CAPTIVE AUDIENCE SPEECHES IN THE LABOR-MANAGEMENT SETTING IN TURKEY

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This paper will be a hypothetical-because captive audience speechees are just "not done"-analysis of the legal validity of captive audience speeches in Turkey. There are, no doubt, too many employers preferring nonunion companies and viewing unions as "outsiders intervening in the relationship between the company and its workers, hampering freedom to manage and limiting flexibility and thus endangering economic progress," "underminers of worker loyalty to the company lessening worker motivation levels," or "trouble-makers misleading workers and turning them against the company." Seeking for "more latitude for decision making" is the common denominator in such arguments. If a captive audience speech, be it on union organization or political, religious or economic approaches, is held by an employer, will this be free speech or unfair advantage? May we say that such a speech may simply be disregarded/avoided by the workers (self-help remedy)? Is a "right to be let alone" violated through pressing ideas on unwilling recipients? References will be made to Turkey's laws and international commitments in trying to find out whether such compulsory assemblages are permissible employer campaigning or constitute the corporate executive's opposition to organized labor, a challenge to union rights and freedoms.

I. VALIDITY OF CAPTIVE AUDIENCE SPEECHES UNDER INTERNATIONAL INSTRUMENTS

International human rights law establishes the workers' right to organize and International Labor Organization conventions, recommendations, and jurisprudence further elaborate it. The Universal Declaration of Human Rights (UDHR) sets out that

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"everyone has the right to form and to join trade unions for the protection of his interests." This is further articulated in the International Covenant on Civil and Political Rights (ICCPR), which states that "everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests." The International Covenant on Economic, Social and Cultural Rights (ICESCR), recognizes the "right of everyone to form trade unions and join the trade union of his choice." The ILO Declaration on Fundamental Principles and Rights at Work (ILO Declaration) lists freedom of association as one of the "fundamental rights" that all ILO members have an obligation to protect. ILO Convention 87 concerning Freedom of Association and Protection of the Right to Organize and ILO Convention 98 concerning the Right to Organize and Collective Bargaining elaborate on this right. A country that has not ratified either of these core conventions, yet as an ILO member, has the duty under the ILO Declaration to abide by their terms. The ILO Declaration states that "all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions."

The ILO Committee on Freedom of Association, which examines complaints from workers' and employers' organizations against ILO members has stated, "When a State decides to become a Member of the Organization, it accepts the fundamental principles embodied in the Constitution and the Declaration of Philadelphia, including the principles of freedom of association." The Committee has repeatedly underscored the importance of adequate laws banning such interference and adequate penalties and mechanisms to ensure compliance fleshing out right to organize. On workers' right to organization, the committee has noted, *inter alia*:[1]

1. Freedom of Association, Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, Fifth (revized) edition 2006 (ilo.org). Other such decisions and principles include, "The full exercise of trade union rights calls for a free flow of information, opinions and ideas, and to this end, workers, employers and their organizations should enjoy freedom of opinion and expression at their meetings, in their publications and in the course of other trade union activities. Nevertheless, in expressing their opinions, trade union organizations should respect the limits of propriety and refrain from the use of insulting language." (para. 154.) "The right of workers to establish and join organizations of their own choosing in full freedom cannot be said to exist unless such freedom is fully established and respected in law and in fact." (para. 309.) "The Committee has emphasized the importance that it attaches to the fact that workers and employers should in practice be able to establish and join organizations of their own choosing in full freedom." (para. 310.) "Both the

> The rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected. (para. 44.)

No person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment.[2]

As regards allegations of anti-union tactics in the form of bribes offered to union members to encourage their withdrawal from the union and the presentation of statements of resignation to the workers, as well as the alleged efforts made to create puppet unions, the Committee considers such acts to be contrary to Article 2 of Convention No. 98, which provides that workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents in their establishment, functioning, or administration.[3]

This case-by-case analysis considering the individual circumstances at issue reveals that employer anti-union campaigning is impermissible interference if it is coercive. However, there is no clear-cut testing as to whether employer tactics to defeat union organizing cross the line between permissible behavior and coercive interference. Acts of interference likely to impair the guarantees established by the Conventions are banned employer tactics. There is no exhaustive list of such acts of interference. Banned employer tactics include: "any discriminatory measures during employment, in particular transfers, downgrading and other acts that are prejudicial to the worker," "bribes offered to union members to encourage their withdrawal from the union and the presentation of statements of resignation to the workers, as well as the alleged efforts made to create puppet unions," "discrimination between trade union organizations," and "violence, pressure or threats of any kind against the leaders and members of these organizations."

