

# Violations of Trade Union Rights: Case Studies from Turkey in 2000s

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**Abstract** This study examines the violations of trade union rights that occurred in Turkey from 2000 to 2015 with respect to the principle of indivisibility of trade union rights. This principle is based on the idea that trade union rights should encompass collective action rights, i.e., the rights to collective bargaining and to strike to increase the effectiveness and functionality of unions seeking protection and also improvement in the economical and social rights of their members. Every year, trade union rights are violated in different ways. Even in the early 21th century, we witness a significant increase in violations in the form of human rights abuse. Furthermore, these violations are not only physical but also psychological and thus demonstrate the inefficiency of relevant legal regulations. Trade union rights constitute a crucial part of international labor law. Therefore, in this study, violations of trade union rights in Turkey will be examined in light of the reports of Annual Survey of Trade Union Rights published by the International Trade Union Confederation.

**Keywords** Trade Union Violations, Trade Union Rights, Annual Survey, Human Rights, Case Studies from Turkey

## 1. Introduction

The idea that the trade union rights cover collective action, i.e., the right to collective bargaining and strike, has been adopted by several international committees and organizations such as the European Court of Human Rights and the supervisory bodies of the European Convention on Human Rights, International Labor Organization (ILO), the European Committee of Social Rights and the Revised European Social Charter. Among those organizations, ILO has also recognized that the rights of collective bargaining and strike as the inseparable trade union rights. This shows that the integrity and indivisibility of the trade union rights is one of the fundamental principles of international labor legislation. Trade union rights without the rights to collective bargaining and to strike undermine the effectiveness of unions in protecting and improving the economical and the social rights of their members.

ITUC publishes reports on trade union right violations regularly every year. ITUC which an international trade union organization having 176 million members in 156 countries and geographical regions examines the union right infringements in such reports by classifying the countries into five different geographical region categories.

Trade union rights are violated every year whether by government or employers. Trade unions and trade unionists

face two related threats: one from hostile governments and the other from global corporations' anti union practises. (Ewing, 2001: 40).

## 2. Literature Review

### 2.1. The Concept of Violations of Trade Union Rights

It is possible to define trade unions traditionally as trade unions and employees to protect and improve the economic and social rights and freedoms. Trade unions rights has an important role in ensuring social rights. (Gülmez, 2005; 8). The main objective of trade unions is to protect and improve the economic and social rights and freedoms of their members. Indeed, trade union rights emerged as part of international law with the establishment of ILO, and were directly or indirectly acknowledged in the documents of several other organizations such the United Nations (UN) and the Council of Europe (Gülmez, 2008; 139). In these documents, the existence of trade unions is seen as the extension of human rights in working life. Human rights are subject to a division as in the form of the first, second and third generation rights. For example, the right to life, personal inviolability, inviolability of domicile are first generation rights. Trade union rights as part of social rights can be evaluated within the category of second generation rights. (Bülent Algan, 2007: 38–65).

As early as the 1940s, trade union rights were extensively defined in the following conventions of ILO; the Freedom of Association and Protection of the Right to Organise Convention (co87) and the Right to -Organise and Collective

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Bargaining Convention (co 98). However, today, these rights are subject to violations given that many trade unionists, activists and union members have been killed or many being taken into custody, arrested, or subject to physical stressor union members being dismissed from employment. (ICFTU, 2006).

### 2.1.1. Types of Violations of Trade Union Rights

Violations of trade unions rights occur not only in under-developed countries but also developed countries though with differences in forms (Ewing, 2001; 23). Based on their source, these violations can be discussed under three concept including those related to legislation, anti-union politics and anti-union employers. Trade union violations are divided into these categories: 1. Legislation – related violations, 2. implicit violations, 3. Physical violations.

#### 2.1.1.1. Legislation-Related Violations

These violations occur as a result of the problems in implementation of existing legislation. For example in Turkey, a prominent example is Law No: 4688, which imposes restrictions on the unionism of the public sector. Article 15 of this law stipulates that civil servants cannot be a member of a trade union. This can be considered a serious limitation not only on unionism but also on the right to strike. (Gülmez, 1996; 126). The subject of workers' right to strike (not only employees but also public servants) has over the last several years become a crucial issue in international labour law. The right to strike is basic to the distribution of power between employers and employees and is essential to individual and group autonomy and the freedom to promote one's economic interests. (Ovunda, 2009: 553). The right to strike is the most visible form of collective industrial action that workers employ to force employers to express their grievance. The right to strike is a keystone of modern industrial society. Any society which lacks that rights can not be democratic. Another important form of legislative abuse is the limitations on civil servants' right to strike. This is mostly seen in the form of postponing strikes. Violations of right to strike exist crucial part of legislation related violations in Turkey. The repeated application of postponing strike is a systematic violation of trade union right. Government intervention of strikes for reason general health or national security is one of the important examples. Committee on Freedom of Association concluded for the period 2004-05 in the tyre industry as a result of the Official Mediator's intervention, the Committee expresses the Government's systematic practice of ending collective disputes and precluding strikes on grounds of national security in sectors such as the tyre industry, which has no apparent link to national security and does not constitute an essential service in the strict sense of the term. (CFA Report, 2005: 338).

