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REVISED EUROPEAN SOCIAL CHARTER

2nd National Report on the implementation of
the European Social Charter (revised)

submitted by

THE GOVERNMENT OF TURKEY

(Articles 2, 4, 21, 22, 26, 28 and 29
for the period 01/01/2005 – 31/12/2008)

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CYCLE 2010

EUROPEAN SOCIAL CHARTER

2nd National Report on the Implementation of
The European Social Charter

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THE GOVERNMENT OF
THE REPUBLIC OF TURKEY

For the period between
January 1, 2005 to July 31, 2008
(Revised Charter)
On Articles 2, 4, 21, 22, 26, 28 and 29

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Article 2 ALL WORKERS HAVE THE RIGHT TO JUST CONDITIONS OF WORK

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;
2. to provide for public holidays with pay;
3. to provide for a minimum of four weeks' annual holiday with pay;
4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;
5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognized by tradition or custom in the country or region concerned as a day of rest;
6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;
7. to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Appendix to Article 2§6

Parties may provide that this provision shall not apply:

a. to workers having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours;
b. where the contract or employment relationship is of a casual and/or specific nature, provided, in these cases, that its non-application is justified by objective considerations.

Article 2§1

The Parties undertake to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit.

<u>Turkish Labour Law 4857</u>

Working Time:

ARTICLE 63 *- In general terms, working time is forty-five hours maximum weekly. Unless the contrary has been decided, working time shall be divided equally by the days of the week worked at the establishment.*

Provided that the parties have so agreed, working time may be divided by the days of the week worked in different forms on condition that the daily working time must not

exceed eleven hours. In this case, within a time period of two months, the average weekly working time of the employee shall not exceed normal weekly working time.

This balancing (equalizing) period may be increased up to four months by collective agreement.

The application methods of working time in line with the principles mentioned above shall be indicated in a regulation to be issued by the Ministry of Labour and Social Security.

The types of work where the daily working time must be seven and half hours maximum or less for health reasons shall be indicated in a regulation to be prepared jointly by the Ministry of Labour and Social Security and the Ministry of Health."

It is seen from the legal framework that reasonable daily and weekly working hours are guaranteed by law.

Working times are regulated by Labour Law No.4857, Article 63. In this article, working time is fixed as 45 hours maximum in a week.

Flexibility is given for working times with the division of working hours equally by the days of the week worked at the establishment. It is accepted that the normal period of weekly working time can be divided by the days of the week worked at the establishment in different forms under the employment contract. On the other hand, there is a provision providing that the daily working time must not exceed eleven hours and average weekly working time of the employee shall not exceed 48 hours including over times.

Weekly working time of the week to be distributed in a different way of working days in case the employer is well-known two-month period of equalization, this time with a collective agreement shall be increased up to four months.

Equalization during the worker's average weekly working time will not exceed normal weekly working time.

In addition, the Working Time Regulation relating to the Labor Law was published in the Official Gazette dated 06.04.2009 with no. 25425 and came into force.

Principles in the Law were repeated in the said regulation and it is taken under the provision of the regulation that the agreement for the application of equalization between the parties should be in written form.

According to regulations, prescribed limitations of working times are related to the workers' himself, not to work places or the work carried out.

In accordance with the Article 104 of the Law titled : "Contradiction to the provisions relating to the regulation of work", it is stated in the Article 63 of the Law and in the Working Time Regulation that the employer or employer's representative who

employed their workers on contrary to the fixed working times in the legislation will be fined.

In addition, “Regulation about the Works needed to work only 7.5 hours or less a day in terms of Health Rules” has been published on Official Gazette dated April 15, 2004 with no. 25434.

Article 2§2:

The Parties undertake to provide for public holidays with pay.

Turkish Labour Law 4857

Work on the national day and public holidays

ARTICLE 44 -*The issue of whether or not work will be done on the national day and public holidays will be decided by the collective agreement or by employment contracts. The employee’s consent is required if there is no provision in the collective agreement or in employment contracts.*

Wages for such days shall be paid in accordance with Article 47.

Remuneration for holidays

ARTICLE 47 - *Employees in establishments covered by this Act shall be paid a full day’s wages for the national and public holidays on which they have not worked; if they work instead of observing the holiday, they shall be paid an additional full day’s wages for each day worked.*

In establishments where a percentage wage system is in effect, the wage for the national and public holidays shall be paid to the employee by the employer.

Turkish Constitution:

Working Conditions and Right to Rest and Leisure

ARTICLE 50 *No one shall be required to perform work unsuited to his age, sex, and capacity.*

Minors, women and persons with physical or mental disabilities, shall enjoy special protection with regard to working conditions.

All workers have the right to rest and leisure.

Rights and conditions relating to paid weekends and holidays, together with paid annual leave, shall be regulated by law.

Paid official holiday leave is guaranteed for workers by these provisions in accordance with the Article 2, paragraph 2 of the Charter. If there is any work during the public holidays, workers get twice the amount of daily wages.

The annual leave is arranged under the article 53 of the Labour Law.

Turkish Labour Law 4857

Annual leave with pay and leave period

ARTICLE 53 – *Employees, who have completed a minimum of one year of service in the establishment since their recruitment, including the trial period, shall be allowed to take annual leave with pay.*

The right to annual leave with pay shall not be waived.

The provisions of this Act on annual leave with pay are not applicable to employees engaged in seasonal or other occupations which, owing to their nature, last less than one year.

The length of the employee's annual leave with pay shall not be less than;

a) fourteen days if his length of service is between one and five years, (five included),

b) twenty days if it is more than five and less than fifteen years,

c) twenty-six days if it is fifteen years and more (fifteen included).

For employees below the age of eighteen and above the age of fifty, the length of annual leave with pay must not be less than twenty days.

The length of annual leave with pay may be increased by employment contracts and collective agreements.

In this Article, it is accepted as a basic rule that annual leave can not be waived. The detail of the duration of the annual leave with pay was given under that Article. On the other hand, it is also accepted that annual leave with pay will not be less than 20 days for workers younger than 18 and older than 50.

By the way, the durations indicated in the Law are the minimum and these durations may be increased by individual employment contract or collective bargaining agreements.

National holidays and public holidays have been identified with "the National Day and Public Holidays Law No: 2429 ". Lately, "May 1st" was accepted as Public Holiday, and named as Labour and Solidarity Day.

According to the Law No. 2429, public offices and institutions will be closed during national, public, religious holidays and on New Year day and May 1st.

Article 2§4:

The Parties undertake to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations.

Turkish Labour Law 4857

Arduous and dangerous work

ARTICLE 85 - *Young employees who have not completed the age of sixteen years and children must not be employed on arduous or dangerous work.*

A regulation shall be issued by the Ministry of Labour and Social Security, after taking the opinion of the Ministry of Health, to specify the categories of work deemed to be arduous or dangerous and the categories of arduous or dangerous work in which young employees who have completed the age of sixteen but are aged under eighteen, as well as women may be employed.

Medical Certificate in arduous or dangerous work

ARTICLE 86 - *An employee shall not be engaged for or employed on any arduous or dangerous work without a certificate based on the results of a medical examination made either at the time of his recruitment or during his employment at least once a year to prove that he is physically fit for the job in question and robust; the medical certificate shall be obtained from the medical practitioner attached to the establishment or from a employees' health dispensary, or in the absence of either, from the medical services of the nearest Social Insurance Organization, health centre, government or municipal medical practitioner, in that order.*

The Social Insurance Organization may not refrain from conducting the first medical examination at the time of the employee's recruitment.

In the event of an objection to the certificate given by the medical practitioner attached to the establishment, the employee concerned shall be examined by the medical council of the nearest hospital of the Social Insurance Organization, in which case the medical certificate given shall be definitive.

Such certificates shall be produced by the employer on request by any competent official.

Such certificates shall be exempt from all fees and taxes.

Medical Certificate for employees aged less than eighteen years

ARTICLE 87 - *Before being admitted to any employment whatsoever, children and young employees aged between fourteen and eighteen (including those in their eighteenth year) shall be examined by the medical practitioner attached to the*

establishment or by an employees' health service, or in the absence of either, by the medical services of the nearest Social Insurance Organization, health centre, government or municipal medical practitioners, in that order, and shall be certified as being physically fit for the job to be performed, taking into consideration the nature and conditions of the work.

Until they have reached the age of eighteen, such employees shall be subject to medical examinations at least every six months in the same manner, to determine whether or not there is any drawback in their continuing their employment; all such certificates shall be filed in the establishment and produced by the employer on request by any competent official. The Social Insurance Organization may not refrain from conducting the first examination before the employee's admission to employment.

In the event of an objection against the certificate issued by any of the medical services mentioned above, the employee in question shall be examined by the medical council of the nearest Social Insurance Organization hospital, in which case the certificate given shall be final.

Such certificates shall be exempt from all stamp duties, fees and taxes.

Related legislations for this subject are Labour Law No. 4857, Regulation about the Works Needed to Work only 7.5 Hours or Less a Day in terms of Health Rules, Regulation on Heavy and Dangerous Works and Notification on Vocational Education of Employees to be Worked at Heavy and Dangerous Works.

An amendment was done at the Article 85 of Labour Law with Law No. 5763 and this amendment was in force since 1st January 2009. According to this amendment, workers who don't have related vocational education can not be employed at the heavy and dangerous work.

Principles and procedures for vocational education of worker to be worked at heavy and dangerous works are arranged by "Notification on Vocational Education of Employees to be worked at Heavy and Dangerous Works". This Notification was published on Official Gazette dated May 31st, 2009, with No. 27244 and then it has been put in force.

The Regulation on Heavy and Dangerous Works arranges the provisions for which works can be considered as heavy and dangerous works and which heavy and dangerous works can be available for women and young employees who have completed the age of sixteen but younger than eighteen. A chart for heavy and dangerous works is attached to the Regulation.

It is obvious that women and young employees who have completed the age of sixteen but younger than eighteen should get medical report showing their physical conditions are available for heavy and dangerous works in terms of conditions and nature of works. If it is needed, this medical report may include laboratory examination.

For young employees who have completed the age of sixteen but younger than eighteen, at least every 6 months, for the others at least once in a year, medical report should confirm that there is not any problems for them to be employed at heavy and dangerous works while they are working.

It is forbidden to employ workers at heavy and dangerous works without medical report.

Worker's health status at the beginning of the work and during the periodic inspection and other necessary information should be recorded on the medical report.

