

Right to Information and Consultation of Employees: Evaluation of EU Directives in Turkey

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Abstract: In Turkish, because of the definitive role of the state, attitude of employers and powerlessness of the working class, the employers do not effectively have a say. In the EU, the employees participate their workplaces in various methods as a part of European Social Model. However, in the reconstruction process in the EU, labour and its participation methods remained local in the European scale despite the globalisation of capital especially with the increase of activities and relationships of MNCs. At this point, to reduce the differences arising from national applications and the effects of the process of reconstruction, the Commission has created a number of directives in order to provide the right to information and consultation of employees. These directives became important also for Turkey as of membership negotiations. This article aims to examine the employee participation in Turkey and indicate the possible effects of EU information and consultation directives.

Introduction

Employees in Turkey are represented in their workplaces mostly by trade unions. Although there is no legal barrier, workplace participation methods are almost non-existing except for trade unions. Besides, unionisation density is reducing in Turkey and members of labour unions suffer several problems arising from implementation. In a general view, in Turkish Industrial Relations System, because of the definitive role of the state within the system, attitude of employers and powerlessness of the working class, the employers do not effectively have a say.

When one looks at the European Union countries, although it is being said that the European Social Model has recently transformed within the framework of competitiveness in the global market, flexibility and adaptation to innovation, employees participate to the decisions which concern them in their workplaces with various methods as a part of this model. In the reconstruction process which appeared as a result of the European Union project, especially the activities and relationships of MNCs in the European scale facilitated the globalisation off the capital. On the other hand, employees of these businesses do not have difficulties in participating the decisions which concern them in the reconstruction process. In serious conditions such as replacement, closure, purchase, merger, etc. experienced in businesses in this reconstruction process, employees of businesses are affected by the decisions of head office which may be thousands of kilometres away from them. At this point, the European Commission has introduced a number of directives in order to provide the information and consultation rights of the employees in the European scale for the purpose of minimising the differences arising from national applications and decrease the effects of the reconstruction process. Taking into consideration the EU membership process, these directives will apparently have various effects on the current participation structure of Turkish Industrial Relations System. These directives should be evaluated in Turkey by taking into consideration the current structure.

Employee Participation in General

One of the most important subjects in the field of industrial relations is participation of employees and/or their representatives to decisions and the question of its scope, while the debates on what the best method of this could be are still ongoing (Hyman and Mason, 1995: 5).

The term participation has survived throughout the years in various forms starting from the communities attempted by Owen (Owenite communities) who wanted to reorganise the society of 1800s on a

social basis until today. Most of the definitions of participation are ideological, and participation can shortly be defined as a process which allows employees to affect its working conditions and operations to some extent (Strauss, 2006: 779). Besides, below one can find the methods appearing concerning the participation of employees until today and the countries these emerged in.

Type	Defined qualities Structural Features	Countries (Key Examples)
(1) Self management of workers	Implemented in socialist economies. Employees participate in the basic decision making structures, have wide range of rights, however do not own the property of the institution. There are representative organs in the management committees which include workers' councils and workers' assemblies.	Algeria, Peru, Poland, Yugoslavia and several 3 rd world and Eastern European societies (Yugoslavia)
(2) Producer cooperatives	Based on the property ownership of workers. Most of the employees are property owners. Ownership is distributed widely. Employees participate in the business management, control and distribution of profit.	France, Italy, Spain, USA, Britain and most 3 rd world countries (Mondragon, Basque region of Spain)
(3) Co-determination	It is as common decision making in business board of directors. Employees are represented in a certain ratio in single or double level boards of directors (audit and management). They have several rights such as veto.	Western Europe (Italy, Norway, Sweden, West Germany), Africa (Egypt) and South America (Argentina) (West Germany)
(4) Work Councils and similar Institutions <i>A-Local</i>	Structures which may hold regular negotiations (meetings) with the management in matters which concern the business and represent the employees in various political economies.	Finland, Indonesia, the Netherlands, Spain Sri Lanka, West Germany, Zambia. (The Netherlands and West Germany)
<i>B-Regional</i> European Work Councils	It is defined as the social dialogue structure based on the enterprise. The employees have the right to information and consultation when decisions which concern them are being taken.	European Union, AEA Countries and other countries with a MNC active within the borders of EU.
(5) Union Actions <i>a- Separator through collective bargaining</i>	It is seen in pluralist societies which accept the current clash of interests through unions. Unions, which are the representation method of the worker side is based on laws and volunteering on a certain basis.	Australia, Canada, USA, Britain (USA, Britain)
<i>b-Complementary</i>	State socialism or corporatism. There is an environment in which state, employer and trade unions can determine several matters in cooperation.	Russia, Eastern Europe
(6) Workplace participation programs	It is as the participation of employees to the organisation of work in various political economies (autonomous work groups or work life quality programs). Effects of the workers are usually dependent on task-based programs.	Management techniques in first, second and third world countries Scandinavia, USA

