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HISTORICAL DEVELOPMENT OF LABOR LAW IN TURKEY: A NORMATIVE VIEW FROM THE OTTOMAN EMPIRE TO THE PRESENT DAY

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Abstract: This study deals with the historical development of labor law from a normative perspective in Turkey. Starting from the last period of the Ottoman Empire, the evolution of Turkish labor law was examined over the Republican Period, 1961 and 1982 Constitutions, the 2003 Labor Law and the European Union harmonization process. In this article, which was prepared based on the thesis study, the basic legal regulations that entered into force in the field of labor law were analyzed; The historical transformation of individual and collective labor relations has been evaluated on the axis of job security, trade union rights and occupational health safety concepts. At the same time, the inadequacies of laws at the application level and the problem of working law on paper are also discussed. In this context, the study provides a comprehensive assessment by taking into account the changes in the social state principle and labor-capital relations as well as the historical process of labor law in Turkey.

Keywords: *Labor Law, History of Labor, Türkiye, Ottoman, Republican Period, Collective Job Relations, Normative Regulations.*

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Introduction

Labor law is one of the basic branches of law that is shaped within the framework of the principle of social justice of the modern state and regulates the relations between the worker and the employer. In essence, the aim of labor law is to protect the workers who are economically weaker and to create a fair balance in working life (Şakar, 2020). In this context, labor law is a comprehensive normative system that includes not only individual employment contracts, but also collective labor relations, occupational health and safety rules and social security structure (Süzek, 2017). The development of labor law in Turkey is directly related to the socio-political transformations of the country. The regulations regarding the business relations that started in the last period of the Ottoman Empire were embodied with the first legal texts in the Tanzimat and Constitutional Monarchy processes and in the Republican period, it became more systematic and institutional structure (Kocabaş, 2019). The Labor Law No. 3008 dated 1936 is the first comprehensive regulation that enables the real codification of labor law in Türkiye. This law established a system that includes collective business relations as well as individual business relations; However, due to the political conditions of the period, rights such as strike and unionization have been subjected to serious restrictions (Durmaz, 2017).

With the 1961 Constitution, the constitutional guarantee of workers' rights, the recognition of trade union rights and the adoption of the principle of social state is a turning point in the history of Turkish labor law. Although the 1982 Constitution limits these rights to a certain extent, the scope of labor law has expanded and new regulations have come into force in parallel with the Labor Law No. 4857 dated 2003 and the European Union compliance process (Uşan & Ersoy, 2023). However, the existence of laws does not eliminate the implementation problems. As a matter of fact, legislation is often “on paper” in areas such as occupational safety, union organization and collective bargaining rights in Türkiye and serious gaps occur in practice (Çiçek & Öçal, 2016). This requires that labor law be evaluated not only at the normative level but also within the framework of sociological and economic dynamics. This study aims to examine the historical development of labor law in Turkey in the context of legal regulations, constitutional changes, international effects and implementation problems in the process from the Ottoman Empire to the present day. In addition, in the historical process, how the level of institutionalization of labor law is shaped and which evolutionary steps are taken, the gap between the normative structure and the actual practice will be analyzed.

Method

This study is a qualitative literature screening study carried out in order to address the historical development of labor law in a normative framework in Turkey. In the study, domestic and foreign literature, academic books, theses, articles, legislation texts and constitutional regulations were systematically examined about the historical process of labor law. This literature screening, which is supported by historical method, has been structured to understand

the normative changes and implementation problems that occurred in the field of labor law in Turkey (Yıldırım & Şimşek, 2021).

In the study, the historical-cure approach was adopted and the development of labor law was examined by dividing the Ottoman period, the first years of the Republic, the 1961-1982 Constitutions Period and the EU harmonization process after 2000. Considering the socioeconomic and political conditions of each period, content analysis of the laws, regulations and constitutional texts enacted in the relevant period was carried out. In this context, not only the existence of legal texts, but also the practical effects such as effectiveness and job security and trade union rights are discussed (Çiçek & Öçal, 2016; Kocabaş, 2019).