Another example of trade union rights violation which is legislation-related is that Turkish Airlines strike. This strike occurred in the late of 2010s strike. After the union's strike

decision in aviation industry airlines the Parliament amended the Act No.2822 and added the aviation industry to the sectors that have a ban on strike; in other words the aviation industry became a strike-ban sector in 2011. The contradictory part of this process is that, the government, by the Act No.6356, released the ban and set the aviation sector free of strikes in 2012. No workers in this sector could go on the strike in 2011. (Aydm, 2015: 10).

Government postponed strike in glass industry for sixty days on June 2014 on the grounds that it posed a risk to "public and national security (ITUC, 2014 Report). Postponing strike means that trade union rights are violated by government. Because it is argued that the entitlement of the Council of Ministers to suspend a strike for reasons of general health or national security is incompatible with the principle of neutrality, as the assessment of the degree to which a strike endangers general health or national security is likely to be highly subjective in many disputes. (Brend Waas, 2012: 88).

On August 2015 the Constitutional Court ruled postponing Şişecam workers' strike by Council of Minister's decision showing "national security" reason was a violation of the right.

According to Article 10/ 8 of the Act No. 6239 on public servants' unions and collective agreement, the Ministry of Labour and Social Security can request the removal of union executive bodies in case of non respect of requirements concerning meetings and decisions of general assemblies.

The new law on Trade Unions and Collective Labour Agreements no. 6356 was adopted on 18 October 2012. This new law imposes strict regulations on the composition and function of the organs of trade unions, as well as on the number of the executive board members and quorum required for adoption of decisions. The new law also provides for a strict and detailed procedure for the election of leaders of trade unions, including the supervision by judicial authorities. (ITUC, 2015)

#### 2.1.1.2. Implicit Violations of Trade Union Rights

These types of violations do not include an explicit abuse of physical power and their effects are more indirect. They are mostly based on discrimination in practice. They are more indirectly violations type. Implicit violations of trade union rights form such as anti union politics and union intimidations (Kose, IREC, 2012). For example, workers that are members of a union may be given shorter lunch breaks than other workers. These subtle violations include employees being dismissed for becoming a member of a trade union, governments preventing the activities of trade unions, or employers applying pressures on their employees to resign from their union membership. According to the report prepared by ITUC in 2009, in Turkey, employers use different methods to prevent their employees from being involved in union activities. (Bakır ve Erdoğan, 2009; 90).

There are so different type of violations related with trade union intimidation. For example changing the positions of

the workers giving more hard works, and forcing workers outside of their professional knowledge and the competence, firing because of membership of trade union, not employing workers who win remployment lawsuit work, pressure to unionized women workers to resign from the union by threatening through family, trade union intimidation made with refined way be considered in violation of trade union rights.

#### 2.1.1.3. Physical Violations of Trade Union Rights

The effects of these violations are usually more direct, such as physical violations as observed in less democratic or non-democratic regimes. Physical violence or open threat to be killed with explicit result of deprivation of the right to life due to participation in union activities are among the most widespread practices. In countries such as Colombia, Syria, Russia, China, Philippines and South Korea there are serious observed physical violations of trade union rights. 48 member of trade union was killed in 2009 in Colombia. Percent of 60 of total deaths occurred in Colombia. (ITUC, 2010).

### 2.2. Violations of Trade Union Rights in Turkey: Case Studies

In Turkey, the violation of trade union rights is observed on a large scale. The main reason for this can be considered the formation dynamics of unionization in Turkey in addition to the general tendency for such violations around the world.

Late and insufficient industrialization process as well as the inability to establish an effective democratic order has limited the progress in unionization in Turkey. Due to the social classes not being strong enough, the efforts toward modernization and becoming a society were undertaken by the state and the attempts to develop labor and trade union movements were hindered by the authorities. Based on the framework of a paternal-state understanding, the labor movement and the dynamics of this movement remained insufficient for a long time. Furthermore, in a society where there is a lack of awareness of being an organized society and class-consciousness, it is just as hard to protect union rights. Since in these societies, the owned rights are not the products of a strong fighting tradition, there are not enough efforts to adopt and protect these rights. Similarly, labor legislation and trade union rights in Turkey have been developed by the state, rather than as a product of social and denominational dynamics. (Yorgun, 2007; 152).