If any abuse done against the provisions of the Regulation, if any woman or young employee who has not completed the age of sixteen but younger than eighteen have been determined that they are employed at heavy and dangerous works even their health status are not available to these kind of heavy and dangerous works, these workers are stopped to work at the heavy and dangerous works.

If an employer or employer's representative recruits any woman or young employee who has not completed the age of sixteen but younger than eighteen at heavy and dangerous works on contrary to Article 85 of Labour Law, money penalty for each worker will be given. On the other hand, if an employer or employer's representative recruits workers who have not vocational education mentioned in the first paragraph of Article 85 of Labour Law, money penalty for each worker will be given.

The purpose of the Regulation about the Works Needed to Work only 7.5 Hours or Less a Day in terms of Health Rules, and of the Regulation on Heavy and Dangerous Works is to regulate maximum working hours for workers at the heavy and dangerous works. Work list to be worked maximum 7.5 hours or less in terms of health rules is determined by the Regulation.

Workers who employed at the works covered by the Regulation can not be employed at any other works after the maximum working times determined by the Regulation and also can not work overtimes at the works mentioned in the Regulation.

Employers who engaged permanently or time to time in anyone of the works mentioned in the Regulation are obliged to notify types and qualities of the work, working times of the work, number of the employed women and men workers to the Regional Directorate of the Ministry of Labour and Social Security at the region of the work place in a written form.

The Regulation of Preparation, Completion and Cleaning Works is prepared according to the Labour Law. In this Regulation, in case of the preparation, completion and cleaning works mentioned in the Regulation about the Works Needed to Work only 7.5 Hours or Less a Day in terms of Health Rules was done by competence workers, working times of all these works have to be arranged according to working time limits indicated in the said Regulation. The working times can not exceed the times mentioned in the Regulation.

In case of the determination of any contrary situation to the legislation at the work place, penalty will be given to the employer. For this subject, Article 79 is related.

Suspending operations or closing the establishment:

ARTICLE 79 - *If any defects endangering the lives of employees are found to exist in the installations and arrangements, in the working methods and conditions or in the machinery and equipment, operations shall be stopped partly or completely or the establishment shall be closed until the danger is eliminated, following the decision to that effect taken by a five-member committee consisting of two labour inspectors authorized to carry out occupational health and safety inspections in establishments, an employee and an employer representative and the regional director of labour. The committee shall be presided over by the senior labour inspector.*

The work and secretarial services of the committee shall be conducted by the regional directorate of labour.

The composition as well as the working methods and principles of the committee for military establishments and establishments producing materials for national defense shall be indicated in a regulation to be jointly prepared by the Ministry of National Defense and Ministry of Labour and Social Security.

The employer is entitled to lodge an appeal with the competent local labour court within six working days against the suspension or closing decision taken in view of this Article.

Appeal to the labour court shall not preclude the execution of the decision to suspend the operations or to close the establishment.

The court shall take up the appeal as a priority issue and issue its decision on the objection in six working days. Decisions of the court are final and binding.

Where an employee's age, sex or health is incompatible with his employment in the establishment, he shall not be permitted to work.

The manners by which the installations and arrangements or machinery and equipment which pose danger for employees, as explained in the above subsections, are to be barred from operating and how they will be permitted to operate again as well as the closing and reopening of the establishment, the measures to be taken in urgent cases until a decision is taken to suspend the operations or to close the establishment, as well as the qualifications and election of the employee and employer representatives to function in the committee, and the working methods and principles of the said committee shall be indicated in a regulation to be prepared by the Ministry of Labour and Social Security.

The permission to set up and operate an establishment shall in no way preclude the application of the provisions foreseen in Article 78.

The employer shall pay his employees their wages or employ them on other jobs in accordance with their occupational skills or status, without any reduction in wages, if they remain without work because of the suspension of the machinery, installations or working arrangements or the closing of the establishment in accordance with the first subsection of this article.

Article 2§5

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to ensure a weekly rest period which shall, as far as possible, coincide with the day recognized by tradition or custom in the country or region concerned as a day of rest

Issues related with this Article of the European Social Charter are arranged by The Constitution and Labour Law No. 4857.

The Constitution:

Working Conditions and Right to Rest and Leisure

ARTICLE 50 *No one shall be required to perform work unsuited to his age, sex, and capacity.*

Minors, women and persons with physical or mental disabilities, shall enjoy special protection with regard to working conditions.

All workers have the right to rest and leisure.

Rights and conditions relating to paid weekends and holidays, together with paid annual leave, shall be regulated by law.

According to the Article 46 of Labour Law, the employees working in establishments covered by this Law shall be allowed to take a rest for a minimum of twenty-four hours (weekly rest day) without interruption within a seven-day time period, provided they have worked on the day preceding the weekly rest day as indicated in Article 63. The employer shall pay the employee's daily wage, without any work obligation in return for the non-worked rest day.

In the Law, the list for the days shall be reckoned as days-worked is also given.

Turkish Labour Law 4857

Remuneration for weekly rest day

ARTICLE 46 - *The employees working in establishments covered by this Act shall be allowed to take a rest for a minimum of twenty-four hours (weekly rest day) without interruption within a seven-day time period, provided they have worked on the day preceding the weekly rest day as indicated in Article 63.*

For the non-worked rest day, the employer shall pay the employee's daily wage, without any work obligation in return.

For entitlement, the following shall be reckoned as days worked;

a) time periods deemed to be part of the working time although no work has been done, and any periods of holidays, with or without pay, either statutory or based on contract,

b) up to three days' leave of absence in the event of the employee's marriage and up to three days' leave in the event of the death of the employee's mother, father, spouse, brother or sister, and child,

c) any leave granted by the employer and any sick or convalescent leave based on a medical report, subject to a maximum of one week,

If the employer, without being obliged to do so by force majeure or economic reasons, suspends work on one or more days of the week, these days on which no work has been done shall be reckoned as days worked in order to be entitled to paid weekly rest day. If work is suspended in an establishment for more than one week on account of force majeure, the wages payable to employees for days not worked due to force majeure in accordance with subsections III of Articles 25 and 26 shall be paid also for the weekly rest day.

In establishments where a percentage wage system is in effect, the wage for the weekly rest day shall be paid to the employee by the employer.

Article 2§6

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship.

According to the Article 8 of the Labour Law No.4857, if the period of employment contract is for one year or more, it has to be done in a written form. If it is not in a written form, the employer has to inform within latest two months the employee about the general and special working conditions, daily or weekly working hours, base wage and if there is additional wages, about the payment date. If the period of employment contract is defined, the employer has to give a written form which shows the period of the contract and the provision which has to be obeyed by all parts in case of the termination of the employment.

Turkish Labour Law 4857

Definition and form

ARTICLE 8 - *Employment contract is an agreement whereby one party (the employee) undertakes to perform work in subordination to the other party (the employer) who undertakes to pay him remuneration. The employment contract is not subject to any special form unless the contrary is stipulated by the Act.*

Written form is required for employment contracts with a fixed duration of one year or more, such written documents are exempt from the stamp tax and all kinds of fees.

In cases where no written contract has been made, the employer is under the obligation to provide the employee with a written document, within two months at the latest, showing the general and special conditions of work, the daily or weekly working time, the basic wage and any wage supplements, the time intervals for remuneration, the duration if it is a fixed term contract, and conditions concerning the termination of the contract. This subsection shall not apply in the case of fixed term contracts whose duration does not exceed one month. If the employment contract has expired before the lapse of two months, this information must be communicated to the employee in written form on the expiration date at the latest.

Article 2§7

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to ensure that workers performing night work benefit from measures which take account of the special nature of the work

Turkish Labour Law 4857

Night hours and night work

ARTICLE 69 - *For the purposes of working life, "night" means the part of the day beginning not later than 20.000 hours and ending not earlier than 6.00 hours, and lasting not longer than 11 hours in any case.*

According to the nature and requirements of certain activities or regional characteristics in the country, regulations may be issued with a view to move back the beginning of night work to an earlier time or, in determining the methods of implementing the provisions of the first subsection, to rearrange summer and winter hours or to fix the beginning and ending of daily working time, or to apply payment of extra wages to certain night work, or to prohibit night work altogether in establishments where there is no economic necessity for night work.

Night work for employees must not exceed seven and a half hours.

Suitability of employees for night work shall be certified by a health report to be obtained before they begin work. Employees who are employed on night work shall

be subjected by the employer to a periodic health examination at least once every two years. The costs of employees' health examinations shall be met by the employer.

The employer shall assign, to the extent possible, the employee who presents documentary evidence that his health has been impaired because of night work to a suitable job in the day shift.

The employer is under the obligation to submit to the relevant regional directorate of labour the list of employees who shall be employed on night shifts as well as a copy of the health reports issued before the said employees have begun work and then given periodically.

In establishments where operations are carried on day and night by alternating shifts of employees, the alternation of shifts must be so arranged that employees are engaged on night work for not more than one week and are then engaged on day work the following week. Alternation of work on night and day shifts may also be carried out on a two-week basis.

The employee whose shift will be changed must not be engaged on the other shift unless allowed a minimum rest break of eleven hours.

Restrictions on night work

ARTICLE 73 - *Children and young employees under the age of eighteen must not be employed on industrial work during the night.*

The principles and methods for employing women who have completed the age of eighteen on night shifts shall be indicated in a regulation to be prepared by the Ministry of Labour and Social Security upon receiving the opinion of the Ministry Health.

Night Works are arranged by Labour Law and the Regulation on the Special Principles and Rules of the Works Executed by Employing Workers in the Form of Shifts and The Regulation on the Working Conditions of Women Workers to Be Employed at the Night Shifts.

The Regulation on the Special Principles and Rules of the Works Executed by Employing Workers in the Form of Shifts is prepared according to Article 76 of the Labour Law. In this Regulation, night work is defined as "the work at the part of the day beginning at 8 o'clock (pm) and ending at 6.00 o'clock (am), and lasting not longer than 11 hours in any case." It is forbidden to employee children and young employees under the age of eighteen on industrial work during the night.

It is forbidden to employ workers at night shift more than 7.5 hours except the works mentioned at the Article 42 and 43 of the Labour Law, at the Law No.79 on The Amnesty of National Prevention Crime and at the Regulation on Preparation, Completion and Cleaning Works.

According to the Regulation on Preparation, Completion and Cleaning Works, if a worker works more than the half of full working times at night shift, this work is considered as a night work. If a worker works at nights shift for a week, for the other week, that worker has to work at day time.