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government authorities and employers should refrain from any discrimination between trade union organizations, especially as regards recognition of their leaders who seek to perform legitimate trade union activities." (para. 343.) "Protection against acts of anti-union discrimination should cover not only hiring and dismissal, but also any discriminatory measures during employment, in particular transfers, downgrading and other acts that are prejudicial to the worker." (para. 781, similarly paras. 779, 782, 784-789, 795-797.) "Article 2 of Convention No. 98 establishes the total independence of workers' organizations from employers in exercising their activities." (para. 855.)

2. Paragraph 771; see also ¶¶ 769-76
3. Paragraph 858; see also ¶¶ 859-66

States have the responsibility for promoting and protecting workers' rights under international law. Turkey has signed and ratified these international instruments. Freedom of association has a collective aspect in the sense that it is a civil liberty and an individual aspect in the sense that it is recognized as the personal right of each worker. The relevant international instruments and the non-exhaustive body of principles built up by the Committee on Freedom of Association are referenced for the development and implementation of national standards as well as in publications on jurisprudence.

II. VALIDITY OF CAPTIVE AUDIENCE SPEECHES UNDER NATIONAL LAWS

In Turkey, there is the institutionalized mandatory representation following the Continental European social model. It is the statutory law that creates the national framework. Union rights and freedoms are not "controllable or opposable worker and/or union attitudes." Managers are bound by restrictions of laws and collective agreements. There is extreme legalism in such areas. The Unions Act (UA)[4] regulates formation and functioning of trade unions and employers' associations and their higher organizations. The Collective Labor Agreements, Strikes and Lockouts Act (CLASLA)[5] regulates the conclusion, effect, and termination of collective labor agreements, collective labor disputes, and their settlement through peaceful procedures or industrial action.

A. Workers' Right to Freedom of Association

The principle of the freedom of association is guaranteed by Article 51 of the 1982 Constitution. Under this article, workers and employers have the right to form unions and higher organizations, without previous authorization, in order to safeguard and develop their economic and social rights and the interests of their members in their labor relations. As regards the individual aspect of freedom of association, union security practices such as closed shop (the pre-entry closed shop), union shop (the post-entry closed shop), or agency shop that make the employment of a worker conditional on his membership, either before or after recruitment, or non-membership of a trade union, are regarded as contradictory to the principle and therefore forbidden by both the

4. Law no. 2821 of May 1983.
5. Law no. 2822 of May 1983.

Constitution and the Unions Act. Everyone holding the title of a worker is free to become a member of or withdraw from membership in a union. No one may be compelled to become a member, remain a member, or withdraw from membership in a union. Freedom to form or join unions is called "positive freedom of association" and freedom not to form or not to join a union or to withdraw from membership is called "negative freedom of association."

Remedies exist for workers subjected to discriminatory behavior by management in exercising their unionization rights. Where a worker's employment is made conditional on his membership, either before or after recruitment, or non-membership of a trade union, labor contracts and collective labor agreements clauses to this end shall be null and void (UA, Art. 31/2).

The employer has to pay a fine with a minimum amount equaling to half of the monthly gross minimum wage to be paid to a worker above 16 years of age.[6]

Where force or threat is used to coerce a worker to join or not to join a union or to participate or not to participate in union activities or to withdraw from union membership or a union management post, the Criminal Code (CC) envisages an imprisonment from six months up to two years (CC, Art. 118/1). Use of force or threat is the constituent element of this crime; a complying behavior by the worker is not required for its realization. Where a union's activities are hindered through use of force or threat or any other illegal behavior, the imprisonment shall be from one to three years (CC, Art. 118/2). Illegal personal storage of data of people as regards union affiliations shall be punished with six to three years of imprisonment (CC, Art. 135/2).[7]

B. Safeguards Against Discriminatory Behavior During Employment and Discriminatory Dismissals

There are also specific remedies for workers subjected to discriminatory treatment during the course of employment or to discriminatory dismissals.

6. UA, Art. 59/3. Monthly gross minimum wage to be paid to a worker above sixteen years of age for the January 1–June 30, 2008 period is 608 TL (about $515) and 638 TL (about $541) for the July 1–December 31 2008 period.