Table 1. Comparison of Basic Types of Industrial Democracy

Source: edited from Poole, M. (2004): 156-157.

As it can be seen from the table, the issue of employee participation is affected by various factors. These can mostly be defined as ideologies, or the parties which start the participation methods.

Other than that, concerning participation methods, modern capitalism has created autonomous workgroups, profit sharing and co-partnership enterprises; liberal pluralist and social democrat thought has created collective bargaining, co-determination and work councils experiences; and democratic socialism has created the applications of self-management (Poole; 2004: 150). When the starting parties are taken into consideration, employee participation methods; employee attempts (for instance, employee (production unit) control on the production process), union attempts (negotiation and bargaining on employment terms and conditions), state attempts, and employer attempts arising from the workplace in order to increase the loyalty, effectiveness, productivity of employees can be mentioned (Poole et al., 2001: 492-493).

Information and Consultation Methods of Employees in Europe

Labour relations have a central role in the basis of European Social Model (ESM); because this field is a field which provides the balance of the model in general. In this area, on one hand economic growth and efficiency, on the other hand equality and security is balanced together (Koray, 2005: 129-130). Working class played an important role in the emerging of ESM and the labour relations play a central role in this social model. One of the basic pillars of ESM consists of employees and their participation in the workplace.

Although the applications in Europe have an important place as a different model in terms of employee participation, it is not really possible to mention a single method of participation in Europe. This is because various systems emerged because of differences in the national applications, traditions and legal systems of the EU countries (Gülmez, 2008: 429).

Trade unions as free and independent unions have been accepted in the EU in general. The traditional collective bargaining structure in Europe is a basic source for the employees to determine their wages policies and working conditions freely. This means that collective bargaining actors are very effective on the functioning of the labour market.

Other than these, information and consultation methods in workplaces are officially established and strengthened with a legal framework in most of the European countries. This workplace representation can be organised by work councils and/or trade union representatives. Although workplace representation has too much diversity, it is a distinctive feature of today's EU industrial relations system. These systems of workplace representation have generally been developed in Western Europe after the World War II as a way of organisational and economic democracy. When the Central and Eastern European countries transitioned to modern market economy, they obtained these methods of participation. This trend caused this area of industrial relations to be more legally active in the EU (European Commission, 2006: 57).

Recently, the issue of employee participation is perceived as an element of reconstruction of enterprises and providing required integration in this process in order to increase the competition, protect and increase the level of employment in Europe. The traditional model in Europe concerning employee participation used to be defined as employee representation in the business level (work councils or trade unions), triple structures, collective bargaining and strong trade unions. This traditional model which provided serious job security, generous welfare state conditions and relatively high wages was criticised on the grounds of causing instability, high level of unemployment and a decrease in competitiveness in the current economic and political period and caused discussions in questions such as how an increase in competitiveness, flexibility and efficiency be provided and how the current changes be adapted to. As a result of these discussions, it can be seen that a new European model which is based on increase in education, lifelong learning, job security, use of information technologies and the concept of flexibility; which is connected to worker ownership and profit sharing, indirect participation based on employer-employee confidence and partnership and empowering individual employees; and which includes direct participation (Gill and Krieger, 2000: 109-112).

For the last 10 years, the basic issue in the political agenda of the EU is related to the regulation of labour market. In the process of cooperation on labour market policies, some concrete results have been achieved in matters such as part-time employment, employment periods, EWCs, sexual equality and work life environment. Social dialogue attempts performed in European level and resulted with several agreements between ETUC, CEEP and UNICE developed certain examples of cooperation among the labour market actors of Europe (Jensen, Madsen and Due, 1999: 118-119). As a result of this cooperation, the Council of Ministers agreed on some directives related to this matter. These directives are EWC Directive (94/45/EC), Information and Consultation Directive (2002/14/EC) and Directive supplementing the Statute for a European company (2001/86/EC) (Schwimbersky, 2005: 189).

