When workers come together

Noyan Turunç of TURUNÇ discusses collective labour relations under Turkish law

With foreign investments in Turkey increasing steadily over the last several years, one of the most significant issues for investors is the legal status of labour unions and, more generally, collective labour relations in Turkey. This is a looming question in M&A transactions and greenfield projects alike, and must be analysed carefully by all potential investors in structuring their transactions and investments.

Freedom to organise and join unions

The freedom of workers to organise and join unions, negotiate collective labour agreements, and strike is recognised by the Turkish Constitution. Furthermore, the Law on Unions, Law No 2821 (*Sendikalar Kanunu*), and the Law on Collective Labour Agreements, Strikes and Lockouts, Law No 2822 (*Toplu Is Sözlesmesi, Grev ve Lokavt Kanunu*) (Collective Labour Law) set the parameters of these rights.

By law, employment may not be conditioned on membership or non-membership in a labour union. Both the Constitution and the Law on Unions prohibit union security practices such as the closed shop and union shop, and safeguard both the freedom to join a union and the freedom not to be a member of a union. Any kind of discrimination based on union membership or activity is illegal, and any such clause is considered null and void. In practice, union security clauses and practices are unknown in Turkey.

The law also forbids discriminatory and retaliatory actions by the employer, including dismissal based on union membership or participation in union activities. The only exception to this prohibition is the inclusion in collective labour agreement clauses on wages and pecuniary matters, the benefits of which are reserved for workers who are members of the relevant union.

In case of discriminatory treatment or termination in violation of these prohibitions, workers are entitled to specific compensation called 'unionism compensation', amounting to no less than the worker's total annual wage. Furthermore, with regard to terminations, the employer has the burden of proof as to just cause, and Turkish courts take into consideration the circumstances and the stream of events in deciding on the validity of a termination.

Organisation of unions in Turkey

Unions can be formed in each industry sector, and they negotiate and conclude collective labour agreements on behalf of unionised workers. Workers join unions on the basis of the primary activity of a workplace.

On a national level, a 'confederation' (ie, upper-level union organisations) can be formed by at least five unions from different sectors of industry.

A union's main activity is the conclusion of collective labour agreements. A union may also act as a party in lawsuits for the protection of the collective rights of its members.

> "Any kind of discrimination based on union membership or activity is illegal"

Union membership

Turkish unions are formed as associations. Membership in a union is fully voluntary, and the financial terms of a collective labour agreement apply only to those who are members of the union as of the date of the conclusion of the collective labour agreement.

A worker and an employer may join only one union in a given sector, and can withdraw freely from the union. A union member can also normally be expelled by the general assembly of the union.

The union informs the employer about the union memberships: (i) when the union is seeking

authorisation at which time the union sends member registration forms to the Ministry of Labour and Social Security and the employer; and (ii) when the union gives a list of members to the employer for the purpose of deducting membership and solidarity dues from wages — union members have to pay membership dues that may not exceed the daily basic wage of the worker. No other dues or additional fees are required.

Union representatives

The role of union representatives is to promote and monitor the rights and interests of the workers, safeguard peace and harmony within the workplace, and help implement working conditions as provided by the pertinent legislation. A maximum eight union representatives can be appointed by the authorised union.

In cases of discrimination against union members and representatives, compensation amounting to no less than a year's wage can be claimed. Being a union representative cannot constitute a valid cause of dismissal. The representative's written consent is required before a material modification of the conditions of work or a transfer to another workplace.

Termination of unions

Through a general meeting resolution, the corporate entity of a union may be terminated. Furthermore: (i) in case of a failure to remedy irregularities on the documentation relating to the foundation of the union within a 60-day period; or (ii) if the purposes and activities of a union violate the fundamental principles of the Turkish Republic, a union may be dissolved by a labour court.

Collective labour agreements

A collective labour agreement is a convention concluded between a workers' union and an employer or an employers' association, as the case may be. Collective labour agreements normally include provisions concerning the conclusion, content and termination of employment contracts, and provisions relating to working conditions. In addition to these normative provisions, they may govern other matters between parties as negotiated.

Although the Collective Labour Law permits a collective labour agreement to encompass more than one workplace through a 'group collective agreement', the basic level of bargaining is the workplace or the undertaking level. Group collective agreements cover several workplaces within the same industry sector and belonging to different employers. If separate workplaces within the same industry sector belong to the same person, the bargaining has to be conducted at the undertaking level through what is known as an 'undertaking collective agreement'. In the private sector, an undertaking collective agreement may not encompass more than a single legal entity.

Collective labour agreements are concluded to govern labour relations that are normally set at the individual level by the parties. Accordingly, provisions of a collective labour agreement replace individual labour contract provisions, except where individual contracts' provisions are more favourable to the worker.