7. A provision corresponding to Articles 118 and 135/2 did not exist under the previous Criminal Code, it was envisaged for the first time by the new Law no. 5237 adopted on 26 Sept. 2004 (Official Gazette, 12 Dec. 2004).

1. Discriminatory Behavior During the Course of Employment

Union membership or involvement in union activities[8] may be the basis for discriminatory treatment by the employer during the course of employment. For example, a worker may not be promoted or transferred to a better position or be demoted as a result of such a conduct. This worker shall be entitled to the so-called "unionism compensation," the minimum amount of which corresponds to the gross amount of his annual basic wage (UA, Art. 31).

2. Discriminatory dismissals

Rules on dismissals vary according to whether the dismissed worker is one with regular or enhanced job security. A worker enjoys enhanced job security if he has been working for more than six months in a company employing thirty or more workers. A worker dismissed due to his trade union membership and/or involvement in union activities is deemed discriminatorily dismissed. It is up to the employer to prove that the ground for dismissal did not the concern the worker's union membership and/or involvement in union activities.[9] Where a worker with regular or enhanced job security is discriminatorily dismissed, he shall be entitled to severance pay if he has completed at least a year of employment at that particular workplace.[10] The explanations cover the indeterminate workers, i.e., those workers employed under open-ended labor contracts. Discriminatory dismissals are non-existent in the public sector and in big institutionalized companies in the private sector. Such dismissals take place especially in SMEs where face-to-face relations are dominant. There are instances where some employers dismiss workers with the idea of preventing unionization.

a. Discriminatory Dismissal of a Worker with Regular Job Security

A worker with regular job security can be dismissed for any reason whatsoever (LA, Art. 17). The employer is not under the legal

8. Involvement in union activities outside hours of work is protected by the law. A worker may carry out union activities within working hours only upon an express permission by the employer (UA, Art. 31/5).

9. UA, Art. 31/7. Due to the high amount of compensation upon discriminatory dismissals and that the burden of proof rests on the employer, dismissed workers, whatever the cause of dismissal may be, tend to claim that they have been discriminatorily dismissed.

10. The worker entitled to severance pay shall receive thirty days' gross pay for each year of service at that workplace. For exceeding periods, calculation shall be made on a prorated basis. The monthly amount of wage supplements of a continuous character shall be added to the last thirty days' gross wage.

obligation of specifying the ground for dismissal. The worker shall be entitled to compensation corresponding to the ground of dismissal but he cannot be reinstated by the court. Where a worker with regular job security is dismissed for union membership and/or involvement in union activities, he shall be entitled to the unionism compensation, the minimum amount of which corresponds to the gross amount of his annual basic wage (UA, Art. 31).

b. Discriminatory Dismissal of a Worker with Enhanced Job Security

A worker with enhanced job security cannot be dismissed unless there is a valid reason connected with his capacity or conduct, or based on the operational requirements of the undertaking, workplace, or work. The employer has to specify the reason for dismissal clearly and precisely in written form. The burden of proving that there is a valid reason shall rest on the employer. Union membership, involvement in legally provided union activities, application to authorities against the employer (filing a grievance), serving in the capacity of a trade union representative shall not cause valid reasons for termination of the labor contract. The court shall invalidate the dismissal and rule for reinstatement if there does not exist a valid reason. If the employer does not want to utilize the reinstated worker, he shall pay the so-called job security compensation equaling to four to eight months' wage of the concerned worker (LA, Art. 21). Where the dismissal is on the basis of union membership and/or involvement in union activities, or the representative functions of the trade union representative, the minimum amount of the job security compensation shall be the gross amount of his annual basic wage (UA, Art. 31).

C. Discriminatory Dismissal of a Trade Union Representative

In Turkey, there is the single channel worker representation by a trade union; works councils do not exist. There is no minimum workforce-size threshold statutorily required to establish a workplace representation. The law attempted to also contain provisions for the election of workers' representatives without an authorized or signatory trade union but failed as a result of the strong opposition by the trade unions conceiving it as a threat to unionism. Trade union representatives, the only statutory body of workplace representation, are appointed by the authorized union from among its member workers employed at the workplace, the number varying in

proportion to the number of employed workers.[11] This is the institutionalized mandatory workplace representation. One of the trade union representatives may be assigned as the chief representative.

Trade union representatives perform the following functions, limited to the workplace (UA, Art. 35):

- To follow up and resolve workers' requests and complaints;
- To promote and maintain cooperation, harmony of work, and peaceful labor relations;
- To protect rights and interests of workers; and,
- To assist the enforcement of working conditions provided by labor legislation and collective labor agreements.