Trade unions in Turkey are not institutionally protected by employers' hard line policies, which have led to a decline in union influence by de-unionizing organized enterprises or by making it difficult for unions to organize workers of unorganized workplaces. (Yıldırım, Uçkan, 2010: 164).

In addition to historical factors, restrictive legal regulations also have contributed to the violations of union rights. The implementation of detailed and prohibitive regulations results in imposing significant restrictions on using these rights.

The Constitution of 1982 and the Laws of 1983 differed from the Constitution of 1961 in terms of the essential

content of union rights. While the 1961 constitution proposed a free and voluntary union structure and a collective bargaining order, the Constitution of 1982 stipulate explicit limitations on union rights. The Constitution of 1982 was based on an understanding that unions were not to be trusted prohibitive and oppressing. According to Gülmez, the Constitution of 1982 aimed to provide harmony in the workplace and increase production through restricting union rights as much as possible. This constitution also does not include any reference to ILO's core conventions related to union rights or any of the legal standards established in the UN Universal Declaration of Human Rights. Therefore, the union rights in Turkey are governed by a restrictive and prohibitive legislation composed of detailed rules. This demonstrates an approach that is against the essence of 'perception of freedom'. (Gülmez, 2005; 9). Everyone has the right to freedom of association according to the UN Universal Declaration of Human Rights as well as the UN twin covenants, namely the International Covenant on Economic, Social and Cultural Rights Agreement and the International Covenant on Civil and Political Rights. The European Convention on Human Rights and European Social Charter, which are also considered twin covenants of the European Council, discuss the union rights in a detailed and comprehensive way. (Gülmez, 2007; 31). Turkey ratified the above-mentioned documents and agreements, but with reservations concerning Articles 5 and 6 of the European Social Charter on the right to collective bargaining and strike. Turkey also sustained these reservations for the Revised European Social Charter.

The current economic situation in Turkey also poses an obstacle to the establishment of an effective union structure. Employers use the high unemployment rate as an important tool for preventing their employees from exercising their union rights. In this regard, the most important violation of union rights is dismissal due to union membership or activities. Such anti-union attitudes and approaches of employers rely on their sole power on the management of their work. Due to both legal and environmental factors like globalization, neoliberalism, there are serious limitations on using union rights in Turkey. Such limitations and violations are also supported by the traditional restrictive policies against Turkish unionism and the anti-union policies of employers.

As is seen, although the basic agreements on union rights such as ILO co 87 and co 98 have been officially acknowledged by many countries, anti-union policies of employers and government interventions in union activities are yet to be eliminated. In Turkey, where there is a strong tradition of resisting collective rights, the violation of union rights results in the already weak unions facing even more difficult situations. The violation of union rights in Turkey is generally caused by employers' negative attitude towards unions aggravated by the lack of legislative support for the protection of these rights. (Yıldırım, Uçkan, 2010; 164).

Considering the ITUC reports demonstrating the widespread violation of union rights throughout Turkey,

these rights seem to have not been fully established. The reported violations of union rights include not only those concerning laborers and civil servants, but also trade union rights subjects that are not paid for. For example, the rights to collective agreement and collective action, which are supposed to be considered as part of union rights, are not provided for civilservants. Most violations are related to employers' anti-union policies in addition to legal restrictions. Such violations are seen in the membership process and during participation in union activities. It has been reported that from the date when the Labor Law No. 4587 was first put into effect until 2005, a total of 15,531 employees were dismissed from work on the grounds for being a member of unions under the Confederation of Turkish Trade Unions (Türk-İş). Furthermore, from 2003 to 2008, approximately 30,000 employees, who were members of unions affiliated with the Confederation of Progressive Trade Unions (DİSK), were dismissed from employment. (Bakır and Akdoğan, 2009; 92). Hence, some important obstacles to the establishment of an effective union structure in Turkey can be summarized as the insufficiency of the relevant laws, the time required to establish an effective union structure, dismissals due to union membership and activities, high unemployment rate and low trust in unions. (Tes-İş, 2004; 22).