European Works Councils

EWCs are structures which allow information and consultation of employees in businesses or groups of businesses in the community level. The importance of EWCs in terms of European industrial relations has increased since their emergence, as an institution representing the interests in the business level. EWCs indicate an acceptance that the need for "Europeanization" introduced by European Single Market increased, beyond national information and consultation methods (Eurofound, 2010).

Although all EWCs are established in a structure which does not have the role of negotiation and providing rights to information and consultation, they provide an institutional framework which may potentially support international bargaining. In relation to that, they have concluded framework conventions or more moderate joint texts. However, this condition was only effective when commercial decisions need to be taken (reconstruction and rationalisation) in the European level and when trade unions or works councils in different countries could strongly organise. In conclusion, Europeanization of industrial relations is seen as a part of the

process in which collective negotiations which are more appropriate for competitiveness and adaptability objectives of employers (Arrowsmith and Marginson, 2006: 255-263).

The purpose of this Directive, as indicated in the official text, is to reinforce the rights of the employees who are employed in the undertakings active in the Community scale to information and consultation (2009/38/EC, art. 1-1). In line with this purpose, a European Works Council or another procedure which provides these rights should be implemented in undertakings or groups of undertakings active in the community level. Since it does not provide any participation other than information and consultation in terms of rights to participation, it has a limited participation structure.

According to the purposes of this Directive, "Community-scale undertaking" means any undertaking with at least 1000 employees within the Member States and at least 150 employees in each of at least two Member States. "Group of undertakings" means a controlling undertaking and its controlled undertakings. "Community-scale group of undertakings" means a group of undertakings with at least 1 000 employees within the Member States, at least two group undertakings in different Member States, and at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State (Article 2/1-a,b,c).

The European Works Council shall have the right to meet with the central management once a year, to be informed and consulted, on the basis of a report drawn up by the central management, on the progress of the business of the Community-scale undertaking or Community-scale group of undertakings and its prospects. (Subsidiary requirements art. 2).

Other than these, the content of these meetings and information and consultation subjects will be related to the structures of community-scale undertakings and groups of undertakings, their economic and financial conditions, possible development and production conditions and wages. Information and consultation of EWC will especially be related to employment conditions and possible trends, investments and important changes concerning the undertaking, new work techniques or formation of production process, production transfer, closure of undertaking, institution or important parts thereof, mergers or downsizing conditions and collective redundancies. In this process, consultation will be conducted with a method in which personnel representatives can negotiate with the central management, have a right to answer and a negotiation environment in which they express their views is provided (Subsidiary requirements art. 1 (a)). Here, the basic principle is based on EWC informing the employees about developments on time and improve the dialogue and cooperation environment by introducing an alternative proposal by personnel representatives to the solution proposals recommended by the management (Hekimler, 2004: 324).

Besides, other than the ordinary meetings in the subsidiary article 3, it is required in extraordinary conditions which affect the interests of the employees greatly such as collective redundancies and closure of undertakings or companies, change of location, etc. that the elected committee, or in the absence of such committee, EWC should be informed.

Directive numbered 2009/38/EC which came into force with its publication on the Official Gazette in May 2009 combined the preceding directives and included EU-27 countries and countries within AEA. Member states are obliged to implement the required regulations in order to adapt to the provisions of this directive not later than June 5, 2011 (Article 16).

Participation of Employees Employed in European Companies

European Company, or with its Latin term, *Societas Europaea*, basically has the purpose that a company to be able to act in the union scale and to participate in the European industrial relations system with regard to the participation rights of the employees (Hekimler, 2006: 76). European legislator issued the regulation numbered 2157/2001 (O J, 2001a) and the directive numbered 2001/86/EC (O J, 2001b) in order to regulate this type of company. Here, while the regulation includes provisions required by the company law, Directive regulates the areas concerning the labour law.

SE allows the companies active in more than one member states to be regarded as a single company under the union law and thus makes it possible for them to be subject to a single law within the EU and to be managed jointly. For the companies active in European Common Market, SE decreases administrative costs and a single legal framework adapted to the Common Market as a whole. This legislation gives the businesses the possibility to enlarge and reconstruct their international activities without costly and time consuming bureaucratic transactions in order to establish an inter-corporation network. This is a convenient step taken in order to encourage international activities of more companies and thus increase the competitiveness of Europe in accordance with the targets determined in Lisbon Conference (OUT-LAW, 2001).