In order to conclude a collective agreement: (i) the major activity of an undertaking or workplace must be within the same sector as the union; (ii) with certain exceptions, the union must represent at least 10% of the workers in the industry sector at the national level; and (iii) more than half of the total number of the workers employed in the undertaking or workplace must be members of the union.

Furthermore, unions seeking to represent workers must apply to the Ministry of Labour and Social Security, which will examine the capacity of the applicant unions regarding the sector of industry and the percentage of members within the industry on a national level. If the Ministry establishes that a union represents (i) at least 10% of the total number of workers in the industry and (ii) the majority of the workers in the undertaking or workplace, it will notify the applicant union, other unions in the same sector, and the employer's union of its authorisation decision. Within six business days of receipt of the notification, the decision of the Ministry on the most representative union may be contested at the local labour court. The contesting party must register it at the Ministry or with the Regional Directorate of Labour, before lodging a complaint. If the collective agreement covers workplaces in different areas, the complaint must be filed with a labour court in Ankara.

The authorisation given by the Ministry grants the union with the following rights: (i) the exclusive right to negotiate the collective labour agreement; (ii) to collect two-thirds of the regular membership dues as so-called solidarity dues from non-member workers who wish to benefit from the collective agreement; (iii) to collect membership fees and solidarity dues from the employer; and (iv) to designate union representatives in the workplace.

Employers that operate in the same industry sector, but not parties to a collective labour agreement, may come within the scope of the agreement through a decree of extension issued by the Council of Ministers. In this event, all employers within the sector will be under the umbrella of the collective labour agreement.

To issue a decree of extension, the union that is party to the collective agreement must be the largest union within the industry and represent at least 10% of the workers within this sector when the decree is issued.

Collective labour agreements are concluded for a definite term that may not be less than one year or more than three years. When the term has expired, the provisions of the agreement will continue to apply as 'labour contract terms'. No more than one collective agreement may be concluded or put into effect at the same workplace for the same period.

Effects of collective labour agreements

Collective agreements are legally binding on the trade union representing the workers and on the employer, and replace less favourable terms in individual contracts. On the other hand, the principle of 'obligation of peace' imposes an obligation for all workers and unions not to engage in any collective action throughout the term of a collective labour agreement.

The Turkish labour system promotes union membership. Workers who are not members of the union that is the party to a collective labour agreement, in principle, cannot benefit from the provisions related to the wages or other pecuniary benefits of the agreement. However, non-pecuniary provisions are generally applicable to all workers in the workplace, whether or not they are union members, with the exception of contract workers, ie, workers of an employer who perform a particular job.

Settlement of collective labour disputes

Turkish law sets forth a set of compulsory rules for the resolution of collective labour disputes: rights disputes, mediation, voluntary arbitration, and the High Arbitration Board.

A so-called rights dispute is a dispute arising from the interpretation or application of existing legal norms or contracts. A rights dispute may never be subject to collective action, such as a strike or lockout. Instead, rights disputes must be resolved either by the courts or by arbitration.

If the parties are not able to reach agreement within 60 days from the beginning of collective negotiations, they have to refer their dispute to a compulsory phase of mediation. The Official Mediation Organisation (*Resmî Arabuluculuk Teskilatı*) provides mediation services. After 30 days from the commencement of negotiations, the parties may choose a mediator. However, after the 60-day period, if no mediator has been chosen, the competent court appoints a mediator.

At any stage of a collective dispute, the parties may agree in writing to bring the case before an arbitrator, arbitration board or the High Arbitration Board (*Yüksek Hakem Kurulu*). Arbitration becomes compulsory: (i) when strikes and lockouts are prohibited; or (ii) when the majority of workers vote against the strike and the parties are not able to reach an agreement; or (iii) in other situations by the Council of Ministers. If a strike is prohibited, either party may refer a dispute to the High Arbitration Board. The High Arbitration Board's award is final and binding on the parties and it has the effect of a collective labour agreement.

Strikes and lockouts

The Turkish Constitution secures the right to strike, which is defined as a concerted and complete cessation of work aiming to halt or to hinder significantly the activities of the workplace by some or all workers. Provided that it complies with the provisions of the Collective Labour Law, a strike is legal. For example, a strike may take place only during the collective bargaining process and only the authorised trade union has the right to call a strike. In order for a strike to take place, the parties should have failed to reach an agreement after having tried to settle the dispute by legal mediation, and at least one-quarter of the workers employed in the workplace must vote for the strike. If the majority of the workers employed in the workplace vote against the strike, the strike may not be implemented. In such an event, the union should either reach an agreement or refer the matter to the High Arbitration Board.

As of the beginning of a strike or lockout and until it ends, the striking workers must leave the

workplace and they must not obstruct its entrance or exits. Those who refuse to join the strike or who decide to abandon the strike may work.