If a worker has a medical problem due to the night works and has a medical report for this health problem, the employer, if it is possible, gives a day time work to this worker.

The Regulation on Working Conditions of Employing Women Workers at Night Works arranges the working conditions and rules for employing women workers at night works. According to the Regulation, women workers can not be employed at the night's shifts more than 7.5 hours. Pregnant woman worker can not be employed at night shift during her pregnancy and woman worker who is breast-feeding her baby can not be employed at night shifts for six months starting from the birth of her baby. This period can be extended to one year if it is necessary in terms of the health of baby or of the woman worker.

Article 4 – THE RIGHT TO A FAIR REMUNERATION

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake:

1. to recognize the right of workers to a remuneration such as will give them and their families a decent standard of living;
2. to recognize the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. to recognize the right of men and women workers to equal pay for work of equal value;
4. to recognizes the right of all workers to a reasonable period of notice for termination of employment;
5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of this right shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

Appendix to Article 4§4
This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.

Appendix to Article 4§5
It is understood that a Contracting Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exception being those persons not so covered.]

Article 4§2:

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake to recognize the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;

Turkish Labour Law 4857

Overtime wage

ARTICLE 41 - *Overtime work may be performed for purposes such as the country's interest, the nature of the operation or the need to increase output. Overtime work is work which, under conditions specified in this Act, exceeds forty-five hours a week. In cases where the principle of balancing is applied in accordance with Article 63, work which exceeds a total of forty-five hours a week shall not be deemed overtime work, provided the average working time of the employee does not exceed the normal weekly working time.*

Wages for each hour of overtime shall be remunerated at one and a half times the normal hourly rate.

In cases where the weekly working time has been set by contract at less than forty-five hours, work that exceeds the average weekly working time done in conduction with the principles stated above and which may last only up to forty-five hours weekly is deemed to be work at extra hours. In work at extra hours, each extra hour shall be remunerated at one and a quarter times the normal hourly rate.

If the employee who has worked overtime or at extra hours so wishes, rather than receiving overtime pay he may use, as free time, one-hour and thirty minutes for each hour worked overtime and one hour and fifteen minutes for each extra hour worked.

The employee shall use the free time to which he is entitled within six months, within his working time and without any deduction in his wages

No overtime work shall be done in work of short or limited duration due to health reasons mentioned in the last subsection of Article 63 as well as in night work stated in Article 69.

The employee's consent shall be required for overtime work.

Total overtime work shall not be more than two hundred seventy hours in a year.

Overtime work and its methods shall be indicated in a regulation to be issued.

Arrangements in the same direction have been put in force according to the said Article of Labour Law by the Regulation on Over Works and Overtime Works. In Turkish Labour Legislation, wages for overtimes is guaranteed and workers can

prefer free-times instead of overtime wage. If worker can prefer free-times instead of overtime wage, free time will be longer than over work.

In Labour Law No.4857, daily working is based on weekly working hours and overtime work is work which, under conditions specified in this Law, exceeds forty-five hours a week. Work which exceeds a total of forty-five hours a week shall not be deemed overtime work. In cases where the weekly working time has been set by contract at less than forty-five hours, work that exceeds the average weekly working time is deemed to be work at extra hours and each extra hour shall be remunerated at one and a quarter times the normal hourly rate. If the employee who has worked overtime or at extra hours so wishes, rather than receiving overtime pay he may use free time.

Article 4§3[1]

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake to recognize the right of men and women workers to equal pay for work of equal value:

As Turkey accepted Article 20 of the Revised European Social Charter, the answer for this paragraph will be given for the Article 20 of the Charter. These questions for Article 4§3 will be taken into account in answers on Article 20.

Article 4§4

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake to recognizes the right of all workers to a reasonable period of notice for termination of employment

Turkish Labour Law 4857

Notice of Termination

ARTICLE 17 - *Before terminating a continual employment contract made for an indefinite period, a notice to the other party must be served by the terminating party.*

The contract shall then terminate:

a) in the case of an employee whose employment has lasted less than six months, at the end of the second week following the serving of notice to the other party;

b) in the case of an employee whose employment has lasted for six months or

[1] States party that have accepted Article 20 of the European Social Charter (revised) do not have to reply to questions on Article 4§3, but must take account of these questions in their answers on Article 20.

more but for less than one-and-a-half years, at the end of the fourth week following the serving of notice to the other party;

c) in the case of an employee whose employment has lasted for one-and-a-half years or more but for less than three years, at the end of the sixth week following the serving of notice to the other party;

d) in the case of an employee whose employment has lasted for more than three years, at the end of the eighth week following the serving of notice to the other party.

These are minimum periods and may be increased by contracts between the parties.

The party who does not abide by the rule to serve notice shall pay compensation covering the wages which correspond to the term of notice.

The employer may terminate the employment contract by paying in advance the wages corresponding to the term of notice.

The employer's non-observance of the rule of giving notice or his terminating the employment contract by paying in advance the wages corresponding to the term of notice shall not preclude the application of Articles 18, 19, 20 and 21 of this Act. In cases where employment contracts of employees who fall outside the scope of Articles 18, 19, 20 and 21 of this Act by definition of subsection I of Article 18 have been ended by the abusive exercise of the right to terminate, the employee shall be paid compensation amounting to three times the wages for the term of notice. If the rule to give notice has not been observed either, the employee must be paid an additional compensation (notice pay) in accordance with subsection 4 above.

In the computation of compensations to be paid in accordance with this Article as well as the advance notice pay, all the monetary benefits plus other benefits which can be measured in monetary terms emanating from the contract and from the law shall be taken into consideration in addition to the wage defined in subsection 1 of Article 32.

On the other hand, there are some exceptions.

The breaking of the employment contract by the initiative of the employer (summary termination)

ARTICLE 25 *- The employer may break the contract, whether for a definite or indefinite period, before its expiry or without having to comply with the prescribed notice periods, in the following cases:*

I. For reasons of health

a) If the employee has contracted a disease or suffered an injury owing to his own deliberate act, loose living or drunkenness, and as a result is absent for three successive days or for more than five working days in any month.

b) If the Health Committee has determined that the suffering is incurable and incompatible with the performance of the employee's duties. In cases of

illness or accident which are not attributable to the employee's fault and which are due to reasons outside those set forth in (a) above and in cases of pregnancy or confinement, the employer is entitled to terminate the contract if recovery from the illness or injury continues for more than six weeks beyond the notice periods set forth in article 17. In cases of pregnancy or confinement, the period mentioned above shall begin at the end of the period stipulated in Article 74. No wages are to be paid for the period during which the employee fails to report to work due to the suspension of his (her) contract.

II. For immoral, dishonorable or malicious conduct or other similar behavior

a) If, when the contract was concluded, the employee misled the employer by falsely claiming to possess qualifications or to satisfy requirements which constitute an essential feature of the contract, or by giving false information or making false statements;

b) If the employee is guilty of any speech or action constituting an offence against the honour or dignity of the employer or a member of his family, or levels groundless accusations against the employer in matters affecting the latter's honour or dignity;

c) If the employee sexually harasses another employee of the employer;

d) If the employee assaults or threatens the employer, a member of his family or a fellow employee, or if he violates the provisions of Article 84;

e) If the employee commits a dishonest act against the employer, such as a breach of trust, theft or disclosure of the employer's trade secrets.;

f) If the employee commits an offence on the premises of the undertaking which is punishable with seven days' or more imprisonment without probation;

g) If, without the employer's permission or a good reason, the employee is absent from work for two consecutive days, or twice in one month on the working day following a rest day or on three working days in any month;

h) If the employee refuses, after being warned, to perform his duties;

i) If either wilfully or through gross negligence the employee imperils safety or damages machinery, equipment or other articles or materials in his care, whether these are the employer's property or not, and the damage cannot be offset by his thirty days' pay.

III. Force majeure:

Force majeure is to prevent the employee from performing his duties for more than one week.

***IV.** If due to the employee's being taken into custody or due to his arrest, his absence from work exceeds the notice period indicated in Article 17.*

The employee may file a lawsuit according to Articles 18,20 and 21 by claiming that the termination was not in conformity with the subsections cited above. http://www.turkishlaborlaw.com/content/view/27/77/ - 0

Article 4§5

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards

Turkish Labour Law 4857

Deductions of fines from wages

ARTICLE 38 *- No employer may impose a fine on an employee's wage for reasons other than those indicated in the collective agreement or the employment contract. The employee must be notified at once, together with the reason, of any wage deductions as fines.*

Deductions made in this way must not exceed three days' wages in any one month, or in the case of piece work or amount of work to be done, the wages earned by the employee in two days.

These deductions shall be credited within one month to the account of the Ministry of Labour and Social Security in a bank established in Turkey and must be designated by the Ministry for use in the training of and social services for employees. Every employer must maintain a separate account in his establishment showing such deductions. A committee presided over by the Minister of Labour and Social Security and including employees' representatives shall decide where and in what amounts the fines thus collected are to be used. Rules for the establishment and working methods of this committee shall be indicated in a regulation to be issued.

The Related Regulation on this issue is "The Regulation on the Principles of Composing the Board and Working Principles of the Board that is authorized to Use the Penal Deductions Done from the Employee's Wage".

Cases where reduction in wages is not permissible:

ARTICLE 62 *- No deductions of any kind may be made from an employee's wages on the grounds that the daily or weekly working hours applicable to any type of work have been reduced by law, or by reason of the fulfillment by the employer of any legal obligation or because of any mandatory obligation imposed on the employer by the provisions of this Act.*

Protected portion of the wage:

ARTICLE 35 *- Not more than one - fourth of the wages in a month may be seized, transferred or assigned to a third party, provided that any maintenance allowances*

awarded by a judge to members of the employee's family whom he is required to support shall not be included in this sum. This provision shall apply without prejudice to the rights of persons entitled to alimony.

Guarantee of Wages of employees employed in certain jobs:

ARTICLE 113 *- Provisions of Articles 32,35,37 and 38 shall apply to employees working in establishments cited in subsections (b) and (ı) of the first paragraph of Article 4 of this Act. In the event of violations of these articles, relevant penal provisions shall apply to the persons concerned.*

The Wage and its remuneration:

ARTICLE 32 *- Wage is, in general terms, the amount of money to be paid in cash by an employer or by a third party to a person in return for work performed by him.*

As a rule the wage shall be paid in Turkish money (legal tender) at the establishment or shall be deposited into a specially opened bank account. If the wage has been decided in terms of a foreign currency, it may be paid in Turkish money according to the currency rate on the date of payment.