Trade union representatives have to perform these functions outside working hours unless provided otherwise by the collective agreement. The union activity of the trade union representatives makes them vulnerable to anti-union discrimination, and in this respect, there are safeguards envisaged by the Unions Act (Art. 31) and the Labor Act (Art. 18).

The relevant provisions of the Labor Act on dismissals shall be applied in case of termination of the open-ended labor contract of the trade union representative by the employer. But, upon termination solely on the basis of representative functions, regardless of whether or not he has regular or enhanced job security, compensation, the minimum amount of which is the gross amount of his annual basic wage, shall be ruled (UA, Art. 30). Unless there is the written approval of the trade union representative, the employer cannot change his workplace, for example, by transferring him to one of his other workplaces. It is also not possible for the employer to make substantial changes in the work performed by the trade union representative. Otherwise, such a change shall be deemed invalid.

C. Recognition of the Authorized Trade Union by Management

There is the legal obligation to "accept" the union as management's counterpart. Simply put, a union cannot be voted out. The law requires an employer to recognize and bargain with the authorized union, but it does not force him to agree with the union. He

11. UA, Art. 34. Not more than one, if the number of workers is up to 50; not more than two, if the number of workers is between 51 and 100; not more than three, if the number of workers is between 101 and 500; not more than four, if the number of workers is between 501 and 1.000; not more than six, if the number of workers is between 1.001 and 2.000; not more than eight, if the number of workers is over 2.000.

is free to yield to the union's persuasions and the union's task is to persuade the employer to accept policies and procedures the union wants. The competent and authorized sectoral union may bargain collectively with the employer's side and consequently conclude a collective labor agreement at three different levels. On the employer's side, there may be the employer or an employers' association representing its member employers.

1. Principles Governing Foundation of Trade Unions

The principles of freedom of association, sectoral unionism, and multi-unionism govern the establishment of trade unions. Sectoral unionism denotes unionization by sectors (industries, work branches). Trade unions shall not be constituted on an occupational (craft unionism) or workplace (local unionism) basis. There are twenty-eight sectors in which unions may be constituted.[12]

In the absence of a system of "universal sectoral unionism" (one sector-one union), "multi-unionism" is almost inevitable. The principle of union pluralism has been accepted by the Unions Act (Art. 3). According to this principle, more than one union can be established in each sector. The Unions Act accepts this principle but at the same time takes measures together with the Collective Labor Agreements, Strikes and Lockouts Act in order to prevent the trade union inflation that existed under previous legislation. Through the measures taken, these two acts try to balance and reconcile the principles of union pluralism and strong unionism. Therefore new machinery whereby the number of unions would be reduced and the process of collective bargaining would be less fragmented has been instituted. Prohibition of local unionism[13] is among the basic measures taken to this end.

12. UA, Art. 60. Agriculture, forestry, hunting, and fishing; mining; petroleum, chemical, and rubber; food; sugar; textile; leather; woodwork; paper; press, publishing and broadcasting; banking and insurance; cement, ceramic, and glass; metal; shipbuilding; construction; energy; commercial, clerical, education, and fine arts; inland transportation; rail transportation; sea transportation; air transportation; warehouse and storage; communication; health; accommodation and entertainment places; national defence; journalism; and general services. Works that are subsidiary to the major activity carried out in a workplace shall be deemed to be within the sector of the major work. Therefore, workers performing subsidiary works may join only the trade union constituted in the major activity. Where there is a dispute, the sector covering a workplace shall be determined by the Ministry of Labor and Social Security. This decision of the Ministry shall be published in the Official Gazette. The parties concerned may lodge an appeal against this decision with the local court having jurisdiction in labor matters within fifteen days of the publication. The court shall give a ruling on the appeal within two months. Where this ruling is appealed, a final ruling shall be given by the Court of Cassation within two months.

13. Previously, local unionism gave rise to proliferation of unions. The real number of trade unions was unknown for this period because many appeared and disappeared at the level of each workplace throughout the country. There were aggressive organizational campaigns and

2. Competence and Authorization

It is the competent and authorized sectoral union to bargain collectively with the employer with the aim of reaching a collective labor agreement.