In Turkey, other common violations of union rights include; not reinstating workers dismissed for union reasons; implementing policies to force reinstated employees to resign; placing informants among the employees to obtain information and thus preventing the development of organized union activities for the welfare of the workforce; dismissing workers who are members of unions or initiate industrial action; arbitrarily reducing the wages of union members and preventing them from undertaking overtime; pushing laborers to resign from unions by bringing notary public to the workplace, or taking workers with the worker service, vehicle to the notary; reassigning union-member workers workplaces, increasing their workload and making them engage in work that is beyond their training and competency; putting pressure on the husbands and families of female union members to cancel their membership; conducting anti-union campaigns in the media especially local newspapers; exerting psychological pressure on workers using traditional relationships such as kinship and fellow citizenship, and connoting union members with betrayal. (Yıldırım, Uçkan, 2010; 173).

In addition to Labor Unions and Collective Agreements Act No. 6356 and Public Servants' Trade Union and Collective Agreement Act No. 4688 that specifically concerns the trade unions of civil servants mentions collective bargaining, and does not recognize the right to strike which is against the European Union standards and ILO covenants. This law categorizes the civil servants into two; those that can be a member of a union and those that cannot. As a result of this categorization, approximately 450,000 workers are not allowed to become a member of a union. (ITUC, 2007).

As stated, violations of trade union rights in Turkey take different forms. While they are mostly in the form of abusing physical power, implicit violations due to legislation are also commonly experienced. The reasons for the intensity and variety of such violations can be explored within the context of the dynamics of unionism in Turkey. Some striking examples further clarify the situation in Turkey. The ICFTU 2000 report commented on the significant shortcomings and restrictions of Turkey in relation to union rights. According to the report, one legislative shortcoming is the low level of compensation paid by employers for the acts of anti-union discrimination, which do not have a deterrent effect. It is also reported that union executives are not able to provide sufficient protection for their members against their work places being changed or being dismissed. Another example concerns the prohibition of a general strike and a collaboration strike. The report also refers to the death of Süleyman Yeter, an instructor in a labor union, in custody. The case of the dismissal of 41 workers, from their employment at Swiss Card and Abacı Card on the grounds of being members of the Union of Press Workers (Basın-İş) should also be noted. Workers that participated in a protest outside the factory that lasted 3 months were arrested. On April 8, Derviş Boyoğlu, the president of Basın-İş received threats to his and his family's life unless the union activities were ceased. On August 6, on the day of the Mine Workers Union (Maden-İş) congress, the general secretary of Türk-İş, Şemzi Denizler, was killed. (ICFTU, 2000; 33, 34).

According to the ICFTU 2001 report, strikes were generally postponed. Another serious violation was about the threshold regulation, which required the unions to represent a certain percentage of workers within the entire industry sector to be able to negotiate a collective bargaining agreement. In July, 10 unions lost their privileges to bargain due to not being able to meet the 10% threshold. (ICFTU, 2001; 29, 30). Furthermore, in the same report, the fact that foreign nationals can be members of unions but not executives was considered an important violation preventing the exercise of union rights. (ICFTU, 2002; 180).

In 2005, during the protests organized by the Union of Education Laborers (Eğitim Sen), 17 union members were injured and 10 were taken into custody. In January 2005, 50 members of the Petrol-İş Union, who worked in Jotun Powder Coatings factory, were dismissed from work following a strike that lasted 16 months. These workers were required by their employer to withdraw their union membership to be reinstated. (ICFTU, 2005).

In June 2004, a similar incident happened in İzmir, when 26 workers were dismissed from work due to their union related activities in the food sector (Tekgıda-İş). Other workers faced pressure and threats unless they cancel their union Membership. Another anti-union strategy used by employers was to reduce the lunch period of union members from 1 hour to 30 minutes. Finally, on November 25, the management opened the workers' lockers in the factory invading personal privacy. Similarly, in 2005, a total of 164 members of the United Metalworkers Union (Metal-İş) were

dismissed from work and 275 members were pressured to cancel their union membership. As a result, 23 workers members were resigned from their union. (ICFTU, 2005).

On August 13, 2008, 9 workers were dismissed from work due to their membership of TÜMTİS (a union in the transportation sector). Three days later, the Head of TÜMTİS İzmir Branch, Safer Kömürcü, and other union members were arrested. On August 17, the police arrested 11 more union members, two of whom were hospitalized due to excessive force by the police. The general secretary of TÜMTİS, Güral Yılmaz and Kömürcü, faced physical violence in the police station where they went to obtain information about the arrested members. (ITUC Report, 2008).

The ITUC 2008 report clearly states that union rights have not fully established in Turkey. According to this report, the leaders of KESK and the affiliated unions such as Kültür Sanat-Sen, Haber-Sen, ESM and SES were intervened by the Ministry of Labor and Social Security for the reason that the concepts such as 'collective bargaining', 'collective dispute' and 'right to strike' are against Public Servants' Trade Union and Collective Agreement Act No. 4688. The report also comments that in the private sector employers generally ignore legal regulations and dismiss their employees due to their union activities in order to weaken unions or hinder their development. (ITUC, 2008).