Wage payment must not be made in bonds, coupons or another paper claimed to represent the national currency valid in the country or by any other means whatsoever.

Wage may be paid on a monthly basis at the latest. The time of remuneration may be reduced down to one week by employment contract or by collective agreement.

Upon the expiration of the employment contract, employee's wage claims as well as all the benefits based on the employment contract and law must be paid in full.

No wage payments may be made to employees in bars and similar entertainment areas where alcoholic beverages are served as well as in retail stores, with the exception of employees working in such establishments.

Statutory limitation on wage claims is five years. http://www.turkishlaborlaw.com/content/view/27/77/ - 0

Wage account slip:

ARTICLE 37*- In wage payments which the employer makes at the establishment or through a bank, he must deliver to the employee a signed slip showing the wage account and bearing the special mark of the establishment.*

This slip must indicate clearly the date of payment, the pay period, all supplements to basic wages such as overtime earnings, payments for weekly rest days and national or general holidays, and all deductions such as taxes, insurance contributions, reimbursement of advance payments, payments for alimony and sequestrated deductions.

These transactions are exempt from all stamp taxes and fees.

Answer to the coverage of Turkish Legislation in respect of the limitation of deduction from wages as non-conformity is on the ground that not all workers are protected against deduction from wages:

There are some exceptions in terms of the coverage of the labour law. These are mentioned at the Article 4 of Labour Law.

These exceptions are;

a) Sea and air transport activities,
b) Agriculture and forestry workplaces employing less than 50 workers,
c) All construction Works related to agriculture which falls within the scope of family economy,
d) Handicrafts and Works performed at home without any outside help by family members or close relatives up to 3rd degree (3rd degree included),
e) Domestic services,
f) Apprentices,
g) Sportmen,
h) Those undergoing rehabilitation,
i) Small workplaces where only 3 persons are employed.

But, agriculture and forestry workplaces employing less than 50 workers can arrange a collective labour contract and by this arrangement they can be also under the coverage of the labour legislation.

On the other hand, according to the Article 113 of Labour Law, regarding the "Guarantee of wages of employees employed in certain jobs", provisions of Article 32 of Labour Law related with wage and its remuneration Article 35 of Labour Law related with protected portion of wages and Articles 37 and 38 of Labour Law related with deductions of fines from wages shall be applied to employees working in establishment cited in Article 4 of Labour Law Paragraphs (b) and (I), it means agriculture and forestry workplaces employing less than 50 workers and small workplaces where only 3 persons are employed are also under the coverage of labour law in terms of wage protection.

All other sectors left out of labour law are covered by other labour law and/or special law, international laws and regulations, like the Code on sea Labour, Civil Aviation legislation, Trade Union Law if the workplace is unionized.

For example, sea and air transportation are not covered by labour law because of their characteristics, but are covered by the Code on Sea Labour Law and Civil Aviation Legislation.

For the other groups, provisions of code of obligation, execution and bankruptcy law, law on public claim are applied in relation to the limitation of deduction from wages.

On the other hand, Turkey ratified ILO convention No.95, Protection of Wages and according to Turkish Constitution International Conventions adopted by the Turkish Parliament by a law of Ratification directly become a part of domestic legislation and their provisions have priority over other domestic laws.

Worker has right to appeal to the Courts in case of unfair deduction from her/his wage and benefits from the limits laid down in our national law for wage deduction. These limits can take places in all above mentioned legislations, not only in labour law.

Workers from several sectors can appeal to the court and limitation for deduction of wages according to national law is applied to all.

Article 21 – THE RIGHT OF WORKERS TO BE INFORMED AND CONSULTED WITHIN THE UNDERTAKING

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

a. to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and
b. to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

Appendix to Articles 21 and 22

1. For the purpose of the application of these articles, the term “workers’ representatives” means persons who are recognized as such under national legislation or practice.
2. The terms “national legislation and practice” embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers’ representatives, customs as well as relevant case law.
3. For the purpose of the application of these articles, the term “undertaking” is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy.
4. It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are “undertakings” within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is

necessary to protect the orientation of the undertaking.

5. It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.

6. The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

Article 21 – The Right Of Workers To Be Informed And Consulted Within The Undertaking

Turkish Labour Law 4857

Collective dismissal

ARTICLE 29 *- When the employer contemplates collective terminations for reasons of an economic, technological, structural or similar nature necessitated by the requirements of the enterprise, the establishment or activity, he shall provide the union shop-stewards, the relevant regional directorate of labour and the Public Employment Office with written information at least 30 days prior to the intended lay-off.*

A collective dismissal occurs when,

a) In establishments employing between 20 and 100 employees, a minimum of 10 employees; and

b) In establishments employing between 101 and 300 employees, a minimum of 10 percent of employees; and

c) In establishments employing 301 and more workers, a minimum of 30 employees, are to be terminated in accordance with Article 17 on the same date or at different dates within one month.

The said written communication shall include the reason for the contemplated layoff, the number and groups to be affected by the lay-off as well as the length of time the procedure of terminations is likely to take.

Consultations with union shop-stewards to take place after the said notification shall deal with measures to be taken to avert or to reduce the terminations as well as measures to mitigate or minimize their adverse effects on the workers concerned. A document showing that the said consultations have been held shall be drawn up at the end of the meeting.

Notices of termination shall take effect 30 days after the notification of the regional directorate of labour concerning the intended lay-offs.

In the event of closing the entire establishment which involves a definite and permanent stoppage of activities, the employer shall notify, at least 30 days prior to the intended closure, only the regional directorate of labour and the Public Employment Office and shall post the relevant announcement at the establishment.

If in seasonal and campaign work layoffs are carried out in conjunction with the nature of such work, provisions on collective dismissals shall not apply.

The employer shall not apply the provisions on collective dismissal to evade and prevent the application of Articles 18, 19, 20 and 21; otherwise the employee may file suit according to these articles.

In our legislation, there are some provisions arranging the information system for workers about the economic and financial situation of the undertaking on a regular basis in an understandable format and arranging consulting system for workers to be involved about the decisions to be taken about the issues concerning the interests of workers.

The main arrangement about the right of workers to be informed and consulted within the undertaking is “workplace union representation”.

Trade Union Law 2821

Appointment of and conditions applying to shop stewards:

Article 34: *A trade union, whose competence to conclude the collective labour agreement is certified, shall appoint shop stewards from among its members at the establishment in the following manner, and shall provide the names of such union representatives to the employer within 15 days: one shop steward, if the number of workers in the establishment does not exceed 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; and, not more than eight, if the number of workers exceeds 2,000. One of the above representatives or shop stewards may be designated as chief representative or shop steward.*

The conditions set out in section 5 respecting founding members shall also apply to shop stewards.

Functions of shop stewards:

Article 35: *The functions and the duties of shop and chief stewards, on condition that they are limited only to the establishment, shall be: to take notice of workers' requests and the handling of grievances; to promote and maintain cooperation, harmony at work and peaceful relations between workers and employers; to protect the rights and interests of the workers; to assist and supervise the application of working conditions provided for in labour legislation and collective labour*

agreements. The functions of shop stewards shall continue as long as the competence of the trade union is valid.

Shop stewards shall carry out their functions and duties on condition that their own work and the work discipline at the establishment are not hindered.

By Article 34 and 35 of Trade Union Law No.2821, appointment of and conditions applying to shop stewards and functions of shop stewards are arranged. The functions and the duties of workplace trade union representatives shall be:

- to take notice of workers' requests and the handling of grievances;
- to promote and maintain cooperation, harmony at work and peaceful relations between workers and employers;
- to protect the rights and interests of the workers;
- to assist and supervise the application of working conditions provided for in labour legislation and collective labour agreements.

Turkey has ratified ILO Convention No.144 and pays more attention to social dialog, tripartite structure (dialogue among government - trade union and employer's organization) in labour relations.

"Workers' Representative" system was offered during the preparation of Labour Law No.4857, but trade unions was not in favour of the system due to cause difficulties for union organization, social partners could not reach any consensus on this issue and at the end, that system was aborted from the Draft Law.

Informing the Workers

For effective implementation of occupational health and safety services at the workplace, giving information to the workers is a must. With this purpose:

a) The employer, according to the size of the establishment, will make sure that the workers and their representatives receive the necessary information concerning:

- The safety and health risks and protective and preventive measures and activities in respect of both the establishment in general and each type of workstation and job
- According to Article 8 section (b) of the By-law, is obliged to give the necessary information regarding the people hired, to the workers and their representatives.

b) The employer shall take appropriate measures so that employers of workers from any outside establishment engaged in work in his establishment receive adequate information concerning the points referred to in section (a), which is to be relayed to the workers in question.

c) The employer shall make sure that, the workers with specific functions in protecting the safety and health of workers or workers' representatives have access to the following, to carry on their duties effectively:

- The risk assessment and protective measures referred to in sub-sections (1) and (2) of section (a) of Article 9 of this By-law
- The accident lists and reports referred to in sub-sections (3) and (4) of section (a) of Article 9 of this By-law,
- The information yielded by protective and preventive measures, control activities related to health and safety, and inspection agencies and bodies responsible for safety and health.

Consultation and participation of workers

The employer is obliged to implement the following provisions to ensure the consultation and participation of the workers on issues related to health and safety:

a) The employer on issues related to health and safety, consult the workers or their representatives, give them the right to make proposals, and will ensure their balanced participation in discussions of such issues.

b) Workers or workers' representatives with specific responsibility for the safety and health of workers shall take part in a balanced way, or shall be consulted in advance by the employer with regard to:

- Any measure which may substantially affect safety and health
- The designation of workers referred to in Articles 7 section (a) and 8 section (b) and the activities referred to in Article 7 section (a) of this Bylaw
- The issues referred to in Article 9 section (a) and Article 10 of this Bylaw
- The enlistment of the competent services or persons outside the establishment as referred to in Article 7 section (c)
- The planning and organization of the training referred to in Article 12 of this By-law.

c) Workers' representatives with specific responsibility for the safety and health of workers shall have the right to ask the employer to take appropriate measures and to submit proposals to him/her to that end to mitigate hazards for workers and to remove sources of danger.

d) Workers or workers' representatives with specific responsibilities for occupational health and safety may not be placed at a disadvantage because of their respective activities.

e) Employers must allow workers' representatives with specific responsibility for the safety and health of workers, adequate time off work without loss of pay, and provide them with the necessary means to exercise their functions mentioned in this By-law.

f) Workers or their representatives are entitled to appeal to the Ministry, if they consider that the measures taken and the means employed by the employer for the occupational health and safety are inadequate.

