

CHILD LABOUR IN TURKEY
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Child labour is universally recognised as an extremely serious human rights issue. The ILO is currently launching a number of proposals by conducting approximately one thousand programmes within the IPEC (International Programme on the Elimination of Child Labour) in order to tackle this issue. As part of these programmes, the ILO runs a number of initiatives in cooperation with the Turkish Confederation of Workers (the country's largest confederation). The ILO estimates that there are approximately 250 million working children in the world today, deprived of sufficient education, health care and of their fundamental rights.¹ Employment of children is regarded as an income for the family, but on the other hand it is considered cheap labour for the employer and a way of earning money for the child.² However, it is obvious that child labour causes a number of serious negative impacts on the physical and psychological health of the child, and on future generations, and the society they live in as well.

This issue must be handled both from the legal perspective and from the facts of society. The legal side has international and domestic aspects.

I. International Documents

The definition of child varies at different times and from society to society. The definition of the concept is no doubt influenced particularly by the inexperience and vulnerability of the child.³ Obviously the weak position of the child in society demands protection. Child labour must not be regarded as a problem only for some states; it is a universal problem.

A number of legal documents in the international arena have been drawn up focusing on this issue. However, in these arrangements it seems that drawing sharp distinctions regarding the child age has been avoided in the United Nations Convention on the Rights of the Child (ratified by Turkey, but with reservation, in 1994), which defines a child as everyone under the age of 18. The determination of some age boundaries can be justified for granting some rights and lifting some protective measure. However, states must always fulfill their duties in order to protect children. For example, a specific consistency between employment age and graduation age must be respected.⁴ The child labour issue has been stipulated in Art.32 of the Convention. The states which are party to this convention must not overlook the other international arrangements. Indeed, the ILO Convention Nr.138 on Minimum Age for Employment (1973) is one of the most important international agreements in this area. This Convention entered into force in 1998 in Turkey. Another important ILO convention is Convention Nr. 182 (1999) on the Worst Forms of Child Labour that urges member states to take effective measures to provide basic education to children and to remove children from the worst forms of employment. This convention, too, has been ratified by Turkey, in 2001. Two ILO conventions, one for Fixing the Minimum Age for Admission of Children to Industrial Employment Nr.59 (1937) and the other for Admission of Children to Employment

¹ http://www.ilo.org/public/turkish/region/eurpro/ankara/about/ilo_cisc.htm, Access date: 22.12.2009.

² T. Centel, Çalışan Çocukların Çalışma Şartlarının İyileştirilmesi, 2.

³ R. Serozan, Çocuk Hukuku, Vedat Yayıncılık, İstanbul 2005, 3.

⁴ Hodgkin/Newell, Implementation Handbook for the Convention on the Rights of the Child, UNICEF Publications, 2007, 1.

at Sea Nr.58 (1936), which were ratified by Turkey in 1992 and 1959 respectively, prohibit employment of children under 15 years of age. Moreover, one of the UN's twin Covenants on Economic, Social and Cultural Rights (1966) that entered into force in Turkey in June 2003, is considered a very important international document in the area of human rights, particularly its Art. 10 which regulates the protection of all children and young people against any discrimination and economic and social exploitation.

II. Domestic Laws

Child protection measures are regulated by various laws in Turkey. The provisions of the Labour Act Nr.4857 dated 2003 must be mentioned first. It regulates the minimum employment age, working hours and work safety of children, while the Social Security and Universal Health Insurance Act Nr.5510 regulates their social security rights. Furthermore, the Trade Unions Act Nr. 2822 grants working children some rights pertaining to individual rights to unionisation.

1. Individual Labour Laws

The Labour Act of Turkey Nr.4857 considers children who have completed 15 years of age but who are below 18 as young workers, and it defines child workers as those who are below 15 years of age. However, a bylaw that has been enacted as part of Art. 71 of the Labour Act but in contradiction to the Act describes child workers as those who have completed the age of 14 but are under the age of 15. In the said bylaw, the types of work children under the age of 14 are allowed to carry out have been listed, and the types of employment that children under the age of 15 are not allowed to undertake have been determined.