In Antalya, 45 members of Gıda-İş, the union affiliated with DİSK in the food sector, were pressured to rescind their existing union memberships and become members of a new union, and 15 workers were dismissed from work for not complying with this. Similarly, in the Nestle factory in Bursa, 20 members were forced to leave their union. Finally, 180 union-member workers in the ADM Oil Industry Factory in Lüleburgaz, were dismissed from work. In 25 November 2009, the police used tear gas against protestors in the demonstration of public servants demanding their right to strike. The President of the time stated that their activity was illegal. The heads of BTS and Eğitim-Sen Sivas Branch and a member of the SES union were arrested with the claim that they had assisted in the establishment of an illegal organization. In 2009, 2 union members and 13 union leaders were arrested. A total of 120 union-member workers were dismissed and although the court ordered or decided the reinstatement of the workers, the employer refused to comply with this legal decision. (ITUC Report, 2010).

Three female workers employed in Yeşil Kundura were dismissed due to being members of a union. They protested against this treatment and the employer in response called the landlord of one of these female workers and she faced eviction from her home. Thus, the employer tried to deprive the female worker of her primary right to shelter. (Nuran Gülenç, 2010).

The ITUC 2010 report stated that there was no major development directed at the protection of union rights against the violations as explained above. Despite the limited number of positive changes, there has been an increase in lawsuits initiated to slow down the activities of unions. It

was also reported that in 2010, the demonstrations of union members were mostly intervened by the police with a total of 61 unionists being arrested and tens of others being taken into custody. (ITUC 2010).

Similarly, On 28 October, the Criminal Court in İzmir sentenced 25 members of Eğitim-Sen to 5 to 6 years in prison according to the anti-terrorism legislation. (ITUC Report, 2012).

In July, the public sector workers union (Belediye-İş) reported that in several municipalities, there were attempts to suppress and intimidate workers to cancel their membership of Belediye-İş and join another organization supported by the management. In İstanbul Metropolitan Municipality, Belediye-İş members were forced to resign from their union membership as a result of the threats by the municipality officials.

In February 2013, police arrested 169 members of the KESK union. This is the third operation against KESK trade unionists in 12 months. Police arrested 73 members in two previous operations in February and June 2012. (ITUC Report, 2013).

In March 2013, the courts found that four DHL workers had been dismissed because of their trade union activities. DHL has also been accused of actively supporting unions which are more favourable to management in order to undermine existing independent unions. (ITUC Report, 2013).

In June 2014, the government issued a decree to suspend a strike in the glass industry for 60 days on the grounds that it posed a risk to "public health and national security". The union Kristal-İş launched a strike at ten factories of the Şişecam company on 20 June 2014. The decree is based on article 63 of the legislative act no. 6356, the Law on Trade Unions and Collective Agreements. The Turkish government uses the regressive law on a routine basis to suppress workers from exercising their right to strike. This was the ninth major strike stifled in this way by the government since the year 2000. The government has never declared a reason why any of the suspended glassworker strikes would be harmful to public health and national security (ITUC Report, 2015).

### 3. Conclusions

Trade union rights violations occur even in developed countries in terms of democratic and unionisation. Anti union practises towards trade unions sometimes can be caused by both government and employers. State suspicion and employer hostility towards trade union rights has been a widespread feature of industrial relations scene since in its early days. Interference by public authorities and employers makes it impossible for unions to hold activities in order to determine policies and strategies making it very difficult to defend workers' interests.

There is almost no country where trade union rights are violated. Trade union rights have so crucial importance for social rights. Unless trade union rights are adopted, development and progressive could not be waited. Trade

union rights are almost guarantee social rights.

Despite the limited progress for the protection of the rights of trade unions in Turkey, there are still restrictions, particularly for civil servants, on union membership and activities. Besides, the discrimination between civil servants and workers is still a problem. Although several countries ratified the ILO Convention No. 87 that stipulate that “Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.”, violations of trade union rights continue both in Turkey and other parts of the world.

Violations of trade union rights in Turkey occur in different types. It can be said that legal based trade union violations can be same amount implicitly and physical based violations. Trade union rights can develop countries where fundamental human rights are respected. Where trade unions cannot exercise their fundamental civil liberties, they cannot effectively represent the interests of workers by formulating policies on employment. According to ITUC reports in 14 out of 87 countries, fundamental civil rights have been restricted by the government or employers. Violations of trade union rights are crucial abuse of human rights in Turkey and other lots of countries.

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