Workers' representatives must have the right to express their opinions during inspection visits by the competent authority.

Training of workers

For ensuring health and safety at the workplace:

a) The employer shall ensure that each worker receives adequate safety and health training, in particular in the form of information and instructions specific to his job. Such training shall be provided in particular:

- Upon recruitment, before starting the job
- In the event of a transfer or a change of job
- In the event of a change in the work equipment or getting new equipment
- In the event of the introduction of any new technology.

The training shall be adapted to take account of new or changed risks and if necessary repeated periodically.

b) The employer shall ensure that workers from outside establishments engaged in work in his establishment have in fact received appropriate instructions regarding health and safety risks during their activities in his establishment.

c) Workers' representatives who have specific responsibilities for health and safety shall be provided special training.

d) The training mentioned in sections (a) and (c) may not be at workers' or their representatives' expense and the time spent in training shall be counted as time worked.

It has the following statements as regards the designation of workers responsible for the protection and preventive related activities and as regards the external services;

a) Without prejudice to the obligations referred to in related articles, the employer shall designate one or more workers to carry out activities related to the protection and prevention of occupational risks for the establishment.

b) Designated workers may not be placed at any disadvantage because of their activities related to the protection and prevention of occupational risks. Designated workers shall be allowed adequate time to enable them to fulfill their obligations arising from this By-law.

c) If such protective and preventive measures cannot be organized for lack of competent personnel in the establishment, the employer shall enlist competent external services or persons.

There is certification system for the occupational medicines, occupational safety engineers and occupational nurses. There are committees to decide the curriculum and means of training for each certification programme consisted of the interested parties including the employers, employees, higher education council, chambers of engineers etc.

The regulation contains the following articles as regards the first aid, fire fighting and evacuation;

a) The employer shall:

- Take the necessary measures for first-aid, fire-fighting and evacuation of workers, adapted to the nature of the activities and the size of the establishment and taking into account the other persons present

- Arrange any necessary contacts with external services, particularly as regards to first-aid, emergency medical care, rescue work and fire-fighting

b) The employer, for first-aid, fire-fighting and evacuation of the workplace referred to in section (a), taking into account the size of the establishment and the specific dangers, shall assign people who are trained on this subject have the appropriate equipment, and be in sufficient numbers.

c) The employer shall:

- As soon as possible inform all workers who are or may be exposed to serious and imminent danger of the risk involved and of the steps taken or to be taken as regards to protection

- Take action and instructions to enable workers in the event of serious, imminent and unavoidable danger to stop work and immediately leave the workplace and proceed to a place of safety

- Under the working conditions where the serious and imminent danger is continuing, except the persons that are specially assigned, it shall be refrained from asking workers to resume work in a working situation where there is still a serious and imminent danger.

d) Workers who, in the event of serious, imminent and unavoidable danger, leave their workstations and/or a dangerous area may not be placed at any disadvantage because of their action and must be protected against any harm.

e) The employer shall ensure that all workers are able to take the appropriate steps in the light of their knowledge and with the technical means at their disposal, in the event of serious and imminent danger to their own and/or that of other persons, and where the immediate superior cannot be contacted, to avoid the consequences of such danger.

Their actions shall not place them at any disadvantage, unless they acted carelessly or there was negligence on their part.

According to the Article 14 of the implementing regulation employer is responsible of giving workers health surveillance appropriate to the health and safety risks they are exposed to at work:

a) A health report certifying that the condition of health of the worker is appropriate to the work to be performed, shall be obtained when a worker is recruited,

b) Depending on the nature of the work, as the work continues, health surveillance shall be done periodically.

Employers are obliged to report every occupational accident to the Ministry and to the Social Security Institution. Occupational accident reporting to the Ministry shall include at least the following;

- Gender, age, working time of injured worker
- Education level of the worker, his/her job during the accident and whether it is his/her own duty or not
- Condition of worker after the accident (injury, physical loss, death)
- Short story and damage level of the accident

Article 22 – THE RIGHT TO TAKE PART IN THE DETERMINATION AND IMPROVEMENT OF THE WORKING CONDITIONS AND WORKING ENVIRONMENT

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

a. to the determination and the improvement of the working conditions, work organization and working environment;
b. to the protection of health and safety within the undertaking;
c. to the organization of social and socio-cultural services and facilities within the undertaking;
d. to the supervision of the observance of regulations on these matters.

Appendix to Articles 21 and 22

1. For the purpose of the application of these articles, the term “workers’ representatives” means persons who are recognized as such under national legislation or practice.
2. The terms “national legislation and practice” embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers’ representatives, customs as well as relevant case law.
3. For the purpose of the application of these articles, the term “undertaking” is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy.

4. It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are "undertakings" within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.
5. It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.
6. The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

Appendix to Article 22

1. This provision affects neither the powers nor obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of the bodies in charge of monitoring their application.
2. The terms "social and socio-cultural services and facilities" are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children's holiday camps, etc.

Article 22 – The right to take part in the determination and improvement of the working conditions and working environment

Turkish Labour Law 4857

By laws and regulations on occupational health and safety

ARTICLE 78- *The Ministry of Labour and Social Security, after taking the opinion of the Ministry of Health, shall issue bylaws and regulations, with a view to ensure the adoption of occupational health and safety measures in the establishments, the prevention of work accidents and occupational diseases which may arise from the use of machinery, equipment and tools as well as the arrangement of working conditions for persons who must be protected because of their age, sex and special circumstances.*

Furthermore, a regulation to be prepared by the Ministry of Labour and Social Security, after taking the opinion of the Ministry of Health, shall indicate, in view of the number of employees, size, the nature and the precariousness and dangers posed by the operations, in which establishments covered by this Act an opening permit should be obtained from the Ministry of Labour and Social Security upon submitting to the relevant authorities of the Ministry operation plans before setting up the establishment as well as for which establishments an operations permit should be obtained from the same authority after the setting up of the establishment.

Suspending operations or closing the establishment

ARTICLE 79 *- If any defects endangering the lives of employees are found to exist in the installations and arrangements, in the working methods and conditions or in the machinery and equipment, operations shall be stopped partly or completely or the establishment shall be closed until the danger is eliminated, following the decision to that effect taken by a five-member committee consisting of two labour inspectors authorized to carry out occupational health and safety inspections in establishments, an employee and an employer representative and the regional director of labour. The committee shall be presided over by the senior labour inspector.*

The work and secretarial services of the committee shall be conducted by the regional directorate of labour.

The composition as well as the working methods and principles of the committee for military establishments and establishments producing materials for national defense shall be indicated in a regulation to be jointly prepared by the Ministry of National Defense and Ministry of Labour and Social Security.

The employer is entitled to lodge an appeal with the competent local labour court within six working days against the suspension or closing decision taken in view of this Article.

Appeal to the labour court shall not preclude the execution of the decision to suspend the operations or to close the establishment.

The court shall take up the appeal as a priority issue and issue its decision on the objection in six working days. Decisions of the court are final and binding.

Where an employee's age, sex or health is incompatible with his employment in the establishment, he shall not be permitted to work.

The manners by which the installations and arrangements or machinery and equipment which pose danger for employees, as explained in the above subsections, are to be barred from operating and how they will be permitted to operate again as well as the closing and reopening of the establishment, the measures to be taken in urgent cases until a decision is taken to suspend the operations or to close the establishment, as well as the qualifications and election of the employee and employer representatives to function in the committee, and the working methods and principles of the said committee shall be indicated in a regulation to be prepared by the Ministry of Labour and Social Security .

The permission to set up and operate an establishment shall in no way preclude the application of the provisions foreseen in Article 78.

The employer shall pay his employees their wages or employ them on other jobs in accordance with their occupational skills or status, without any reduction in wages, if they remain without work because of the suspension of the machinery, installations

or working arrangements or the closing of the establishment in accordance with the first subsection of this article.

Occupational health and safety boards

ARTICLE 80 *- In establishments deemed to be industrial according to this Act, where a minimum of fifty employees are employed and permanent work is performed for more than six months, the employer shall set up an occupational health and safety board.*

Employers are under the obligation to enforce the decisions of the occupational health and safety boards taken in accordance with the legislation on occupational health and safety.

The constitution, working methods, functions, powers and obligations of occupational health and safety boards shall be laid down in a regulation to be prepared by the Ministry of Labour and Social Security.

Rights of employees

ARTICLE 83 *- In connection to occupational health and safety in an establishment, any employee faced with an imminent, urgent and life-threatening danger which may do harm to his health or endanger his bodily integrity may make an application to the occupational health and safety board with a request for the determination of the case and a decision for the adoption of necessary measures. The board shall hold an urgent meeting and decide on the same day, and lay down the case in a written report. The decision shall be communicated to the employee in written form.*

In establishments where there are no occupational health and safety boards, the request shall be made to the employer or the employer's representative. The employee may request the determination of the case and demand a written report to that effect. The employer or his representative must give a written reply.

In the event the board takes a decision consistent with a employee's request, the employee may refrain from working until the necessary occupational health and safety measure is taken.

The employee's wages and other rights shall be reserved during the period he refrains from working.

In establishments where the necessary measures have not been taken despite the decision of the occupational health and safety board and the employee's request, employees may terminate, with no obligation to respect the notice term, their employment contracts with a definite or indefinite period, within the six working days in accordance with subsection (I) of Article 24 of this Act.

Provisions of Article 79 of this Act shall not apply in the event of suspension of operations or the closing of the establishment.

Regulation concerning annual leave with pay

ARTICLE 60 *- A regulation indicating the methods and conditions applicable to annual leave with pay, the periods within the year during which leaves will be made available according to the nature of employment, the persons authorized to decide and the order to be observed in exercising the right to leaves, the measures to be taken by the employer in order to implement annual leave in ways useful for employees as well as the form of registers to be kept by the employer shall be issued by the Ministry of Labour and Social Security.*

Turkish Legislation in this issue is in line with the Article 22 of the European Social Charter. Especially, Article 78 **"**By laws and regulations on occupational health and safety**"**, Article 79 "Suspending operations or closing the establishment", Article 80 "Occupational health and safety boards", Article 83 "Rights of employees" and Article 60 "Regulation concerning annual leave with pay" of Labour Law 4857 and several Regulations prepared according to these Articles are parallel to Article 22nd of European Revised Social Charter. On the other hand, Disciplinary Committee, Divergence Resolution Committee and Damage Assessment Board are some examples of Committees that make possible to ensure the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking.

