

Law, Labor, and Society in Turkey

The new Labor Act in a wider social context

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Abstract

This study aims to explore the individual labor law in Turkey in the 2000s and the historical context within which the law is embedded. To this purpose, firstly, the process of deterioration in the organizational capacity of working class and the main trends in the accumulation strategies of post-1980 Turkey are investigated. Secondly, a functional analysis of the power relations imbedded in the norms regulating the field of technical division of labor and the labor contract is pursued.

On May 22, 2003, the National Assembly of Turkey passed a Labor Act (No. 4857) to radically modify the “individual labor law”³ in accordance with the neoliberal conceptualization and envisioning of capital-labor relations, in which labor is seen as an ordinary commodity measurable in terms of production costs. In Turkish law, the Labor Act No. 4857 is the most basic and comprehensive statute regulating labor relations within the realm of technical division of labor. It covers the main components and limitations of labor contracts, such as the form of labor contracts, payment of wages, working hours, rest

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³ The law concerning workers’ rights at work and through the contract for work.

days, annual paid leave, protection of children and pregnant women, workers compensation and work rules. Contrary to many provisions of collective labor law, it covers almost every worker and workplace⁴ and, in many cases, applies to the labor capital relations in the informal sector.

This study aims to explore the individual labor law in Turkey in the 2000s and the historical context within which the law is embedded. To this purpose, the process of deterioration in the organizational capacity of working class and the main trends in the accumulation strategies of post-1980 Turkey shall be investigated first. Historically, elements of an export-oriented industrial schema of reproduction, which requires significant changes in the norms regulating labor capital relations in the realm of technical division of labor, become visible only after the impasse of the export-oriented version of the import-substitution strategy and after the erosion of the collective capacities of labor in Turkey.

Our investigation establishes that as soon as the capitalist class in Turkey found structural opportunities to submit to various variants of import substitution strategy, the Turkish state was interested mainly in the deterioration of the collective capacities of the working class. It reached its aim, among other means of violence, by way of altering collective labor law. Within this period, individual labor law in Turkey remained nearly untouched. Individual labor law regulates the labor-capital relations in the realm of technical division of labor.⁵ Only with the emergence of the crisis of export-oriented version of import substitution do we observe the demands for a “flexible” individual labor law. To put it differently: unless the state’s function of securing the rights of capital to control labor-power reaches a level in which the ruling classes benefit from the extraordinary⁶ absorption of relative surplus-value, individual labor law remains untouched. This may be the case for the other countries that experienced the impasse of im-

⁴ However, journalists (Press Labor Act of 1952) and seamen (Sea Labor Act of 1967) have their own codes. Yet in cases in which no specific solution is brought by the specific labor laws of journalists and seamen, the new Labor Act shall apply.

⁵ Absorption of relative surplus-value is realized in the realm of technical division of labor whose spatial dimension can be exemplified—in general—as a factory, a place in which divisions of labor are regulated *ex ante* and work under single control or ownership; a place in which the technical characteristics of capitalist production shapes the characteristics of the existing divisions of labor.

⁶ This means “extraordinary” in the sense of “super” and/or “hyper.”

port substitution, yet it requires further investigation that is beyond the scope of this study.

Against this background, the study will seek to perform a functional analysis of the power relations imbedded in the norms regulating the field of technical division of labor and the labor contract. In other words, this study will functionally analyze the individual labor law of Turkey. It will be alleged that the new provisions of the new labor law acquire a meaning when they are considered in correlation with an export-oriented strategy of accumulation. The functional analysis will be pursued on three grounds. Firstly, the legal borders of the capacity of control in the technical division of labor will be analyzed with reference to the changing content of the notion of subordination. Secondly, the shift in the regulatory scope of the labor contract will be dealt with. Thirdly, to conclude our attempt to reach a functional analysis of individual labor law, and thus to reveal the power relations embedded in the norms regulating the realm of the technical division of labor and the labor contract, we will deal with the changing conditions of work to the extent that these norms and institutions influence the notion of flexibility.

An Analysis of Capital-Labor Relations on the Axis of the Impasse of the Import Substitution Strategy

The socially instituted forms of relations by which domestic labor is controlled in Turkey have changed radically after the military coup in 1980. This was a time in which a major shift occurred across much of Western Europe—particularly associated with governments on the right—in the relationship between capital and labor and their corporatist framework that had been prevalent since Marshall Aid came into existence. Again, this was a time in which we saw the emergence of the discourses of informalization and flexibilization of labor relations throughout the world. However, unlike Europe, the business initiatives did not include widespread initiatives to restrict, weaken, or eradicate statutory protections for workers against arbitrary employer practices within the field of technical division of labor, and against the rigidities of the labor market in the 1980s in Turkey. Rather, in the post-1980s, the main concern for the Turkish policy makers has been a massive reconfiguration of the collective labor law as a device to regulate the collective capacities of the working class to interfere in national policies.

There are several reasons for the aforementioned divergence between Turkey and Europe. In Turkey, the collective labor law was not enacted with the idea of reaching certain levels of productivity that would help the Turkish bourgeoisie to compete internationally. Rather, the Turkish bourgeoisie was driven by the motive to benefit from the import-substitution strategy. In fact, when considered from the perspective of the overall international competitiveness of the Turkish industrial production, there were no additional gains that would be used in exchange for a deeper Taylorization of the workforce, for the benefit of their import-substitution-driven accumulation strategies (cf. Çetik and Akkaya 1999, 206–14). Nor was Turkish industry determined to take the necessary steps for a kind of reorganization that would help to pursue export-oriented strategies based on high levels of exploitation. On the other hand, the role of collective bargaining over the stabilization of wage relation throughout the 1950–1980 period increasingly expanded⁷ together with the rising organizational capacity of the labor movement. These led to the stabilization of the production norms specific to import substitution and had a correlation with the process of constitutionalization⁸ of the labor process that ended with the military coup of 1980.

