers to participate in the codetermination are very limited in our legislation. This participation should be advanced; and also the codetermination should be developed, in addition to the union representative system which can only find place in the collective labour agreement system. But in this period, it would be advantageous if these workers' representatives, who participate in occupational health and safety boards in the framework of the provisions that enable limited participation in administration, can be made to enjoy from an effective protection. It would be only just that the scope of protection be expanded to include the workplaces outside the scope of Labour act, employees who are in executive positions in trade unions; and to include a certain period after the duty of the steward ends.

Today, in our practice of law, "valid reason" term has been added to "justified reason" in terms of "employment protection" provisions; and the scopes of these terms have been made explicit. In this respect, there is a need to include both terms in a new regulation to be made. It will not be just to accept that the contract of the steward can be cancelled only due to "justified reasons". Because, finding the valid reasons, commensurable during the period of notification but which become unbearable for the employer by negatively affecting the operation inadequate for the termination of contracts will go beyond the 'protection of contract' apprehension of the Labour Act no.4857 developed on employment assurance.

Here, the need for an attentive application of the last resort principle for the stewards should be emphasised. It can be said that the last resort principle shall apply as it applies to other workers for valid reasons resulting from the the capacity or conduct of the worker. However, in cases where an excess of workers occurs due to enterprise concerns and economical reasons, enabling the termination of contract of the stewards latest shall be suitable to the effective protection concept that the international law envisages.

Advancing the protection for the union representative from the protection of the workers should be accepted as a natural consequence of the stewardship duty. Therefore, it is possible to depart from the general job security provisions in some areas. In this respect it will be suitable that the steward is provided the reinstatemant option independently of conditions such as the number of workers in the workplace, the working hours, type of the conract of employment, and job done.

The fact that the condition that the notice of termination should be made as expressing the reason of termination clearly and precisely, and in writing is a validity condition, not a proof condition, in termination of the contract of the steward for whatever the reason should be regulated clearly and precisely .

The liability to take statement from the worker envisaged in the employment protection provisions for the employer should be

8 In case of cancellation of the contract of employment of the union stewards due to reasons other than stewardship activities, a compensation of a minimum of four months and a maximum of eight months wage, will be adjudicated.

9 In favour of this situation enforces the views criticising the legal regulations, Çelik, s.421

enabled for every reason in the termination of contract of the steward and there should be a condition of validity. By this means, the steward will at least be given a chance to deliver opinions and to make suggestions even though it is difficult to mention a real statement in cases where administrative decisions and economical reasons that create an excess of workers occur.

Both the steward and the trade union that assigned him should bring a suit against termination. A method should be developed for the cases, brought about against the termination by the steward or the union, to be concluded primarily and in a short time both in labour courts and in the Supreme Court. Admitting of application to a private arbitrator in cases of agreement between the empoyer and the employee, provided that it is after the date of termination, would accelerate the solution of the problem.

It should be accepted as presumption that the termination is due to union activities or stewardship activities in the case, and the compensation to be paid in case of denial of reinstatement should be union compensation. In this respect, the burden of proof for the termination will be the employer's in all conditions. Effective protection, in fact, depends on separating the steward from the regulation that enables the employer 'to pay compensation instead of accepting reinstatement.' Any practice converse will not comply with the "union protection" principle that is being attempted to be guaranteed.

It should be enabled that, after the resinstatement decision finalised with the termination being null and void, in cases the worker makes application to the employer in ten workdays, the wage and other rights belonging to the period the worker has not been let work is due and payable apart from the four month restriction included in the job security. If the worker does not apply to start working it can be accepted that the contract is terminatited by the worker. By this way, the worker would be provided with the option to quit getting all the wages and other rights rights belonging to the period the worker has not been let work, if he thinks that he could not manage his job or stewardship duties aright due to the conflict since the Notice of termination

Defining the duration that the employer would enable the steward for reinstatement shorter than one month which was defined for other workers would be suitiable due to the importance of the steward's duties. In cases the employer does not let the steward to work de facto, and when the option to pay compensation clears away, the situation should be evaluated as the default of the employer and the liability to pay the wages and other rights should be enabled to continue for a certain time.

To think that the employer can not change fundamentally the place and conditions of employment of the steward in any case would not correspond to the realities of life and business. However, when one consider that the change, especially in workplace, would cause the stewardship protection to end, it is obvious that this situation should be handled carefully. The steward should be enabled to enjoy from all the provisions in Article 22 of Labour Act whether or not he is under the job security as a worker. The employer, will deliver the fundamental changes in the employment conditions to the steward in writing. Changes made with contrary to this form or not accepted by the steward in writing in six workdays do not bind the steward. If the steward does not accept the change proposal in this period, the employer may appeal to termination provided that he delivers which valid reason the change depends on clearly and explicitly and provided that he takes the statement from the steward. In this case, the steward should be able to bring a suit for reinstatement in terms of the job security entitled to him. According to the configuration of Article 22, in case the steward does not accept the change he will not terminate the contract. The termination is made by the employer. If the employer does not terminate the contract and does not give job to the steward in the workplace, it should be accepted that the contract has been terminated in defiance of the provisions of the contract of employment related to job security, and this provisions should be made apply.

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