According to the Article 80 "Occupational Health and Safety Committee" of Labour Law, the employer in establishments deemed to be industrial according to this Law, where a minimum of fifty employees are employed and permanent work is performed for more than six months, shall set up an occupational health and safety board. "The Regulation on Occupational Health and Safety Committee" is prepared to regulate the establishment of these kinds of committees, to indicate the responsibilities, authorities and duties of these committees.

The 5th Article of the Regulation "The formation of Occupational Health and Safety Committee":

"Occupational health and safety boards consist of the following people:

a) Employer or employer representative,

b) According to the Article 82 of Labour Law, Engineer or technical staff responsible from occupational safety,

c) Work place Physician assigned according to the Article 81 of the Labour Law,

d) The staff responsible from human resources, personnel management, social affairs or administration and financial affairs,

e) If there is any civil defense expert,

f) Foreman, journeyman or master at the work place,

g) In accordance with Trade Union Law No. 2821, Article no.34, the person who is elected by the union representatives among workers' union representatives or if there

is not any union representative at the work place, the person who is elected by the majority votes of the workers

h) Health and safety representative of workers

The head of the Committee is the employer or the representative of employer and the secretary of the Committee is the person mentioned at the (b) paragraph of this Article.

Members mentioned at (b), (c), (d) and (e) paragraph of this Article are appointed by the employer or the representative of the employer.

The member mentioned at (f) paragraph of this Article is elected by the open votes of foreman, journeyman or master at the work place with the attendance of more than half of these people.

With the same method, substitute members to the committee members mentioned at (f) and (g) paragraph of this Article are also selected."

The responsibilities of Occupational Health and Safety Committees:

- To prepare a draft occupational health and safety interior regulation according to the nature of the establishment
- To submit the draft regulation for the approval of the employer or the representative of employer
- To follow up the implementation of the interior regulation,
- To prepare a follow – up report and to indicate necessary measures according to this report
- To submit this report and the supposed measures to the attention of the committee
- To explain the occupational health and safety subjects to the workers at the work place
- To evaluate occupational health and safety dangers and measures at the work place and to indicate specific measures
- To inform the employer or the representative employer from the danger and measures evaluation.
- To make necessary research and investigation after the every work accident and occupational disease or any danger related with occupational health and safety
- To prepare a report indicating necessary measures for the above mentioned dangers and to submit the report for the approval of the employer of the representative employer.
- To plan occupational health and safety training and education at the work place and to prepare rules and programs for these subjects and to submit these programs to the approval of the employer or the representative of employer.
- To follow – up these programs
- To plan necessary safety measures for maintenance and repair works at the facilities

- To control the implementation of these safety measures
- To follow-up the adequacy of measures for fire, natural disasters, sabotage and other events
- To follow-up the works of teams for preventing the above mentioned events
- To prepare annual report about the health and safety situation of the work place
- To evaluate the yearly activity of the establishment
- To plan next year activities and agenda
- To submit the planned agenda and activities for the next year to the attention of the employer
- In case of emergency event, to held a meeting immediately for indicating emergency measures in accordance with the Article 83 of Labour Law.

According to Article 83 of Labour Law, in connection to occupational health and safety in an establishment, any employee faced with an imminent, urgent and life-threatening danger which may do harm to his health or endanger his bodily integrity may make an application to the occupational health and safety board with a request for the determination of the case and a decision for the adoption of necessary measures. After receiving this application, the board shall hold an urgent meeting and decide on the same day, and lay down the case in a written report. The decision shall be communicated to the employee in written form.

In establishments where there are no occupational health and safety boards, the request shall be made to the employer or the employer's representative. The employee may request the determination of the case and demand a written report to that effect. The employer or his representative must give a written reply.

In the event the board takes a decision consistent with an employee's request, the employee may refrain from working until the necessary occupational health and safety measure is taken. The employee's wages and other rights shall be reserved during the period he refrains from working.

In establishments where the necessary measures have not been taken despite the decision of the occupational health and safety board and of the employee's request, employees may terminate, with no obligation to respect the notice term, their employment contracts with a definite or indefinite period, within the six working days in accordance with subsection (I) of Article 24 of this Act.

According to the Employees Occupational Health and Safety Regulation on Procedures and Principles of Education, during the preparation of the training programme, the ideas and evaluations of workers or the representatives of health and safety workers will be taken into consideration.

According to the Regulation on Yearly Paid Leave, a "Leave Committee" with three members, one representative from employer or acting employer and two representatives from workers will be established. The representative of the employer will head the Committee. If there is any trade union at the work place, other members (workers) of the Committee and their spares are selected by the representatives of the trade union at the work place. If there is not any trade union representative at the work place, worker-members of the Leave Committee will be selected by the majority

votes of workers at the work place. The head of the said Committee and worker-members of the Committee will be announced by the employer. In case of the absent of the real members, one of the alternate members will be called by the head of the Committee and attend the meeting.

The responsibilities of the Leave Committee:

- to submit paid-leave table prepared by the Committee to the approval of the employer
- to prepare leave table by taking into account the working time of workers, continuation of the work, the number of workers at the work place
- to investigate the claim of workers related with the yearly paid leave and to inform the result of these investigations
- to arrange camps and travels for yearly leave times
- to take necessary measures and to offer these measures to the attention of the employer

For the establishment which has workers less than 100 workers, the responsibilities of the Leave Committee will be fulfilled by the employer or the representative of the employer or a person assigned by the employer and a representative selected by workers among the workers.

In accordance with Labour Law No 4857, there are many regulations in the field of Occupational Health and Safety.

- Regulation on Health and Safety Signals
- Regulation on Health and Safety at Construction Works
- Regulation on Vibration
- Regulation on Noise
- Regulation on Health and Safety Measures at the works with Display Tools
- Regulation on Health and Safety Measures at the works with Carcinogen and Mutagenic Materials
- Regulation on Health and Safety Measures at the works with Chemical Materials
- Regulation on Health and Safety Measures at the works with Asbestos
- Regulation on Health and Safety Measures at work place buildings and its extensions
- Regulation on Health and Safety Conditions for the use of work equipments
- Regulation on the use of Personal Protective Equipment at the work place
- Regulation on Manual Handling Works
- Regulation on Health and Safety Conditions at the Ground and Underground Mining Managements
- Regulation on Health and Safety Conditions at the managements which extracted mines by drilling
- Regulation on Health and Safety at the temporary works or specific term works
- Regulation on Preventing Risks in case of the exposure to Biological factor
- Regulation on Health and Safety Measures at the Fishermen Vessel works

All these above mentioned Regulations cover provisions for workers to take part in the determination and improvement of the working conditions and working environment.

ARTICLE 26 – THE RIGHT TO DIGNITY AT WORK

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organizations:

1. to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;
2. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

Appendix to Article 26

It is understood that this article does not require that legislation be enacted by the Parties.
It is understood that paragraph 2 does not cover sexual harassment.

Article 26§1

The right to dignity at work With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organizations to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct:

<u>Turkish Labour Law 4857</u>

Employee's right to break the contract for just cause:

Article 24

The employee is entitled to break the contract, whether for a definite or an indefinite period, before its expiry or without having to observe the specified notice periods, in the following cases.

I. For reasons of health

a. If the performance of the work stipulated in the contract endangers the employee's health or life for a reason which it was impossible to foresee at the time the contract was concluded;

b. If the employer, his representative or another employee who is constantly near the employee and with whom he is in direct contact is suffering from an infecting disease or from a disease incompatible with the performance of his duties.

II. For immoral, dishonorable or malicious conduct or other similar behavior. If, when the contract was concluded, the employer misled the employee by stating the conditions of work incorrectly or by giving him false information or by making false statements concerning any essential point of the contract;

a. If the employer is guilty of any speech or action constituting an offence against the honour or reputation of the employee or a member of the employee's family, or if he harasses the employee sexually;

b. If the employer assaults or threatens the employee or a member of his family to commit an illegal action, or commits an offence against the employee or a member of his family which is punishable with imprisonment, or levels serious and groundless accusations against the employee in matters affecting his honour;

c. If, in cases where the employee was sexually harassed by another employee or by third persons in the establishment, adequate measures were not taken although the employer was informed of such conduct;

d. If the employer fails to make out a wages account or to pay wages in conformity with the Labour Act and the terms of the contract;

e. If, in cases where wages have been fixed at a piece or task rate, the employer assigns the employee fewer pieces or a smaller task than was stipulated and fails to make good this deficit by assigning him extra work on another day, or if he fails to implement the conditions of employment.

III. Force majeure

Force majeure is necessitating the suspension of work for more than one week in the establishment where the employee is working.

The breaking of the employment contract by the initiative of the employer (summary termination)

Article 25

The employer may break the contract, whether for a definite or indefinite period, before its expiry or without having to comply with the prescribed notice periods, in the following cases:

I. For reasons of health

a. If the employee has contracted a disease or suffered an injury owing to his own deliberate act, loose living or drunkenness, and as a result is absent for three successive days or for more than five working days in any month.

b. If the Health Committee has determined that the suffering is incurable and incompatible with the performance of the employee's duties. In cases of illness or accident which are not attributable to the employee's fault and which are due to reasons outside those set forth in (a) above and in cases of pregnancy or confinement, the employer is entitled to terminate the contract if recovery from the illness or injury continues for more than six weeks beyond the notice periods set forth in article 17. In cases of pregnancy or confinement, the period mentioned above shall begin at the end of the period stipulated in Article 74. No wages are to be paid for the period during which the employee fails to report to work due to the suspension of his (her) contract.