Competence is a prerequisite for authorization. Confederations, the only form of higher occupational organizations established by at least five sectoral unions, are deprived of the right of collective bargaining. But workers' and employers' confederations may come together and reach a "common understanding" on labor issues. When they decide on conditions of work, for example, with regard to the public sector or a particular sector, the agreement serves as a guideline for the collective labor agreements to be concluded by their affiliates. The sectoral union has competence for those workplaces and undertakings in the sector in which it is founded.

Authorization procedures for a new collective labor agreement may start 120 days prior to the termination of the existing one. However, the new agreement may not go into effect prior to expiry of the previous agreement (CLASLA, Art. 7/3). It is the Ministry of Labor and Social Security to keep track of unionization figures and to determine the authorized union (CLASLA, Art. 12). A trade union that considers itself authorized to conclude a collective labor agreement shall make an application in writing to the Ministry requesting the Ministry to designate it as the authorized union. There are two workforce-size thresholds to be qualified as the authorized trade union: To be representing at least 10% of the total employed in the concerned sector[14] and to be representing more than half of the total employed in the concerned place of work. The union, with an authorization document obtained from the Ministry, requests the management to start negotiations (CLASLA, Art. 17). If the invited employer does not come to negotiations or at first attends and then

hostilities among workers of the same workplace. The hawkishness of competing unions endangered not only the whole collective bargaining process but also public peace and order. Personal rivalries among trade union leaders, political fractionalisation of leadership, the aspiration of most leaders to retain and consolidate their well-entrenched leadership posts, rewarding both in terms of income and prestige, and their consequent reluctance to convert their autonomous local organizations into a branch office of a sectoral union thereby subjugating themselves to the rules of a central head office were among impeding factors for a centralized structure of Turkish trade unionism. As a result, local unionism was viewed as one of the main causes for the total breakdown in industrial relations and for union inflation and the new Unions Act of 1983 forbade their formation. With the removal of local unions, federations formed by at least two local unions, were automatically removed from the labor relations' scene. Prohibition of local unionism and federations in Turkey is criticised by both the ILO and the EU.

14. The 10% threshold is not required in industry no. 1 (industry of agriculture, forestry, hunting, and fishing) where organization is difficult.

quits negotiations, then mediation, the second phase in the making of a collective labor agreement, shall start (CLASLA, Art. 21). Where mediation ends with no agreement, for whatsoever the reason, a strike may take place (CLASLA, Art. 27). If there is a workplace or an activity where industrial action is prohibited,[15] then there shall be compulsory arbitration, meaning that by an application by one of the parties, it shall be up to the Supreme Arbitration Board[16] to conclude the collective labor agreement for the parties (CLASLA, Art.32).

3. Levels of Collective Bargaining

Workplace (establishment), workplaces, or undertaking (enterprise) are the bargaining units and, at the same time, the levels of collective labor agreements (Table 1). Thus, we speak of a local (workplace) collective labor agreement, group (workplaces) collective labor agreement, or an undertaking collective labor agreement (CLASLA, Art.3). Where a single workplace is involved, there is the legal compulsion for the parties to conclude a local collective labor agreement. Workplaces belonging to the same employer and functioning in the same sector constitute an undertaking for the purposes of the Collective Labor Agreements, Strikes and Lockouts Act. Where more than one workplace falling under the same sector belong to the same employer, the legal compulsion is for the conclusion of an undertaking collective labor agreement. However, there is no legal compulsion for the parties to conclude a group

15. Jobs in which industrial action is prohibited are as follows: 1. Life or property preservation; 2. Funeral and mortuary services; 3. Production of lignite used for thermal power plants, water, electricity, and city gas; exploration, production, processing, and distribution of natural gas and petroleum; petrochemical work starting from naphtha and natural gas; 4. Banking and notary services; 5. Fire fighting, urban sea, land, and railway and other mass transportation services on rail provided by the public sector. Establishments subject to prohibition are: 1. In any health related establishment, such as vaccine and serum manufacturing institutions, hospitals, clinics, sanatoriums, health centers, dispensaries, and pharmacies except for establishments manufacturing medicine; 2. In educational and teaching institutions, childcare facilities, and rest homes; 3. In cemeteries; 4. In establishments run directly by the Ministry of National Defense, the General Command of Gendarmerie and the Coast Guard Command.