A European Company can be established in 4 ways (Europa, 2007);

- Merger of two or more public companies which are active in at least two member states (two or more companies established and active subject to the legislation of more than two member states).
- By establishing a holding by a public or private company active in at least two member states

- By establishing subsidiaries of companies active in at least two member states
 - By transformation of a public company with a subsidiary for at least two years in another member state.
- Participation rights of employees in SE are secured and regulated with the Directive numbered 2001/86/EC. The existing participation rights of employees were protected in the Directive and it was attempted to prevent the limitation of these rights. The principle of regulating the participation rights of employees here was attempted to be secured regardless of the size of the SE or the number of employees (Hekimler, 2006: 87).

According to the paragraph h of article 2, “involvement of employees” means any mechanism, including information, consultation and participation, through which employees' representatives may exercise an influence on decisions to be taken within the company. This article also defined the meaning of the rights of “information and consultation”, as well as “participation”. It was expressed that participation to a decision occurs in two ways. First, by directly electing or appointing some members of supervisory or advisory organs of the company; second, by recommending or opposing the appointment of some or all of the members of the company's supervisory or administrative organ (Article 2, paragraph k).

Framework Directive 2002/14/EC on Informing and Consulting Employees

The incident that Renault company applied redundancies without informing the employee representatives in Vilvoorde near Brussels on the second half of 1990s had an important role in accepting this Directive. Here the directive 2002/14/EC was introduced by the commission since 98/59/EC (O J, 1998) collective redundancies, 2001/23/EC (O J, 2001c) workplace transfer and previous 94/45/EC (O J, 1994) ve yeni 2009/38/EC (O J, 2009) European Works Councils Directives could not provide the adequate security concerning information and consultation of employees (Hekimler, 2006: 103-104; Gülmez, 2008: 460-461).

This Directive establishes a general framework in order to reduce the deficiencies within the provisions in force in national or community levels and fill in the gaps for rights to information and consultation of employees in the European Community (Europa, 2008). The purpose of the directive is to establish a general framework determining the minimum requirements in order to contribute to the information and consultation rights of employees (art. 1/1). Two important principles are emphasised here. Firstly, practical regulations concerning information and consultation should be determined and implemented in order to provide their effectiveness in accordance with the industrial relations applications in member states and national legislation (art. 1/2). Secondly; worker and employer representatives should work in line with mutual rights and obligations and within the cooperation spirit, taking into consideration the interests of each undertaking or institution and employee in defining and implementing practical legislations concerning information and consultation (art. 1/2).

In line with the preferences of member states, undertakings with at least 50 employees or establishments which employ at least 20 employees can be selected to implement the Directive (art. 3/1). Here, undertaking is used in order to define the workplaces with a separate legal personality which have an economic activity regardless of whether profit-seeking or not, public or private, and establishment is used to define workplaces which have a constant economic activity, defined as workplace nationally, do not have a legal personality and registered to only one employer (TISK, 2006; art. 2/a-b).

Information should be provided to employee representatives with an appropriate time, content and method which makes it possible for them to make required preparations and adequate studies for consultation. Consultation is defined as the dialogue and exchange of ideas between employer and employee representatives (art. 2/f-g).

Information and consultation consists of three areas concerning undertakings. These are (art. 4/2, a-b-c); information concerning the activities or economic conditions of the establishment or information concerning the current status and possible development of undertaking; information and consultation related to any measures to be taken in advance concerning the conditions, structure and possible development of employment in undertakings or establishments; information and consultation on possible decisions which may cause important changes in contractual relations and labour organisation within the scope of the Community provisions expressed in article 9(1).

The Commission accepted the Directive on March 11, 2002 and required the member states to adapt it to their national legislations at the latest on March 23, 2005. Other than this, according to article 10, in case that there are not any legal, general and continuous information and consultation methods which regulate the representation of employees on the date that the Directive comes into force, the member states may limit the application area of the Directive as undertaking with 150 employees and establishment with 100 employees until March 23, 2007. In the continuance of this article, it was indicated that these undertakings can be limited within one year as undertakings with 100 employees and establishments with 50 employees (Art. 10).