II. For immoral, dishonorable or malicious conduct or other similar behavior. If, when the contract was concluded, the employee misled the employer by falsely claiming to possess qualifications or to satisfy requirements which constitute an essential feature of the contract, or by giving false information or making false statements;

a. If the employee is guilty of any speech or action constituting an offence against the honour or dignity of the employer or a member of his family, or levels groundless accusations against the employer in matters affecting the latter's honour or dignity;

b. If the employee sexually harasses another employee of the employer;

c. If the employee assaults or threatens the employer, a member of his family or a fellow employee, or if he violates the provisions of Article 84;

d. If the employee commits a dishonest act against the employer, such as a breach of trust, theft or disclosure of the employer's trade secrets.;

e. If the employee commits an offence on the premises of the undertaking which is punishable with seven days' or more imprisonment without probation;

f. If, without the employer's permission or a good reason, the employee is absent from work for two consecutive days, or twice in one month on the working day following a rest day or on three working days in any month;

g. If the employee refuses, after being warned, to perform his duties;

h. If either willfully or through gross negligence the employee imperils safety or damages machinery, equipment or other articles or materials in his care, whether these are the employer's property or not, and the damage cannot be offset by his thirty days' pay.

III. Force majeure:

Force majeure is preventing the employee from performing his duties for more than one week.

IV. If due to the employee's being taken into custody or due to his arrest, his absence from work exceeds the notice period indicated in Article 17.

The employee may file a lawsuit according to Articles 18,20 and 21 by claiming that the termination was not in conformity with the subsections cited above.

Even this article of the Charter does not require that legislation be enacted by the Parties, 24th article of Labour Law arrange employee's right to break the contract for just cause related with health, immoral, dishonorable or malicious conduct or other similar behavior and 25th of article of Labour Law arrange the reasons for breaking of the employment contract by the initiative of the employer related with health, immoral, dishonorable or malicious conduct or other similar behavior. Sexual abuse done by a worker against to another worker is also considered as a reason for breaking the employment contract.

According to Labour Law, if the employer assaults or threatens the employee or a member of his family to commit an illegal action, or commits an offence against the employee or a member of his family which is punishable with imprisonment, or levels serious and groundless accusations against the employee in matters affecting his honor; and if, in cases where the employee was sexually harassed by another employee or by third persons in the establishment, adequate measures were not taken although the employer was informed of such conduct, these reasons are accepted as reasons for breaking the employment contract. In this arrangement, it is said that if adequate measures were not taken although the employer was informed of sexual harassment, worker has right to terminate the employment contract. By saying adequate measures, it is aimed to mean that the employer has to make effort to prevent such conduct such as changing the work place of the worker or terminating the employment contract of worker who done sexual harassment to other workers.

If a worker has terminated his/her employment contract due to the reason mentioned in the Article 24/II-b and 24/II-d of Labour Law, he/she has right to get his/her severance payment.

Article 26§2

The right to dignity at work to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

<u>Turkish Labour Law 4857</u>

The breaking of the employment contract by the initiative of the employer (summary termination):

Article 25

The employer may break the contract, whether for a definite or indefinite period, before its expiry or without having to comply with the prescribed notice periods, in the following cases:

I. For reasons of health

a. If the employee has contracted a disease or suffered an injury owing to his own deliberate act, loose living or drunkenness, and as a result is absent for three successive days or for more than five working days in any month.

b. If the Health Committee has determined that the suffering is incurable and incompatible with the performance of the employee's duties. In cases of illness or accident which are not attributable to the employee's fault and which are due to reasons outside those set forth in (a) above and in cases of pregnancy or confinement, the employer is entitled to terminate the contract if recovery from the illness or injury continues for more than six weeks beyond the notice periods set forth in article 17. In cases of pregnancy or confinement, the period mentioned above shall begin at the end of the period stipulated in Article 74. No wages are to be paid for the period during which the employee fails to report to work due to the suspension of his (her) contract.

II. For immoral, dishonourable or malicious conduct or other similar behaviour. If, when the contract was concluded, the employee misled the employer by falsely claiming to possess qualifications or to satisfy requirements which constitute an essential feature of the contract, or by giving false information or making false statements;

a. If the employee is guilty of any speech or action constituting an offence against the honour or dignity of the employer or a member of his family, or levels groundless accusations against the employer in matters affecting the latter's honour or dignity;

b. If the employee sexually harasses another employee of the employer;

c. If the employee assaults or threatens the employer, a member of his family or a fellow employee, or if he violates the provisions of Article 84;

d. If the employee commits a dishonest act against the employer, such as a breach of trust, theft or disclosure of the employer's trade secrets.;

e. If the employee commits an offence on the premises of the undertaking which is punishable with seven days' or more imprisonment without probation;

f. If, without the employer's permission or a good reason, the employee is absent from work for two consecutive days, or twice in one month on the working day following a rest day or on three working days in any month;

g. If the employee refuses, after being warned, to perform his duties;

h. If either wilfully or through gross negligence the employee imperils safety or damages machinery, equipment or other articles or materials in his care, whether these are the employer's property or not, and the damage cannot be offset by his thirty days' pay

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III. Force majeure:

Force majeure is preventing the employee from performing his duties for more than one week.

IV. If due to the employee's being taken into custody or due to his arrest, his absence from work exceeds the notice period indicated in Article 17.

The employee may file a lawsuit according to Articles 18,20 and 21 by claiming that the termination was not in conformity with the subsections cited above.

The prescribed period within which the right to summary termination may be exercised:

Article 26

The right to break the employment contract for the immoral, dishonorable or malicious behavior of the other party may not be exercised after six working days of knowing the facts, and in any event after one year following the commission of the act, has elapsed. The "one year" statutory limitation shall not be applicable, however, if the employee has extracted material gains from the act concerned.

The employee or employer who has terminated the contract for any of the reasons mentioned above within the period indicated in the above subsection is entitled to claim compensation from the other party.

Justification of termination with a valid reason:

Article 18

The employer, who terminates the contract of an employee engaged for an indefinite period, who is employed in an establishment with thirty or more workers and who meets a minimum seniority of six months, must depend on a valid reason for such termination connected with the capacity or conduct of the employee or based on the operational requirements of the establishment or service.

In the computation of the six-month' seniority, time periods enumerated in Article 66 shall be taken into account.

The following, inter alia, shall not constitute a valid reason for termination:

a. union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;

b. acting or having acted in the capacity of, or seeking office as, a union representative;

c. the filing of a complaint or participation in proceedings against an employer involving alleged violations of laws or regulations or recourse to competent administrative or judicial authorities;

d. race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;

e. absence from work during maternity leave when female workers must not be engaged in work, as foreseen in Article 74;

f. temporary absence from work during the waiting period due to illness or accident foreseen in Article 25 of the Labour Act, subsection I (b).

The "six month" minimum seniority (length of service) of the employee shall be calculated on the basis of the sum of his employment periods in one or different establishments of the same employer. In the event the employer has more than one establishment in the same branch of activity, the number of employees shall be determined on the basis of the total number of employees in these establishments.

This Article and Articles 19 and 21 and the last subsection of Article 25 shall not be applicable to the employer's representative and his assistants authorized to manage the entire enterprise as well as the employers' representative managing the entire establishment but who is also authorized to recruit and to terminate employees.

According to Labour Law No. 4857, mobbing is also considered as a reason for breaking the contract, whether for a definite or indefinite period, before its expiry or without having to comply with the prescribed notice periods. Mobbing is also negatively affecting normal flow of business and work peace at work and is violating the employment contract. The employment contract of an employee or employees doing mobbing can be terminated according to the reasons mentioned in Article 18 of Labour Law.

The rights of worker who met sexual harassment was arranged by Article 24/II-d of Labour Law and according to Article 26 of Labour Law, the employee or employer who has terminated the contract for any of the reasons mentioned in the legislation within the period indicated in Law is entitled to claim compensation from the other party.

ARTICLE 28 – RIGHT OF WORKER REPRESENTATIVES TO PROTECTION IN THE UNDERTAKING AND FACILITIES TO BE AFFORDED TO THEM

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

a. they enjoy effective protection against acts prejudicial to them, including

dismissal, based on their status or activities as workers' representatives within the undertaking;

b. they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

Appendix to Article 28

For the purpose of the application of this article, the term "workers' representatives" means persons who are recognized as such under national legislation or practice"

Article 28

Right of worker representatives to protection in the undertaking and facilities to be afforded to them

Article 28§a

They enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking

Turkish Labour Law 4857

Justification of termination with a valid reason

Article 18

The employer, who terminates the contract of an employee engaged for an indefinite period, who is employed in an establishment with thirty or more workers and who meets a minimum seniority of six months, must depend on a valid reason for such termination connected with the capacity or conduct of the employee or based on the operational requirements of the establishment or service.

In the computation of the six-month' seniority, time periods enumerated in Article 66 shall be taken into account.

The following, inter alias, shall not constitute a valid reason for termination:

b. acting or having acted in the capacity of, or seeking office as, a union representative;

Trade Unions Law 2821

Protection of shop stewards:

Article 30

No employer shall terminate the employment contract of shop stewards or trade union representatives working in his establishments unless he indicates clearly and precisely a just cause for termination. The shop steward or his trade union shall have the right to lodge an appeal with the competent labour court within one month of the date the notice of termination is communicated to him. The court shall apply fast-hearing procedures and conclude the case within two months. The decision of the court shall be final. If the court decides that the trade union representative or shop steward is to be reinstated in his employment, the termination shall be annulled and the employer shall pay his full wages and all other benefits to which he is entitled with effect from the date on which his employment was terminated, even if he performed no work during his period of office as shop steward. This provision shall likewise apply in the case of a fresh appointment as shop steward. The worker shall report to work within six working days following the decision of reinstatement. If he fails to report within six working days, he shall not be entitled to the compensation fixed by the court.

Although the decision of the court is final, the worker shall retain all the rights conferred on him by law and the collective labour agreement.

Appointment of and conditions applying to shop stewards

Article 34

A trade union, whose competence to conclude the collective labour agreement is certified, shall appoint shop stewards from among its members at the establishment in the following manner, and shall provide the names of such union representatives to the employer within 15 days: one shop steward, if the number of workers in the establishment does not exceed 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; and, not more than eight, if the number of workers exceeds 2,000. One of the above representatives or shop stewards may be designated as chief representative or shop steward.

The conditions set out in section 5 respecting founding members shall also apply to shop stewards.

Functions of shop stewards

Article 35

The functions and the duties of shop and chief stewards, on condition that they are limited only to the establishment, shall be: to take notice of workers' requests and the handling of grievances; to promote and maintain cooperation, harmony at work and peaceful relations between workers and employers; to protect the rights and interests of the workers; to assist and supervise the application of working conditions provided for in labour legislation and collective labour agreements. The functions of shop stewards shall continue as long as the competence of the trade union is valid.

Shop stewards shall carry out their functions and duties on condition that their own work and the work discipline at the establishment are not hindered.