The resources used within the scope of the research are classified under thematic headings within the framework of qualitative data analysis:

- Individual Business Relations
- Collective Labor Relations and Union Rights
- Occupational Health and Safety
- Social Security and Job Security

In addition, a comparative analysis has been conducted on the relevant legislation; In particular, the Labor Law No. 3008 dated 1936, Law No. 1475 dated 1971, Law No. 4857 dated 2003 and the Occupational Health and Safety Law No. 6331 dated 2012 were compared in detail (Süzek, 2017; Uşan & Ersoy, 2023).

Critical normative analysis method was used in the evaluation of data; Not only the legal texts, but also the reflection of these texts in working life and the impact on workers' rights have been discussed (Durmaz, 2017). Thus, the study aims to provide a frame that sheds light not only the transfer of the past, but also to current legal problems.

DISCUSSION and FINDINGS

Ottoman Period - From Professional Solidarity to the First Legal Arrangements:

Business relations in the Ottoman Empire were shaped by professional traditions, custom and religious rules rather than the rules of labor law. Ahilik Organization has provided both moral and social control in the working life of the period as a professional organization based on the master-apprentice relationship (Kocabaş, 2019). However, due to the late start of the industrialization process and the economic structure is largely based on agriculture, the transition to modern regulations in labor relations was delayed (Need, 2008).

The first written regulations emerged in the post -Tanzimat period. Dilaver Pasha Regulation dated 1865 draws attention as the first text to regulate the working conditions of workers working in Ereğli Coal Mines (Çiçek & Öçal, 2016). This arrangement was followed by the order of Maadin dated 1869; These documents include provisions such as business hours, wages and limited health measures. However, since these regulations aim to increase economic efficiency, the nature of protecting the worker was limited (Talas, 1992).

The Holiday-i Eşgal Law of 1909 is the first legal text regulating the rights of trade unions and strikes. Although this law granted the right to strike, it has imposed a ban on establishing a union to workers working in public services (Durmaz, 2017). This reflects the tendency of the ruling classes of the period to suppress workers' movements.

Early Republic Period - First Steps to the State of Social Law:

With the proclamation of the Republic, the state has become a more active employer and regulatory actor. Eregli Havza-i Fahmiyesi Law No. 151 dated 1921 has been one of the first laws to provide occupational health, safety and wage assurance for employees in the mining sector (Kocabaş, 2019). This was followed by the Labor Law No. 3008 dated 1936. This law is the first comprehensive legislation that regulates individual and collective labor relations and is an important turning point in the history of Turkish labor law (Süzek, 2017).

However, although the law no. Collective bargaining mechanisms are limited to compulsory arbitration. This has led to a limited trade union mobility in practice, although the rights of workers' rights have been legal guaranteed (Güzel & Heper, 2017).

The General Hıfzıssıhha Law (1930), which was enacted in the same period, contains important provisions in occupational health and safety. Provisions such as having a physician in workplaces employing workers and over 50 shows that the consciousness of occupational health has begun to settle in a modern sense (Uşan & Ersoy, 2023).

Between 1961 and 1982 - Period of Institutionalization with Constitutional Rights:

For the first time in Turkey, the 1961 Constitution has secured social rights and union freedoms. The Law No. 274 issued in this period and the collective bargaining agreement, strike and lockout law no. Thus, the workers had the opportunity to use the right to strike legally for the first time.

These developments are important in terms of adopting the principle of social law in Turkey. However, it was observed that these rights were significantly limited and constitutional guarantees were damaged after the 1980 coup (Kocabaş, 2019). The 1982 Constitution imposed restrictions on trade union freedoms; It has brought provisions that make it difficult for collective bargaining and strike processes.

In this period, the Labor Law No. 1475 entered into force. It contained significant arrangements in issues such as job security, severance pay and occupational health. However, the provisions interpreted in favor of the employer in practice prevent the full protection of workers' rights (Süzek, 2017).