Although it was said that almost half of all undertakings and establishments in the European Union would provide right to information and consultation to their employees and thus ensure the development of employee participation and social dialogue within “European industrial relations system” with complete implementation of the Directive (Hekimler, 2006: 113), European Trade Union Confederation has some criticism

arguing that quantitative thresholds are too high. Accordingly, the threshold of undertaking employing 50 employees correspond to only 3% of all undertakings in Europe (Gülmez, 2008: 475). This fact seriously narrows down the area of application.

Employee Participation in Turkey and Evaluation of EU Directives in Turkey

When one looks at Turkish Industrial Relations System, it can be seen that detailed and restrictive legal arrangements, attitude of employers towards employees and unionisation, scale of the illegal economy and big role of the state within the system (Yildirim and Calis, 2008) have a restrictive effect concerning the participation of employees. These conditions affected negatively on the creation of methods which allow the employees to participate in the work life.

Labour Laws in Turkey clearly include only those who are employed in large scale undertakings. In the Labour Law numbered 4857, it is indicated that Labour Law provisions will not be valid in workplaces and undertakings which employ less than 50 workers and agriculture and forest works are performed (art. 4) and the condition that more than 30 workers should be employed for the job security to be implemented (art. 18) (Resmi Gazete, 2003). Taking into consideration that according to SSK statistics, 2.300.000 of 5 million insured employees are employed in work places which employ less than 30 employees (Simonetti et al., 2008:4), it can be found that almost half of even the legally employed insured workers are not covered by the Labour Law.

Also, the subject of unionisation of employees in our country appears quite problematical. Taking into consideration that the problems continue using the union rights and calculating the unionisation ratios, it is claimed that the ratio of unionisation is between 10 and 15% (Çelik ve Lordoğlu, 2006: 28). Besides, it should be mentioned that number of workers according to the scale of work place within the scope of collective labour agreements is very little compared to the collective labour agreements agreed in the large scale enterprises (ÇSGB, 2008:32).

Although freedom of trade union is secured by the constitution and related laws in Turkey, there are several limitations in implementation. One encounters legal article breaches in actual use of this right and trade unions have difficulties in registering new members (Simonetti et al., 2008:3).

Social policy in Turkey was created under the control of the state and independent from social and class dynamics because of reasons such as late capitalism, late working class and late democratisation. Delay in industrialisation in our country also delayed the emergence of working class and prevented the formation of social policy with pressure coming from below (Çelik, 2008: 185-186).

In addition to the constitution (1982 Constitution) which introduced restrictive regulations to trade unions and union activities, Law of Trade Unions and Laws of Collective Bargaining, Strike and Lockout which came into force in 1983 introduced administrative control and extreme limitations on trade unions and imposed judicial and bureaucratic limitations on collective bargaining and strike activities. These laws are still in force without substantial amendments and constitute the main legal framework of industrial relations system. Although officially freedom of organisation and the right to collective bargaining and strike was recognised in these laws, they impose many anti-unionist applications as proved by ILO investigations and later ICFTU reports. Because of structural reforms imposed by the World Bank and the IMF since 1980 and acceleration of privatisation caused illegal economy and subcontracting to develop. Today, approximately 50% of those who work in unqualified and low-wage positions constitute the insecure and informal labour market. All those developments limited the realm of industrial relations and affected negatively on the employees, their organised power and the actual wage levels. Also, today the state continues to play the dominant role in determining the basic characteristics of industrial relations in Turkey; because despite the recent attempts and privatisation, the public sector employs nearly 40% of all wage earners. On the other hand, the role played by the state as a large employer places it in the centre of industrial relations in Turkey. Legal framework created in detail allows the state to be effective on the structure of industrial relations. Starting from the first years of the Republic of Turkey until 1940s, it has been expressed that the state was dominant in the economic and political agenda with a single party ideology, a kind of corporatist ideology, almost all industrial institutions were established and managed by the state while worker organisations were not allowed (Yildirim and Calis, 2008: 214-216).

Concerning the representation and participation of employees in Turkey, although various methods which provide participation in work place and undertaking level with trade unions, institution of collective bargaining, new management techniques, various industrial democracy methods, this structure is heavily provided by the union representation method. Turkish trade unionism has the structure which obtains its power from legal supports and limits itself with collective bargaining activities. Unionisation of public employees also faces several problems and limitations. Moreover, there is an employer unionism with a weak representative power (Kutal, 2005: 17).