Stewards gain legal basis by Law. Law makers pay more attention to the job security of stewards and put several provisions to provide them to exercise his/her responsibilities, duties and activities freely.

Stewards are base of the trade union activities. It is important for employers, employees and also trade unions. All social parts have responsibilities and duties in terms of ensuring peace at work place, increasing efficiency, establishing harmonized relationship between employers and employees. Trade unions have big responsibilities for the selection of stewards, stewards have big responsibilities to fulfill the tasks and duties, employers have big responsibilities to prepare suitable place and working conditions and also workers have big responsibilities to do their jobs and to obey rules of the work place. All these relations are arranged by Law.

Article 28 – Right of worker representatives to protection in the undertaking and facilities to be afforded to them

Article 28§b

They are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

<u>Turkish Labour Law 4857</u>

Unworked periods treated as part of the one-year requirement to qualify for annual leave with pay:

Article 55

In determining the right to annual leave with pay the periods shown below shall be treated as having been worked;

a. Days on which the employee fails to report to work owing to an accident or illness (however, time which exceeds the period foreseen in subsection I (b) of Article 25 shall not be treated as worked);

b. Days on which the female employee is not permitted to work before and after her confinement, in accordance with Article 74;

c. Days on which the employee is unable to report to work through having been called up for military exercises or for the performance of a statutory obligation, other than compulsory military service, (up to a maximum of 90 days in a year);

d. Fifteen days of any period during which the employee has not worked because of the temporary but interrupted suspension of operations for longer than one week owing to force majeure, on condition that he has subsequently resumed work;

e. Periods reckoned as having been worked, envisaged in Article 66;

f. Weekly rest days and national and public holidays;

g. Half-days of leave granted in addition to Sundays to employees working in radiological clinics, in accordance with the regulation issued under Act No. 3153;

h. Days on which the employee is unable to report for work because of having to attend meetings of mediation and arbitration boards, acting as an employees' representative on such boards or before a labour court, serving as an employees' or union representative on boards, committees or meetings organized under the relevant legislation or attending conventions, conferences or committee meetings of international organizations dealing with labour matters;

i. Up to three days' leave on the occasion of the employee's marriage and up to two days' leave on the occasion of his parent's, spouse's, sister's or brother's or child's death;

j. Other leave granted by the employer;

k. Annual leave with pay granted to the employee in pursuance of the application this Act.

According to Article 30 "Protection of shop stewards" of Trade Union Law No.2821, the termination of indefinite duration employment contract of stewards will be implemented by the related provisions of Labour Law.

In the Article 18 of Labour Law it is said that the employer, who terminates the contract of an employee engaged for an indefinite period, who is employed in an establishment with thirty or more workers and who meets a minimum seniority of six months, must depend on a valid reason for such termination connected with the capacity or conduct of the employee or based on the operational requirements of the establishment or service.

And, it is also mentioned in the same Article of the Law that

- Union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;
- and acting or having acted in the capacity of, or seeking office as, a union representative

shall not constitute a valid reason for termination.

Stewards are subject to the arrangements named as “procedure in termination” (Article 19) ,”procedure of appeal against termination” (Article 20) and “consequences of termination without valid reason” (Article 21) in the Labour Law.

Procedure in termination:

Article 19

The notice of termination shall be given by the employer in written from involving the reason for termination which must be specified in clear and precise terms.

The employment of an employee engaged under a contract with an open-ended term shall not be terminated for reasons related to the worker’s conduct or performance before he is provided an opportunity to defend himself against the allegations made.

The employer’s right to break the employment contract in accordance with Article 25/II of the Labour Act (for serious misconduct or malicious or immoral behaviour of the employee) is, however, reserved.

Procedure of appeal against termination:

Article 20

The employee who alleges that no reason was given for the termination of his employment contract or who considers that the reasons shown were not valid to justify the termination shall be entitled to lodge an appeal against that termination with the labour court within one month of receiving the notice of termination. If there is an arbitration clause in the collective agreement or if the parties so agree, the dispute may also be referred to private arbitration within the same period of time.

The burden of proving that the termination was based on a valid reason shall rest on the employer. However, the burden of proof shall be on the employee if he claims that the termination was based on a reason different from the one presented by the employer.

The court must apply fast-hearing procedures and conclude the case within two months. In the case the decision is appealed, the Court of Cassation must issue its definitive verdict within one month.

Consequences of termination without a valid reason:

Article 21

If the court or the arbitrator concludes that the termination is unjustified because no valid reason has been given or the alleged reason is invalid, the employer must re-engage the employee in work within one month. If, upon the application of the employee, the employer does not re-engage him in work, compensation to be not less than the employee's four months' wages and not more than his eight months' wages shall be paid to him by the employer.

In its verdict ruling the termination invalid, the court shall also designate the amount of compensation to be paid to the employee in case he is not re-engaged in work. The employee shall be paid up to four months' total of his wages and other entitlements for the time he is not reengaged in work until the finalization of the court's verdict. If advance notice pay or severance pay has already been paid to the reinstated employee, it shall be deducted from the compensation computed in accordance with the above stated subsections. If term of notice has not been given nor advance notice pay paid, the wages corresponding to term of notice shall also be paid to the employee not re-engaged in work.

For re-engagement in work, the employee must make an application to the employer within ten working days of the date on which the finalized court verdict was communicated to him. If the employee does not apply within the said period of time, termination shall be deemed valid, in which case the employer shall be held liable only for the legal consequences of that termination.

The provisions of subsections 1,2 and 3 of this Article shall not be altered by any agreement whatsoever; any agreement provisions to the contrary shall be deemed null and void.

According to Article 30 of the Trade Union Law, no employer shall terminate the employment contract of shop stewards or trade union representatives working in his establishments unless he indicates clearly and precisely a just cause for termination.

The shop steward or his trade union have right to lodge an appeal with the competent labour court within one month of the date the notice of termination is communicated to him.

The decision of the court shall be final. If the court decides that the trade union representative or shop steward is to be reinstated in his employment, the termination shall be annulled and the employer shall pay his full wages and all other benefits to which he is entitled with effect from the date on which his employment was terminated, even if he performed no work during his period of office as shop steward. Although the decision of the court is final, the worker shall retain all the rights conferred on him by law and the collective labour agreement.

According to Article 31 of the Trade Union Law, it shall be unlawful for an employer to make any discrimination between workers who are members of a trade union and

those who are not, or those who are members of another trade union, with respect to recruitment, arrangement and distribution of work, promotion, wages, bonuses, premiums, social and fringe benefits, discipline rules or provisions respecting other questions, including termination of employment.

The provisions of the collective labour agreement with respect to wages, bonuses, premiums and social and fringe benefits shall be excluded.

No worker shall be dismissed on account of his participation in the activities if trade unions or confederations outside his hours of work or during hours of work with the employer's permission, and no worker shall be subject to discrimination for any reason.

If there is any discrimination in terms of being a member of a trade union, he shall be liable to pay compensation which shall be not less than the worker's annual wage. The worker shall retain all the rights conferred on him by the labour legislation and other enactments. However, where compensation has been granted by virtue of this paragraph, the compensation provided in the labour legislation for lack of good faith shall not be applicable.

According to Trade Union Law, the work place or the work of steward will not be changed by the employer without written approval of the steward. If the employer has done a change, that change is invalid. If an employer has to make a change at the work place or work of steward, this change has to be suitable to the Article 22 of Labour Law.

Change in working conditions and termination of the contract:

Article 22

Any change by the employer in working conditions based on the employment contract, on the rules of work which are annexed to the contract, and on similar sources or workplace practices, may be made only after a written notice is served by him to the employee. Changes that are not in conformity with this procedure and not accepted by the employee in written form within six working days shall not bind the employee. If the employee does not accept the offer for change within this period, the employer may terminate the employment contract by respecting the term of notice, provided that he indicates in written form that the proposed change is based on a valid reason or there is another valid reason for termination. In this case the employee may file suit according to the provisions of Articles 17 and 21.

By mutual agreement the parties may always change working conditions. Change in working conditions may not be made retroactive.

ARTICLE 29 – THE RIGHT TO INFORMATION AND CONSULTATION IN COLLECTIVE REDUNDANCY PROCEDURES

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

Appendix to Articles 28 and 29

For the purpose of the application of this article, the term "workers' representatives" means persons who are recognized as such under national legislation or practice.

Article 29 – The right to information and consultation in collective redundancy procedures

Collective dismissal procedure is arranged by the Labour Law No.4857.If there is any collective terminations for reasons of an economic, technological, structural or similar nature necessitated by the requirements of the enterprise, the establishment or activity, the employer shall provide the union shop-stewards, the relevant regional directorate of labour and the Public Employment Office with written information at least 30 days prior to the intended lay-off.

Turkish Labour Law 4857

Collective dismissal:

Article 29

When the employer contemplates collective terminations for reasons of an economic, technological, structural or similar nature necessitated by the requirements of the enterprise, the establishment or activity, he shall provide the union shop-stewards, the relevant regional directorate of labour and the Public Employment Office with written information at least 30 days prior to the intended lay-off.

A collective dismissal occurs when,

a. in establishments employing between 20 and 100 employees, a minimum of 10 employees; and

b. in establishments employing between 101 and 300 employees, a minimum of 10 percent of employees; and

c. in establishments employing 301 and more workers, a minimum of 30 employees, are to be terminated in accordance with Article 17 on the same date or at different dates within one month.

The said written communication shall include the reason for the contemplated layoff, the number and groups to be affected by the lay-off as well as the length of time the procedure of terminations is likely to take.

Consultations with union shop-stewards to take place after the said notification shall deal with measures to be taken to avert or to reduce the terminations as well as measures to mitigate or minimize their adverse effects on the workers concerned. A document showing that the said consultations have been held shall be drawn up at the end of the meeting.

Notices of termination shall take effect 30 days after the notification of the regional directorate of labour concerning the intended lay-offs.

In the event of closing the entire establishment which involves a definite and permanent stoppage of activities, the employer shall notify, at least 30 days prior to the intended closure, only the regional directorate of labour and the Public Employment Office and shall post the relevant announcement at the establishment.

If in seasonal and campaign work layoffs are carried out in conjunction with the nature of such work, provisions on collective dismissals shall not apply.

The employer shall not apply the provisions on collective dismissal to evade and prevent the application of Articles 18,19,20 and 21; otherwise the employee may file suit according to these articles.