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Impact of New Law on Trade Unions and Collective Bargaining Agreements

Although the New Trade Unions and Collective Bargaining Agreements Law No. 6356 (the "**Law**") was strictly criticized, it was recently approved by President Abdullah Gül without any change. The Law was published in the Official Gazette and entered into force on 7 November 2012.

The Law will have significant effects on more than 10 million employees in their labour related rights. The purpose of this bulletin is to provide an overview of the significant changes introduced by the Law.

Combination of Different Pieces of Legislation

The Law aims to combine two different pieces of legislation concerning trade unions and collective bargaining, namely the Law on Trade Unions No. 2821[1] and the Law on Collective Bargaining Agreements, Strikes and Lock-Outs No. 2822[2] (collectively the "**Former Laws**"). The main objective of the Law is to reduce the government's control and limitations, particularly on strike activities and collective bargaining agreements.

Reduction in the Number of Industrial Sectors

Various industrial sectors were determined under the Former Laws, in order to classify sectors in which trade unions may be formed. In principle, the Ministry of Labour and Social Security determines the industrial sector of a workplace. These industrial sectors are then published in the Official Gazette. Employees may only form or participate in trade unions that are related to their industrial sector.

In the Former Laws, there were 28 different industrial sectors. The Law reduces the number of industrial sectors to 20. As a consequence of this change, the number of members in each industrial sector will increase. Although the increasing number of participants in trade unions seems like a positive development, it is probable that this issue will cause difficulties in concluding collective bargaining agreements. Furthermore, with the merger of industrial sectors, more than 25 trade unions will lose their capacities to negotiate.

Remarkable Changes in Becoming a Trade Union Member

The Former Laws required being a Turkish citizen and speaking Turkish in order to form a trade union. The Law revokes this requirement and, as a result, foreign employees may also form trade unions. This, indeed, is a positive development for foreign individuals employed in Turkey, considering the additional rights provided in collective bargaining agreements.

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[1] Published in the Official Gazette dated 7 May 1983.
[2] Published in the Official Gazette dated 7 May 1983.

Under the Former Laws, employees were required to be 16 years of age in order to become a trade union member. The Law reduces this age threshold to 15.

As it was the case under the Former Laws, neither employees nor employers can be members of more than one trade union in the same industrial sector at the same time. However, the Law allows employees to become member in more than one trade union, if the employee works for different employers. This novelty of the Law is considered as one of the positive new developments.

Furthermore, the Law allows employees to make online applications to become trade union members. The application for membership will be deemed approved, if it is not refused by the relevant trade union within 30 days. Under the Former Laws, application documents were required to be notarized and this caused significant costs for employees. This undoubtedly had a dissuasive effect on unionisation. For this reason, it is believed that this amendment will increase membership applications.

Thresholds for Making Collective Bargaining Agreements

Trade unions in Turkey have very limited rights and are subject to several restrictions for making collective bargaining agreements. As a result, Turkey has a very low collective bargaining coverage rate, particularly compared to those of European Union member countries. Among others, one of the most significant amendments introduced in the Law is the reduction in the thresholds of trade unions for making collective bargaining agreements. Before the Law's enactment, a union must have attained a membership level of at least 10% in the industrial sector and at least 50% +1 at the workplace[3] concerned, to be able to engage in any collective bargaining process. The Law reduced this membership level threshold to 3%.[4] The 3% threshold is still not deemed sufficient for relevant authorities, since industrial sectors will include more employees, as a result of combination of industrial sectors and unions will lose competency because of consolidation of sectors.

Compensation for Termination of Employment Agreements

In principle, employers cannot terminate employment agreements based on an employee's union related activities. An employee whose contact is terminated because of his/her trade union activities may file a lawsuit and claim compensation. Employers violating this principle will be liable for compensation amounting to at least 12 months of salary of each worker, in addition to the claims arising from the Labor Law.[5]

One of the most criticized amendments introduced by the Law is concerning the employee's above mentioned compensation claims. The Law limits employees' rights to being employed in a company with 30 or more employees. Accordingly, if an employee is employed in a company in which fewer than 30 employees are employed, he/she cannot file a lawsuit for compensation. This amendment will have a negative effect on approximately 6.5 million employees who are working in companies with fewer than 30 employees and therefore criticized by various trade unions.

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[3] If there are more workplaces belonging to a legal entity, individual or a public institution, all of these workplaces are collectively called an "enterprise". A trade union can conclude a collective bargaining agreement with an enterprise, only if 40 % of the employees employed in the enterprise covered by the collective bargaining agreement, are members of the relevant trade union.

[4] Please note that trade unions, which are members of Economic and Social Committee, will apply these thresholds as 1% until 1 July 2016 and 2% from 1 July 2016 until 1 July 2018.

[5] Published in the Official Gazette dated 10 June 2003.

Strikes and Lock-Outs

Similar to the Former Laws, the Law imposes several limitations for the declaration of a strike. However, different from the Former Laws, the Law allows educational institutions and public notaries to declare a strike.

Additionally, same as the Former Laws, the Council of Ministers may suspend any lawful strike or lock-out which is likely to be prejudicial to public health or national security. As a significant change, the Law revokes the right to file a lawsuit for the cancelation of such a suspension before the Council of State. This means that the Council of Ministers will be able to suspend any strike, if it considers that such strike may jeopardize public health or national security, and the employees wishing to go on strike will not be able to take any legal action against such suspension.

On another note, the Law revokes the provisions prohibiting strikes or lock-outs having political purposes, general strikes and lock-outs, slowdown and any other action aimed to hamper production.

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