The General Health Care Act Nr.1593, which has been in force since 1930 (one of the oldest pieces of legislation in modern Turkey), has brought in many important provisions concerning health and safety in employment and public health care. However, this law considers the age of 12 as the lower age limit for employment, and states that they can be employed for a maximum of 8 hours daily, and furthermore considers 'adult' those individuals who have completed 16 years of age. It is obvious that these rules are in contradiction to the new labour legislation and Turkey's responsibilities related to its international liabilities.⁵ Nonetheless, the rules of the new Labour Act Nr.4857 (2003), as it is the latest piece of legislation, replace the contradictory rules of Act Nr. 1593. Today, the application of Act Nr.1593 has been considerably narrowed.

Labour Act Nr.4857 prohibits the employment of children who have not completed the age of 15. However, children who have completed the full age of 14 and their primary education may be employed in light work on condition that it does not hinder their physical, mental and psychological development, and, for those who are continuing their education, in jobs that will not prevent them attending school (Art.71).

Further, this Act prohibits the employment of young workers who have not completed the age of 16 years, and those who have not had vocational training for the work they perform must not be employed in arduous and dangerous work (Art.85).

⁵ K. Bakırçı, *Çocuk ve Genç İşçilerin Haklarının Korunması*, Beta, İstanbul 2004, 85.

The types of work where the employment of children and young workers who have not completed the full age of 18 is prohibited and the work where young workers who have completed the age of 15 but not completed the age of 18 may be permitted to work have all been determined in the regulation issued by the Ministry of Labour and Social Security. Since workers under the age of 16 can not be employed in dangerous work and workers under the age of 14 can not be hired in any kind of work, any employment contracts entered into with these workers are deemed null and void, but the invalidity is effective merely for the future (ex nunc).⁶ Therefore these child workers may claim any wages corresponding to the amount of work they performed. In other words, legal protection in this case is effective only for the future.

Children working in informal sectors, regardless of age, are deprived not only of social security rights but also of employment rights. For example, they have no retirement rights and they do not receive the minimum wage because they fall outside the protective scope of the Labour Law and Social Security. Children under 18 years of age are not allowed to work in night work, in jobs where explosive, flammable, arduous and dangerous materials are produced, or in jobs which may cause drug and alcohol addiction. According to the related bylaw examples of light jobs where children who have completed 14 years of age can be employed are picking fruit and vegetables, assisting in offices, packing, bell boy.

On the other hand child and young workers are preferred by employers because they agree to work for lower wages. However, the legal order introduced restrictions on the lower level of wages paid to child workers as well as adult workers. In this context the bylaw for the minimum wage made a distinction between workers regarding their age and prescribes that those who have completed 16 years of age shall be paid at an equal rate to adult workers. However, those who work in the informal sector can of course enjoy no employment rights no matter what age they are.

The organization of work is another sensitive subject. The Law Maker brought in some protective restrictions for child and young workers with respect to their work and rest break times and education possibilities, and made a distinction between school goers and non-school goers. In this context, if a child worker attends school he can be employed for a maximum of 2 hours per day and 10 hours in two weeks, if the school is closed. The working time of children who have completed their basic education and are no longer attending school shall be no more than 7 hours daily and 35 hours weekly. However, this working time may be increased up to 8 hours daily and up to 40 hours weekly if they have completed 15 years of age. If the maximum working time of adults (45 hours) is taken into consideration, 40 hours for young workers seems relatively high. Further, workers who are below 15 years of age enjoy weekly rest not below 40 hours (LA Art.71).

In Turkey workers whose length of employment service is more than 5 years and less than 15 years are entitled to a minimum of 20 days annual leave with pay. However, for employees who haven't yet completed 18 years of age annual leave with pay must not be less than 20 days per year (LA Art.53).

⁶ S. Süzek, *İş Hukuku*, 4th Ed., İstanbul 2008, 287-288.