Post -2000 Period - European Union Compliance and Normative Expansion:

In the 2000s, significant reforms were realized in the legislation of labor law as well as the European Union harmonization process. With the Labor Law No. 4857 (2003), previous laws have been repealed and a system more compatible with EU norms was established. In this law, flexible work, job security, gender equality, overtime and the responsibilities of the employer have been arranged in many areas (Uşan & Ersoy, 2023).

However, many regulations were made directly translated from the European Union directives, which has led to various problems in practice (Süzek, 2017). For example, the Occupational Health and Safety Law no. In addition, there were serious decreases in trade union organization and the unionization rate in Türkiye in the 2020s remained below 14 %(Çelik, 2022). There are similar problems in the field of job security; Corious -term employment contracts, subcontractor employment and registration

are the structural elements that make it difficult to protect the worker (Akyiğit, 2021).

Neoliberal Policies and Flexibility Approach in Labor Law:

Neoliberal economic policies, which have been adopted on a global scale since the 1980s, have not been limited to market regulations, but also restructured the labor markets. During this period, fundamental changes in working life took place with practices such as flexible production models, deregulation, privatization and unionized; Labor law has started to evolve into a structure that became flexible by moving away from the classical protective function (Standing, 2011; Harvey, 2005).

Neoliberalism has led to abradiations on job security and workers' rights while drawing labor law to the axis of "productivity and competition". In particular, the replacement of vague periodic employment contracts is that temporary, part-time, call or subcontractor agreements weakened the bargaining power of the worker (Akyiğit, 2021). In Türkiye, this transformation has gained momentum with structural harmony programs after the 1980 military coup and economic reforms supported by the IMF - Enda Bank (Buğra & Keyder, 2006).

The Labor Law No. 4857, which came into force in 2003, was the normative equivalent of this neoliberal transformation. With the law;

- Part -time work,
- Trial period employment contract,
- Working on call,

Flexible forms of employment such as remote working are legal guaranteed (Süzek, 2017). While these regulations provide cost advantages and competitiveness to employers on the one hand, on the other hand, workers have limited their access to continuous income assurance and social protection (Akyiğit, 2021).

Another reflection of neoliberal flexibility is the widespread of the subcontracting model. Even in the public sector, subcontractor practices have completed the mechanism of rights to seek rights against the principal employer and led to an uncertainty of the worker-employer relationship (Yamak & Türedi, 2013). The most severe consequences of this structure; It emerges as employees who cannot receive severance pay, who are deprived of occupational safety, and who have actually prevented freedom of organization.

In addition, although the provisions of job security are included in the Labor Law, it is ineffective in practice; For example, the protection of the worker in the face of the dismissal practice of the employer without showing the valid cause of the employee often depends on the judicial process (Uşan & Ersoy, 2023). The proportion of workers who can open a job return case remain low; Long -term cases and weak trade union organization make these mechanisms dysfunctional.

Another dimension of flexibility is to weaken the trade union movement. Neoliberal state policies saw unions as "non -market" actors and limited collective bargaining systems. Especially in the private sector, the fact that unionization rates decreased below 10 %has made workers' collective rights struggle almost impossible (Çelik, 2022).

The neoliberal flexibility model is not only specific to Turkey; It points to a period in which labor law around the world is re -discussed on the axis of Flexicurity "(Flexicurity). However, in the case of Türkiye, it is seen that the balance between the arrangements made in favor of flexibility and the assurance cannot be established and the "precarious flexibility" environment is dominant (Özdemir, 2018). For this reason, the restructuring of labor law in the neoliberal framework should be re -evaluated not only from the perspective of economic growth, but also in terms of the principles of work, social justice and equality.

Unregistered Employment and Legal Gaps:

Unregistered employment is one of the most basic structural problems of the labor market in Turkey. Record of the employment of employees without any legal contract without being included in the social security system; It does not only cause workers to be deprived of social rights, but also leads to disabling the protective mechanisms of labor law (Çelik, 2022; Ilo, 2021).