16. The Supreme Arbitration Board, under the chairmanship of the president of the labor chamber of the Court of Cassation, shall consist of the following members: 1. A member to be selected by the Council of Ministers from among persons having knowledge and experience in economics, management, social policy, or labor law and who shall not have any ties in any way with workers' and employers' organizations nor any function in the organs of the political parties and who shall be outside the ministries; 2. A lecturer in labor law or economics to be selected by the Higher Education Council from among the teaching staff of the universities; 3. The Director-General of Labor of the Ministry of Labor; 4. Two members to be designated by the workers' confederation having the largest number of member workers; 5. Two members to be designated by the employers' confederation having the largest number of member employers, one of them representing public employers.

collective labor agreement. A group (workplaces) collective labor agreement is the one concluded at the level of various employers' workplaces (multi-employer bargaining). Sectoral collective bargaining does not exist, but a group collective labor agreement is somewhere between workplace and sectoral bargaining. The idea is the more or less harmonization of working conditions in the same sector.

For various employers' workplaces to be grouped together as a bargaining unit, these have to be in the same sector. An employer may own one or more of the grouped workplaces. If more than one of the grouped workplaces belong to the same employer, then it simply means that there is an undertaking grouped together with other workplaces and/or undertakings. The parties may not compel each other to conclude a group collective labor agreement; only upon willingness of both sides may a group collective labor agreement be concluded. Lacking such an agreement, there will be separate collective labor agreements at the level of each workplace or undertaking. For the trade union to be one of the parties to a group collective labor agreement, it has to be the authorized union for each one of the grouped workplaces and/or undertakings to be covered. On the employer's side, there has to be an employers' association representing its member employers; unaffiliated employers may not come together to conclude a group collective labor agreement.

Table 1
Levels of Collective Bargaining

Bargaining units	Parties	Type of CLA
Workplace	Authorized trade union / Employer or employers' association	Local CLA (workplace CLA)
Workplaces	Authorized trade union / employers' association	Group CLA (workplaces CLA)
Undertaking	Authorized trade union / Employer or employers' association	Undertaking CLA

There is the legal principle of exclusive representation whereby the trade union recognized by the Ministry is the bargaining agent for all workers in the bargaining unit, whether or not they are members of the union. But the members of the signatory union (the authorized union becomes the signatory union with the conclusion of the collective labor agreement) benefit from the collective labor agreement automatically once it is concluded[17] whereas the non-members may benefit by applying to the concerned employer and stating that they are going to pay solidarity dues, equaling two-thirds of the union dues.[18]

17. The Collective Labor Agreements, Strikes and Lockouts Act makes a distinction between the member workers. Of these workers, those who are members on the conclusion date shall benefit starting from the effective date; those who join the signatory union after the conclusion date shall benefit starting from the date on which the employer is informed of their membership by the signatory union. The effective date may be the same with the conclusion date but an earlier date, the day following expiration date of the previous collective labor agreement at the earliest, may be specified as the effective date.

18. Due to the principle of voluntary unionism, the consent of the signatory union is not required for non-member workers to benefit from the agreement through the payment of solidarity dues. Workers who are not members of the signatory trade union on the date of conclusion of the collective labor agreement, or those who are subsequently recruited but do not join the signatory union, or those who resigned or were expelled from the signatory union after the conclusion date may benefit from the agreement if they pay "solidarity dues" to the signatory union. Workers wanting to benefit from the agreement by paying solidarity dues shall do so starting from the date on which such a request is made to the employer. But, the date of request may not be a date prior to the conclusion of the collective labor agreement.

D. Independence of Workers' Occupational Organizations from Management and Employers' Occupational Organizations (Principle of Purity)

Due to the principle of independence of workers' and employers' organizations from each other, employers or employers' organizations can, in no way, attempt to establish their control or influence over unions or attempt to establish or promote establishment of puppet (yellow) unions (UA, Art. 38). Such acts of interference are punishable by one to six months' imprisonment (UA, Art. 59/5).

E. Tripartite and Bipartite Information and Consultation Structures

Formal and informal information and consultation structures are avenues for the employers and workers to express their views in the labor organizing context. Formal and informal bipartite and tripartite assemblages (formal information and consultation structures) exist at the national, sectoral, and company levels (Table 2).