Those workers whose designation is regulated by law must continue to work during the strike or lockout in order to ensure the functioning of activities necessary for the security of the workplace and the preservation of equipment and products. Such work must not be aimed at production or sale. The employer may suspend work temporarily and workers may not engage in other work during the strike.

Strike picketing is regulated mainly by the Collective Labour Law. From among its member-workers, the authorised trade union assigns four strike pickets at each door of the workplace. Those entering and leaving the premises may not be subjected to force, threatened or stopped by strike pickets. Except a sign indicating that 'This Workplace Is on Strike,' no other type of sign, poster, or writing is allowed during a strike.

A strike may end: (i) by decision of the authorised union; or (ii) if the union is barred from activity or dissolved; or (iii) by court decision, if and when at least three-quarters of the members resign from the union.

By mutual agreement, parties may have recourse to private arbitration at any stage of a dispute. The provisions on mediation, strike, lockout, and compulsory arbitration do not apply if the parties agree, in writing, to refer the dispute to arbitration.

A lockout is legal when it is declared after the authorised trade union has decided for a strike and gives notice to the employer. An employer may not decide for a lockout where no strike has been called. The effect of a legal lockout is the suspension of the obligation to pay wages. In an illegal lockout, the employer is obliged to continue to pay wages and all other worker benefits, without any work being performed.

Slowdowns and any other form of concerted action having an adverse effect on production are prohibited, and are subject to the same civil sanctions as an illegal strike. The labour contracts of those workers who take part in such acts may be terminated without notice or any compensation. Penal sanctions are provided for such situations. Sit-ins also are prohibited and sanctioned by law. All workers who are on strike must leave the workplace at the very beginning of a strike.

Restrictions on the right to strike

Political strikes, general strikes, solidarity strikes, the occupation of work premises, labour slowdowns, and other obstruction are prohibited. Strikes and lockouts in certain jobs and workplaces are also prohibited. In these cases, after a mediation stage, either party may bring the dispute before the High Arbitration Board for final resolution. Industrial action is prohibited in some enumerated jobs as well as some workplaces. At times of mobilisation and natural disasters, strikes and lockouts may be temporarily banned. In sea, air and land transportation, strikes and lockouts are prohibited in vehicles that have not completed the journey to their domestic terminal points.

If the right to a strike or lockout is misused or when a strike or lockout becomes harmful to society or destroys national wealth, a strike or lockout may be suspended. Likewise, if the strike or lockout would endanger the general health or national security, it may be postponed.

In cases of prohibition of strikes and lockouts, and when a strike ballot's result is against a strike, either party may refer the disagreement to the High Arbitration Board, which will resolve the dispute by concluding the collective labour agreement itself.

Effect of a legal strike on the labour relation and the workplace

The right to strike is protected; a worker may not be dismissed for having voted to strike or actually striking as permitted by law. However, work gets suspended during the strike period, and wages and benefits are not paid for this period. Furthermore, in the calculation of severance compensation, the period of a strike is not taken into account and no wage may be paid for the period of the strike. Nothing contrary to this rule may be agreed upon.

The union that called for a strike may be liable if the striking workers cause damage to the workplace.

Consequences of illegal strikes

The labour contracts of workers who participate in an illegal strike may be terminated by the employer without notice or compensation. The employer must notify the termination within six working days. Furthermore, the union that called for the strike is liable for the damages resulting from the illegal strike; if the strike was not decided by any workers' organisation, the workers will bear the liability.

During a strike, either party may apply to a labour court to determine whether the strike or lockout is illegal. The court decision: (i) binds the parties and the members of the union; and (ii) serves as absolute evidence before the criminal courts.

Structuring investments

Labour law should be one of the key agenda items in structuring any investment into the Turkish market. In particular, collective labour relations are an important consideration in such structuring as well as post-investment business plans of investors. The rules applicable to, and issues surrounding, these relations must be analysed carefully and investment plans devised accordingly.

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In addition to being one of the leading practitioners of labour and employment law in Turkey, Turunç's diverse practice covers a wide spectrum of areas, including banking and finance, mergers and acquisitions, restructuring and insolvency, project finance, competition law and tax. He has also litigated hundreds of cases in many areas, including with respect to labour and employment law, corporate matters, competition law, tax, and customs. He has decades of experience advising domestic and international corporations and financial institutions in a wide variety of industries across many jurisdictions including Turkey, the EU, the US, Asia and Latin America.

Turunç is the author of many publications on labour and employment law, and related topics, including the English-language books *Turkish Labor Law* and *The Law and Practice of Mergers and Acquisitions* in Turkey. He wrote and co-wrote the Turkish chapters of various publications including the books *International Labor and Employment Laws and Restrictive Covenants* and *Trade Secrets in Employment Law: An International Survey*, both published by the American Bar Association and BNA Books.

Before founding TURUNÇ, he was general counsel at Boeing Services (Turkey) and The Coca-Cola Export Corporation (Turkey).
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