According to the Turkish Statistical Institute (TURKSTAT) data, approximately 27 %of the general employment in Turkey as of 2023 is still unregistered. This ratio also occupies an important place in non -agricultural sectors and concentrates between women, young people, immigrant workers and low -skilled laborers (TURKSTAT, 2023). The prevalence of informal work is the most concrete indication that there is a serious disconnection between labor law and practical life.

Although labor law is a system of rights and obligations determined by law, the functionality of this system is only possible through registered employment. However, an unregistered worker;

- From the provisions of job security,
- From wage guarantee,
- Overtime, annual leave, week holiday rights,
- Occupational accident and occupational disease insurance,

It cannot benefit from the right to union organization (Akyiğit, 2021).

The extensive of registration is the result of employers' tendency to use the labor force by avoiding low cost and responsibility. The weakness of the control mechanisms and the inadequacy of administrative sanctions reinforce this tendency (Karaarslan, 2019). Although the criminal sanctions of unregistered employment have been identified in the legislation, most of these sanctions are either not applied or are far from deterrence.

In addition, informal employment causes tax losses, sustainability of the social security system and contraction of legal trade union activities. Because it is not legally possible for a unregistered worker to become a member of the union, to participate in collective bargaining processes or to benefit from job security (Çiçek & Öçal, 2016). This makes the normative power of labor law limited only to "registered" individuals; Social justice.

The fact that unregistered work has become almost norm in sectors such as construction, agriculture, domestic services and textiles shows that labor law in Turkey has become a fragmented structure with regional, sectoral and gender -based differences (ILO, 2021; Yıldırım, 2020). This disintegration systematically excludes certain parts of the labor force.

The solution of the problem will be possible not only through legal regulations, but also with effective and widespread audit policies, employer -supported employment incentives and informative campaigns for unregistered employees. In addition,

local governments, non -governmental organizations and professional associations should be actively involved in this process. As a result, registration is not only a lack of legal control, but also a corporate, cultural and economic problem. Labor law can only be fair and effective to the extent that it can protect registered labor.

Women's Labor and Labor Law: Gender Based Assessment:

Although labor law theoretically aims to provide equal protection to all employees, it contains serious gender -based inequalities in terms of the participation of female laborers in the labor force, the persistence of employment and working conditions. The labor force of women in Turkey is only 34.3 %as of 2023 (TURKSTAT, 2023). This ratio is quite low compared to European countries and shows that women are not sufficiently integrated into the production process due to social, cultural and structural barriers (ILO, 2022).

One of the main problems faced by women in working life is gender -based wage difference. There are wage differences ranging from approximately 15-20 %between men and women who do the same job in Turkey (OECD, 2021). This shows that despite the fact that the principle of equal fees equal to equal work is included in the Constitution (M.10 and M.49) and the Labor Law No. 4857, it cannot be implemented in actual practice (Akyiğit, 2021).

Another reason why female workers cannot fully benefit from labor law is protective but legal regulations that produce discrimination. For example, although regulations such as birth leave, milk leave and night shifts show women under “special protection ,, these provisions are considered as“ cost elements ve and discrimination against women in recruitment (Erdoğan, 2020). As a matter of fact, although Article 5 of the Labor Law is clearly a prohibition of discrimination, the number of lawsuits filed based on these regulations is quite low; Because the burden of proof still belongs to the worker.

In addition, women's labor in Turkey is largely concentrated in informal sectors and domestic services. These areas are outside the coverage of labor law; Thus, women are prevented from benefiting from social security, job security and organization rights (Yıldırım, 2020). Especially women who work in seasonal agricultural work and domestic labor have become the “unseen victims of labor law.