2. Right to Unionization

The Trade Unions Act Nr.2821 of Turkey adopted a relatively low age for union membership. Accordingly, a young person who has completed the age of 16 is entitled to be a union member and has voting rights in the general assembly of the union without the need for consent from parents or a legal representative. Those who are under 16 years of age are also entitled to become a union member but only with the consent of his/her parents or legal representatives, but these child workers are not entitled to vote. The lower age limit for becoming a union member has not been explicitly stated in the law. However, the minimum employment age of 14 applies for these as well.

3. Regulations Regarding Social Security Rights

As a final evaluation regards the issue of social security rights, according to the Act Nr. 5510 on Social Insurance and Universal Health Insurance, every person who is under the age of 18 and working under a labour contract is included in the social security system. Exceptions are minor employees who are declared of full legal age (majority) through a court decision and minors who are employed for educational purposes.⁷

According to the Law, the insurance period for areas of long term insurance such as invalidity, old-age and survivors insurance starts at the age of 18. The premiums paid in the period before the age of 18 can be added to the number of premium paying days but can not be included in the insurance period (Art. 38/2). This creates a disadvantage for minors between the ages of 14-18 who are legally employed.

In conventional social security systems, economically inactive or unemployed family members are provided with social security through the wage earning members of the household. In addition, the Law also states that non-wage earning members shall benefit from social security for a limited period of time under the green-card system (Act Nr. 5510, provisional Art. 12). Finally, it may be concluded that child and young workers are provided with social security by the State.

III. Shortcomings in Practice

With regard to the problem of employment of children and young people, international agreements set forth a general framework and domestic law, despite the above mentioned shortcomings, provides a broader regulative structure. However, the state of affairs in practice seriously deviates from the structure contemplated by the law. Statistics discussed below confirm the fact that legal regulation on its own is insufficient for tackling the child labour issue. The reason for the inadequacy of the legal regulations is the lack of a satisfactory inspection system, as well as poverty.⁸

Poverty is considered to be the major factor responsible for child and youth labour and such a view is also backed by the findings of field surveys. The increasing rate of poverty and the deprived economic conditions of the average household, force children and young people to enter into the labour market.

⁷ *Tuncay/Ekmekçi*, Sosyal Güvenlik Hukukunun Esasları, İstanbul 2009, 242.

⁸ *T. Centel*, Çalışan Çocukların Çalışma Şartlarının İyileştirilmesi, 3.

Due to the lack of inspection and the poverty suffered by families, many minors are employed before the minimum legal age or are employed under illegal conditions, even though clearly prohibited by law. Research carried out by a trade union (Eğitim-Sen) among over 300 children employed in industrial work affirms the problem. Namely, 64 percent of these children are forced to work 11-14 hours a day. In contravention of the law, the average age for starting employment seems to be 11. The average wage ranges between 250 and 400 TL (\$170-270) and a quarter of them have already suffered work related accidents.⁹ According to the United Nations Development Programme Human Development Report 2008 *Youth in Turkey*, 22% of the young employees start apprenticeships before the minimum legal age of 15.¹⁰ These findings demonstrate the discrepancy between the legal regulations and the actual situation.

The Report, *Youth in Turkey*, states that “...many (young people) are forced into it [working life] either before they become conscious of alternatives or when they migrate to big cities without the skills required by the urban labour market”. The rate of youth participation in the labour force is as low as 35% in Turkey.¹¹ A particularly noteworthy point is that unemployed men over 18 have either no health insurance or have very limited cover.¹² With regard to education, there has been a shift in the expectations of young people coming from poor families, and such disadvantages result in the inheritance of poverty from one generation to the next.¹³ In short, the lack of education has an important role in the rise of poverty. It should be mentioned that the interruption of education is a serious problem for children and it is a direct end result of poverty. Poverty chronically worsens the living conditions of people and this deterioration is persistent. It results with permanent elimination from social, economical, political and cultural participation mechanisms. Therefore poverty jeopardizes children’s hopes for the future and negatively affects their psychological conditions.