The application of participation to management through collective agreements mostly occurs as participation of labour or union representatives through commissions or committees. Common worker councils which regulate the participation of workers to management in collective labour agreements are established in

very different subjects and names. These are respectively, discipline councils, councils for settlement of disputes, occupational health and security councils, examination commissions, special arbiter councils, damage assessment councils, leave committees, central councils, worker-management cooperation committees, application and supervision councils, employee-employer cooperation committee and workplace councils or committees (Dicle, 1980: 265- 269; Erdoğan, 2009: 143).

Management participation applications through collective bargaining method aims to provide common solutions in matters such as production, working conditions, wage, redundancies and discipline in the workplace (Görmüş; 2003). Also, the basic purpose is to check whether the collective labour agreement agreed in the workplace is appropriately working, and if not, to provide solutions for these problems.

The reason for the emergence of these councils which have tasks in various areas is the desire of trade unions to increase their effects on workplace management. Taking into consideration the activities they perform, these councils supervise the unilateral applications of the employer and increase democracy. If the employees are not represented adequately in these councils whose proper functioning is dependent on the power of the employee party and the trade union, the councils may transform into a formal tool (Aslan, 1998a: 161).

Although in principle the institution “worker’s representation” does not exist in the labour law, “union representation” institution exists according to the Law of Trade Unions numbered 2821. However, since in our country the scope of collective labour agreement is quite narrow and it is not possible to conclude collective labour agreements in the wider sense, the “worker’s representative” councils are applied in a very limited area [Law of Trade Unions Art. 35] (Kayhan, 2007: 68).

Workers have been represented in the minimum wage commissions in the rate of 1/3 since the year 1921. In the Labour Law numbered 3008, “arbitration” discipline councils and worker’s representation are important for our topic (Dicle, 1980: 239-240). In the Labour Law dated 1936, a council of “worker’s representatives” was established. However, since the law was regulated narrowly in terms of scope, only certain workers were granted this right. The law of trade unions numbered 274 and law of collective agreement, strike and lockout numbered 275 accepted after the constitution of 1961 on 1963 ended this worker’s representation application and introduced union representation application instead. Workplace trade union representation institution is still in force with the law numbered 2821 (Hekimler, 2006: 195). Other than these, in 1934, in a state enterprise, Türkiye Şeker Fabrikaları A.Ş., the participation of employees in Turkey to the management with the demand of the employer occurred through “management committees” established in the undertaking level (Dicle, 1980: 239–240).

The law numbered 23 dated 1960 allowed the participation of employees to the management through election of a worker’s representative to the Board of Directors in government business enterprises. Later, instead of this law, the law numbered 440 which allowed the membership of a worker in the board of directors of “those who employ widely in industrial, agricultural and transportation sectors” and the management committees of similar establishments came into force in 1964. In this law, it was stipulated that 1 worker’s representative should be elected to the Board of Directors in government business enterprises in which more than 10.000 workers are employed (Çelikkol, 1974: 248-249). The law numbered 440 and the regulations issued for its application was applied in a very limited sense since the establishment size was defined very high and therefore the number of representatives was inadequate (Tokol, 2005: 92). The law numbered 440 was abolished with the laws numbered 2929 on 1983 and the introduced law did not include any provisions concerning the representation of workers in the board of directors; and also the bylaw dated 1984 and numbered 23 did not introduce any provisions when it abolished the law numbered 2929 (Ünsal, 2006: 95).

Either in the workplace level or enterprise level, a participation right has never existed in our country except for some exceptional cases (Hekimler, 2006: 196).

Between 1960 and 1980, trade unions such as Asis, Dev Sağlık-İş, Sosyal-İş, Yer altı Maden-İş, Türkiye Gıda-İş, Devrimci Metal –İş, Dev Maden-Sen, Tekges-İş, TİS, Devrimci Toprak-İş, Maden-İş, Tek Eğitim Büro-İş had an experience with their regulations and activities which included workplace council, committee or assemblies were established. These structures were regarded as improving the intra-union democracy, rather than being an alternative to trade unions. Also, the workplace committees which remained silent after September 12 came into the agenda once again after the end of 1980s. Harb-İş Union which is a part of Türk-İş had the workplace committees application which consisted of 2 representatives in larger undertakings and 1 in smaller undertakings and gathering every month around 1986 (Aslan, 1998b: 158-159). Recently, at least partially, some worker’s council applications can be encountered. Some trade unions began to establish relations with the EWCs of the workplaces they are organised in. Also, there are EWCs in some of the workplaces in which the larger unions are organised. However, in very few of these workplaces a representative, in the observer status from Turkey is sent to the EWC.