Women's trade union organization rates are also very low compared to men. According to 2022 data, the rate of unionized female workers in Turkey is below 10 %(Çelik, 2022). This is due to both the male -dominated structure of trade unions and the stuck in women's flexible, precarious and fragmented employment forms. In addition, workplace problems such as gender -based violence and mobbing cannot be sufficiently protected in practice despite being legally recognized (Gürbüz, 2021).

In order to ensure gender equality, there are ILO 100 (equal fee) and ILO 111 (Discrimination ban) contracts to which Turkey is a party. In addition, the decision to withdraw from the Istanbul Convention in 2021 was concerned about the fight against violence against women. The protection of female labor is not only with legal regulations; It is also a multi -layered struggle area that requires social awareness, corporate responsibility and cultural transformation. In this context, labor law is not the one who removes women from employment; It is necessary to provide an egalitarian, integrative and strengthening normative structure. Otherwise, female labor will continue to be out of the protection umbrella of law.

Results and Recommendations

When the historical development of labor law in Turkey is examined, it is seen that legal regulations are largely shaped by social and political transformations. During the Ottoman Empire, business relations were carried out within the framework of traditional structures and customary law, while the first steps of the transition to modern legal norms were taken in the post -Tanzimat period (Kocabaş, 2019). With the proclamation of the Republic, the process of institutionalization of labor law started; With the Labor Law No. 3008 dated 1936, individual and collective labor relations were based on the legal basis (Süzek, 2017).

With the 1961 Constitution and the Social State Principle and Union Rights have gained constitutional guarantee and these developments have led to the deepening of labor law in Turkey. However, it is seen that these rights were significantly limited in the post -1982 Constitution period and the gains regarding the protection of workers declined (Durmaz, 2017). Modern regulations such as Labor Law No. 4857 and Occupational Health and Safety Law No. 6331 dated 2012, which entered into force in 2003, have been developed in parallel with the European Union compliance process; However, this normative expansion could not fully eliminate the structural problems in practice (Çiçek & Öçal, 2016).

Today, the biggest problem in terms of labor law in Turkey is that there is a serious disconnection between legal regulations and implementation. Although the legislation in the field of occupational health and safety seems to be highly developed, it is known that necessary measures are not taken, especially in small and medium -sized enterprises, that occupational accidents cannot be prevented and unregistered employment is common (Akyiğit, 2021). The low unionization rates and the limitation of collective bargaining agreements weakens the organized struggle of the workers; Job security becomes a concept that exists only in laws but cannot actually apply it (Çelik, 2022).

Recommendations

Application Control and Effective Legislation Monitoring:

It should be ensured that the legislation is not only prepared, but to be effectively implemented in the field. In this respect, the number of labor inspectors should be increased, control mechanisms should be independent and deterrent administrative sanctions should be applied (Uşan & Ersoy, 2023).

Development of Occupational Health and Safety Culture:

Only legal regulations are not sufficient for preventing occupational accidents. The understanding of “security first ından before the employer, employee and state should be transformed into a cultural value (Çiçek & Öçal, 2016).

Developing and Encouraging Trade Union Rights:

Legal and actual obstacles to trade union organization should be removed; Collective bargaining processes should be supported. Especially young workers and female employees should be included in union movements (Çelik, 2022).

Expansion of Job Security:

The abuse of fixed -term contracts should be prevented and the boundaries of the subcontractor system should be clarified. Steps that may weaken security such as the transfer of severance pay to the fund should be structured in a way that cannot damage the acquired rights of workers (Süzek, 2017).

Training and Awareness Programs:

In the fields of labor law, occupational health and social security, continuous training programs for both employers and employees should be developed; Universities, professional chambers and non -governmental organizations should be actively involved in this process (Güzel & Heper, 2017).

Database and Transparency Mechanisms:

Data on issues such as occupational accidents, collective bargaining agreements and unionization rates should be published regularly and transparently; Policy should be made open to the access of makers (Akyiğit, 2021).

These suggestions not only ensure that labor law is more effective, but also has critical importance in terms of Turkey's implementation of the social state principle.

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