According to the Children’s Foundation (Çocuk Vakfı) report of 2000 in Turkey, only 8% of children receive pre-school education. The rate of poverty in the population is 36% and those with an income below the poverty line are 17.5%. The poverty rate of children under 15 has been declared as 26%. According to the Turkish Statistical Institute, the poverty line in Turkey for the year 2008 is estimated as 767 TL (\$ 511) per month.

In addition to the above mentioned poverty rates, one out of every five children is in employment and the rate of persons between 12 to 19 years of age in the total labour force is 17.2%. It should further be mentioned that according to the research data, 57 percent of employed children are deprived of adequate work safety and subject to unhealthy conditions.¹⁴

Turkey is one of the 6 countries that has cooperated with the ILO and International Programme on the Elimination of Child Labour (IPEC) and has taken direct action to combat child labour. Throughout the technical cooperation period between the years 1992 and 2007, the government has developed multiple policies with clear priorities and targets, and

⁹ <http://bianet.org/bianet/cocuk/118871-sanayide-cocuklar-somuruluyor-siddet-goruyor>, Access date: 22.12.2009.

¹⁰ United Nations Development Programme 2008 (Human Development Report) *Youth in Turkey*, 29

¹¹ United Nations Development Programme 2008 (Human Development Report) *Youth in Turkey*, 14.

¹² United Nations Development Programme 2008 (Human Development Report) *Youth in Turkey*, 15.

¹³ N. Açıklan, *Yoksulluk ve Genç Kuşakların Toplumsal Hareketlilik Olanakları: İstanbul ve Gaziantep Örnekleri*, Çalışma ve Toplum, Vol. 2008/2, 137.

¹⁴ 2000 Hakları Çalınmış Çocuklar Raporu, Çocuk Vakfı Yayını: <http://www.cocukvakfi.org.tr/> Access date: 24.12.2009.

consequently succeeded in eliminating child labour to a certain extent. Nevertheless, the numbers revealed in Child Labour Research conducted in 2006 by the Turkish Statistical Institute with the support of ILO/IPEC, are worrisome.

According to the Child Labour Survey of 2006, the declining trend of child labour of the previous years continues. In line with such optimistic findings, 958,000 children out of 16,264,000 17 year olds are in employment. The same findings disclose the fact that, while in 1994 15.2 % of those between the ages of 6-17 were in employment, the figure decreased to 10.3% in 1999 and to 5.9 % in 2006. In the age group 6-14 years, 320,000 children out of 12,478,000 were in employment. Comparing those figures with October 1999, the rate of employed children has declined from 5.1 % to 2.6 %. According to the survey, the distribution of employed children among sectors is: 41% in agriculture, 28% in industry, 22% in commerce and 9% in services. The worst conditions are observed among those who work on the streets, in the furniture and leather industries and in seasonal agricultural work.

Although precise numbers are unknown, street children are estimated at around 6,000. According to the data dispatched by the Istanbul Governorship to Parliament in 2006, 72.5 % of street children are somehow involved in crime. The risk of involvement increases in correlation with the lifetime spent on the street. The average age of a first offence is 12.1. The most common crime is theft with 70.3%; followed by plunder and assault.

Moreover, the latest Progress Report prepared by the EU in connection with the negotiation process (EU Turkey Progress Report), deals with the issue and states that the poverty rate of children under 15 increased by 0.9% to 26.1% in 2007. In rural areas the rate is as high as 42%. The Report further emphasizes that an integrated approach with well established structures and adequate resources to eradicate child labour has yet to be adopted.¹⁵ Again according to the Report, the Ministry of Labour and Social Security together with its affiliate institutions have inadequate administrative capacity. It is accepted that some efforts have been shown to combat child labour. However, it stated that there is no effective inspection system, that the elimination of this longstanding problem requires the activation of more resources, and that Turkey is not yet well prepared in the area of child labour protection.

¹⁵ EU Turkey Progress Report 2009, 5.