In this matter, Hak-İş Confederation and Konya Metropolitan Municipality have taken an important step with the “Konya Workplace Information and Consultation Councils Project”. With the project, an original model was attempted to be established which will constitute the basis for the legal regulations that our country

will perform in the future concerning “Workplace Information and Consultation Councils” and it has been put into practice in Konya Metropolitan Municipality as of September 20, 2007 (Hak-ı̇ş and KBB, 2007: 51-52).

As it can be seen in the development plans, as the EU membership efforts gained speed since 1990s, regulations concerning the participation of employees began to exist within the matters of adaptation to EU directives and ILO norms. Especially the plans numbered 6, 7, 8 and 9 include commitments for these purpose (DPT, 1990, 1996, 2000, 2006). When the commission report concerning the worker participation in Turkish National Program was examined (DPT, 2007: 89-90); while partial conformity to the directives concerning the cooperation between the parties of work life and information and consultation methods in EU acquis was established (for instance, establishment of triple consultation council, abolition of some limitations before unionist organisation with the amendment on the Law of Public Employees’ Unions numbered 4688), it is required that current information and consultation mechanisms should be strengthened, triple social dialogue in the national level as well as bilateral dialogue in the sectoral and business level should be developed, and EU directives such as “EWCs”, “participation of employees of European companies”, and “information of employees of undertakings” should be conformed to.

When the Labour Law numbered 4857 concerning the participation rights of the employees related to information and consultation is examined, articles which formally or indirectly regulate this structure can be observed. Along with some articles concerning information and consultation in the Labour Law, there are also council structure which provide worker participation. Articles 8, 13, 17, 22, 29, 38, 39, 52 and 77 of the Labour Law numbered 4857 are related to the information and representation of the employees (Resmi Gazete, 2003).

In the Labour Law numbered 4857, although there are some articles concerning information and consultation, it is somewhat difficult to say that they conform with the content of information and consultation as provided in EWCs. Although there is a regulation concerning giving information to employers and providing participation of employees in matters such as collective redundancies, wage cut penalties, minimum wage, percentage method, occupational health and security and formation tripartite consultation council, what attracts attention is that this obligation is given for workplace union representative and related trade union while non-union employees cannot benefit from these rights.

Moreover, employees in Turkey are also represented in various social dialogue structures. Among these, Tripartite Consultation Council, Work Assembly, Economic and Social Council; Minimum Wage Determination Commission and YHK focusing on a certain part of work life can be mentioned. Besides, Social Security Institution and Labour Institution of Turkey which work on the general assembly and the management councils of the institutions concerning the work life and Occupational Training Council, Council for the Disabled, Consumers’ Council and Tax Council which concern the work life indirectly can be mentioned (Koray and Çelik, 2007: 395-396). The most important thing to be said about these institutions are that the employees are represented through the representatives determined by the trade unions only organised in their workplaces and having the most members.

Besides, all these councils cannot reflect the social dialogue completely. In the Minimum Wage Determination Commission which has an important place among the councils of tripartite structure, decisions are not taken unanimously, and the minimum wage is usually determined despite the dissenting opinion of the workers’ confederation. A similar condition is also valid for the ESC which became legal in 2001. The dominant role of the government within the structure of the council whose purposes are to provide social consensus and cooperation in establishing economic and social policies, to create a continuous and permanent environment, to transfer the opinions to decision making organs creates problems. In member states of the European Union, it can be observed that such committees are formed with an understanding in which social groups are widely represented distant from government domination (Şahin, 2003: 68-69).

Social parties find the role of the government in the social dialogue inadequate and inefficient, and demand from it to change its oppressive role to a more listening stance which does not act on its own. In the matter of developing a behaviour code to which all parties would agree by the government, it has been expressed that DİSK and Türk-İş has demands as well as TİSK (Valk and Sural, 2005: 50-51). However, lack of cooperation culture between the government and social parties prevents agreement and weakness of social parties also weakens their negotiation skills (Kayhan, 2007: 72).

Since ESC is unsuccessful in providing an effective consultation between social partners in the national level, it has been criticised by the EU and it is argued that the government should decrease its number of representation. For these reasons, the government expressed that it intends to review the composition of ESC and especially its own dominant position in 2005. Although all social parties have responsibility in the success of social dialogue, the actual responsibility belongs to the government in this matter. If the government contributes in the serious functioning of ESC, it would have taken a big step towards the development of social dialogue (Yildirim and Calis, 2008: 225).