Table 2
Formal Institutional Structure

Levels	Tripartite	Bipartite
National level (Level of foundation of confederations)	Work Assembly	None
	Tripartite Consultation Board	
	Economic and Social Council	
	Supreme Arbitration Board	
	Minimum Wage Board	
	Others	
Sectoral level (Level of foundation of trade unions and employers' associations)	None	None
Company level	None	Collective bargaining, trade union representation, information sharing

1. Tripartite Structures

Tripartite relationships ensure that trade unions and employers come together with policymakers voicing the diverse interests they represent and have role in national policy formulation and implementation thus maintaining open lines of communication to develop long-term relationships. These mechanisms also affirm the domain of the tripartite partners in the specific areas of the determination of wages, employment conditions, selection of mediators, etc. In the implementation phase, there is a higher representational power and a higher degree of coordination efforts of employers' associations and confederation. Their strong associational setting makes them more active and mobilized in the development of labor market policies. The trade unions and confederations, on the other hand, remain focused on splits at the confederate and sectoral levels and disagreements on representativeness. They spend their

energy on inter-union rivals. This has repercussions on (tripartite and bipartite) partnership. There are established informal relations that work well. Sometimes, informal individual and personal input may prove to be more important and fruitful than formal representation; they are in no way negligible.

2. Bipartite Structures at Company Level

Bipartite structures at company level include the conclusion of collective agreements, trade union representation, and information sharing. Workers' right to information exists in various cases, *inter alia*,

- Information on collective redundancies (LA, Art. 29),
- Information on individual employment conditions (LA, Art. 8/2),
- Information on occupational risks and diseases (LA, Art. 77/2),
- Information on job vacancies (LA, Art. 13/4),
- Information on short-time working (work-sharing) and forced vacation period (compulsory leave) (LA, Art. 65), and,
- Information on substantial amendments in employment conditions (LA, Art. 22).

3. Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 Establishing a General Framework for Informing and Consulting Employees in the European Community

Attempts to harmonize with the Community *acquis* mark the evolution of labor issues. Turkey, as a country eager to join the European Union, is in the process of adopting the Community *acquis* in stages. Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community is to be transposed into the Turkish legislation. The Directive specifies the cases in which the employer is obliged to communicate information and undertake consultation. Article 4/2-3 of the Directive reads:

> 2. Information and consultation shall cover:
>
> information on the recent and probable development of the undertaking's or the establishment's activities and economic situation;

> information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment;
>
> information and consultation on decisions likely to lead to substantial changes in work organization or in contractual relations.
>
> 3. Information shall be given at such time, in such fashion and with such content as are appropriate to enable, in particular, employees' representatives to conduct an adequate study and, where necessary, prepare for consultation.

Whether a captive audience speech is within the limits of information and consultation as specified in the Directive or likely to cause an immediate breach of the industrial peace in the company constituting a violation of union rights and freedoms shall be decided by the courts. A speech may receive hostile reaction, induce unrest, stir people to anger and is thus found provocative, challenging, and coercive by the audience and/or the union. People may feel intolerant and annoyed but generally speaking the Turkish courts are more likely to be tolerant and protective in trying to interpret fighting words (insults). There is a very delicate balance between freedom of speech and coercive behavior.

III. CONCLUSIONS

In Turkey, it is unlawful for an employer to:

- interfere with, restrain, or coerce workers in the exercise of union rights and freedoms including forming a union;
- dominate or interfere with the formation or administration of any trade union or have organic or financial relations with a trade union;
- discriminate at the time of conclusion or termination of the labor contract or during the course of employment by encouraging or discouraging union membership or involvement in legally provided union activities;
- discharge or otherwise discriminate against a worker because he has filed a complaint against him; and,
- refuse to bargain collectively with the authorized trade union.

There have been no practices of captive audience speeches in Turkey and consequently no jurisprudence to this end. Employers will tend to use available avenues to convey their opinions on various issues to their workers. This does not mean that any act of

interference by management is automatically deemed an unfair labor practice. An act of interference by management cannot be an unfair labor practice unless it is coercive. Theoretically speaking, an employer is free to communicate to his workers his general views and considerations about unionism or any other issue through holding a captive audience speech or using a bipartite platform for this purpose so long as the communications are not threatening. Determination of coercive interference requires a case-by-case analysis considering the individual circumstances at issue. The difference between free speech and coercive interference may not always be apparent. An unfair labor practice is an exploitation of this distinction Where a compulsory assemblage is held or a bipartite platform is used to force workers to receive unwanted advice and information and/or aims at quashing organizing attempts, it shall be deemed to impair union rights and freedoms guaranteed by the laws. Such a (provocative) managerial stance is the corporate executive's opposition to organized labor, a challenge to union rights and freedoms. It will thus constitute illegal intrusion/interference by the employers in union affairs.