The decision to start the negotiations with Turkey in the Brussels summit in December 17, 2004 is a new phase in the EU process and it will probably be shaped within this framework in the following 10 to 20 years. Also, the least interested among two constitutional amendments and seven harmonization packages within

the EU harmonization procedure of Turkey were social law and policies (Çelik, 2005: 23-25). Lack of interest on this field in which the most enthusiastic debates should have occurred show that the problems still wait for solutions.

EU candidacy procedure of Turkey develops on one hand with developments required for integration and on the other hand the conflict of interest among the parties which want to be effective within this development. In this phase of development and progress, the conditions which the preservation of status quo prevents protection of rights cause pauses and deviations. In countries where bilateral and tripartite agreements are used as effective social dialogue tools in the national level, matters such as protection and development of competitive power of agreements, balanced economic growth, establishment of economic stability, development of employment and decrease of unemployment, active employment policies, tax and income policies, social security, training and occupational training, labour laws, discrimination, etc. are involved. From this point, the developments in Turkey are not institutionalised, therefore deficient and lacks actual results. Procedures such as ESC efforts, labour law and social security laws could only be formally existent and virtually ineffective under the domination of government policies or the stronger party (Çelebi, 2007).

According to Dereli (2007), it is required that conformity to EU Directives which regulate the participation of employees in workplaces should be provided in the process of conformity with EU *acquis*. Removal of the provision which allowed election of workers' representatives in workplaces which did not have union representatives from the draft law 4857 created a gap in the legislation especially in terms of information and consultation related to collective redundancies, transfer of workplace, etc. In this matter, Turkey is required to make legislations in line with the directives which include information and consultation of at least the employees employed in the undertakings of national level or establishing workplace councils.

Also, an intensive process is expected in the future period. In our country, the legislations to which could not be harmonized with the EU *acquis* and will be introduced with the following directives would introduce new and important concepts and institutions in the Turkish work life;

— Directive 2009/38/EC on the establishment of a European Works Council for the purposes of informing and consulting employees,

— Directive 2002/14 establishing a general framework for informing and consulting employees,

— Directive 2001/86/EC for a European company with regard to the involvement of employees.

Political conditions peculiar to Turkey and competitive power discourses of Turkey are two important obstacles before the EU harmonization process. Although first one is partially overcome, the other discourse is difficult to overcome and it is only possible by distancing from the paternalist and neo-liberal line (Çelik, 2005: 43-45).

However, Turkey generally accepts the EU directives with tactics such as nonconformity, extending over a period of time or delaying – as in ILO norms. It also accepts the current applications either late, or with reservations or not implementing them in the national law; thus is criticised in international supervision. Also, required steps concerning political rights and freedoms in the EU process are not conformed to because of excuses such as they do not conform with the dynamics of Turkey and would weaken the structure of the country. It is observed that wider social groups in Turkey (employer-employee unions, academics, government and EU organs) have varying opinions in this matter (Çelik, 2005: 26-27).

Conclusion

The fact that the scope of Turkish Industrial Relations system is narrow, that it includes detailed legal provisions and dominant role of the state within the system caused negative consequences in terms of participation of employees. It was quite difficult for the employees in Turkey to have power or legislation to have a say in determining the economic and social policies because of reasons such as late capitalism, late working class and late democratisation. As a matter of fact, even today, employees have difficulties in using their universal rights. When one looks at the rights to participation in Turkey, the basic method of representation is trade union and collective bargaining structure either in the micro (undertaking) or macro (national) level. Those who are represented within this structure constitute only 10-15% of the wage earners. Workplace participation methods other than this are almost nonexistent. Taking into consideration the non-unions, those who are not included within the Labour Law and those who are not legally employed, a great majority of the employees in Turkey lack the right to representation and say. From this point of view, the EU Directives which provide the rights to information, consultation and participation to management in workplaces would theoretically contribute a lot to Turkish Industrial Relations System. However, the attitude of employers towards these Directives, legislations of the government concerning social policy and employment, delaying or reservations concerning some articles, ineffectiveness of workers' representatives either in general or in social dialogue structures and lack of a common strategy among the confederations in this matter may cause the integration of these directives to be problematical.

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