⁷ Collective agreements found a certain area of impact in the stabilization of wage relation in certain sectors in this period. The improvement of department 2 of the overall schema of reproduction and the appearance of the paradigm of inflexibility, as a result of wage bargaining, were to a certain extent observable between 1950 and 1980 in the Turkish case (Boratav 2003). Turkey witnessed the appearance of a peripheral kind of wage labor nexus (cf. Çetik and Akkaya 1999, 56–7). Throughout the period, collective bargaining increasingly acquired a place in the determination of the wage-labor nexus as an intangible apparatus structuring interactions between the state, trade unions, and employee organizations. In some sectors, including automobile and consumer durables, the social insurance system, the power to demand stable wages, and firing regulations that have a certain degree of job security were the elements of compromise in return for management's right to intensified control over the labor process. The organizational rights provided by the collective labor legislation have positively influenced the incomes of wage earners (Boratav 2003).

⁸ In the narrowest sense, the term “constitutionalization” refers to the constitutional acknowledgment of labor rights. However, the term will be used in a wider sense, which includes the legal acknowledgment of abstract labor as a major constituent of society, by which the juridical ordering seeks to intervene in the reality of social relationships by directly controlling and reconfiguring those relationships (cf. Hardt and Negri 1994, 71).

The hegemonic projects pursued throughout the history of the Turkish Republic have always been successful in terms of preventing the dominated classes from establishing their own economic and political organizations capable of influencing policy-making on fundamental choices or “discoveries.” This situation has continued and intensified in the post-1980s. When compared with the 1950–1980 era—which roughly corresponds to a certain variant of import substitution—a fairly weak level of representation and organization of working classes in the state has become a persistent feature of post-1980 Turkish industrial relations. However, the deprivation of working classes from the means of participation in policy-making was not equal to the requisite level of control over the workforce to pursue an export-oriented policy as a strategy of accumulation. The Turkish bourgeoisie needed an impasse in the existing accumulation strategy and needed to wipe away the collective capacities of labor before beginning to overtly demand the creation of a mode of regulation that is compatible with an export-oriented industrial schema of reproduction, which requires significant changes in the norms that regulate labor capital relations in the field of technical division of labor. In other words, the individual labor law has become a point of reference only in the aftermath of the deterioration of collective capacities of labor combined with the impasse of the export-oriented version of import substitution corresponding to the years between 1980 and 1994. These two determinants will be discussed briefly in order to understand the incentives behind the enactment of the new labor act which is enacted for the purpose of regulating individual labor law.

Impasse of the Export-oriented Version of Import Substitution

Between 1980 and 1994 the neoliberal “revolution” in Turkey did not include the structuring of industrial organization to charm international investments, and the concerns over the weak national productivity level did not cause a break with the old patterns of production norms. The import-substitution strategy was restored by a reduction in government involvement in productive activities, by an increased emphasis on market forces and by the replacement of an inward-looking strategy with an “export-oriented strategy of import substitution” (Kepepek and Yentürk 1996). With the continuation of the borrowing facilities of the state after the military takeover, which resulted in a relaxation of supply constraints, the Turkish bourgeoisie

found a base to depend upon its earlier practices and did not radically opt for the initiation of investments necessary for the implementation of export substitution (Öniş 1998, 77, 128). Within this context, the “export-oriented strategy of import substitution” meant that the government aimed to achieve structural adjustment by liberalizing finance without structurally changing the investment patterns of the Turkish bourgeoisie.⁹ Accordingly, we observe the lack of supportive hegemonic discourses, in the sphere of relations constituting the technical division of labor as in the case of “Kigyoshugi”¹⁰ in Japan (cf. Woodiwiss 1992). The state economic enterprises were functioning (in an a posteriori sense) to transfer the cost of many intermediate goods from private to public under the protection of high tariffs. Yet, especially after the reductions in tariffs, the productive capacity of the industry severely weakened.

The stress created by the unproductive investments over the division of total income created the 1994 crisis (Yeldan 2001; Boratav *et al.* 2000). A massive depreciation of the exchange rate in the early months of 1994¹¹ brought a major stabilization program in association with the IMF. After the 1994 crisis, the main dynamic of growth had become the ongoing deterioration of wages, and thus of conditions of the reproduction of collective labor-power, due to the ongoing stress resulting from the structural deficiencies of import substitution. The neoliberal restructuring of the Turkish state has resulted in an ongoing decline (except for the period between 1989 and 1993) in the shares of real wages and agricultural incomes throughout the 1980s, the 1990s, and in the first years of the 2000s (Boratav 2003).

⁹ In the 1980s the Turkish bourgeoisie’s pattern of investment could hardly be deemed to be in compliance with the requirements of “selling cheap labor” or “skill-intensive activities.” They did not invest in labor-intensive sectors in which internationalized capital declared its interest. Nor did they articulate with internationalized capital under the conditions of vertical hierarchy (Ansal *et al.* 2000, 69–70).

¹⁰ “Kigyoshugi” refers to the enterprisism or belief in the intrinsic virtue of the company in Japanese industrial relations (Woodiwiss 1992, 87). This term refers to identifying the Japanese company as the principal object of the hegemonic discourse. It is clear that “Kigyoshugi” is not the sole source of themes in the hegemonic discourse in Japan; it is only the dominant source of such themes and, therefore, of the interpellative means whereby the Japanese people are attached and attach themselves to their society.

¹¹ Imports dwindled by 15%, GDP fell by 5.5%, and the inflation rate soared to 106% with the sudden drainage of short-term funds in the beginning of January 1994 (Yeldan 2001, 51).

The post-1994 crisis management depended significantly on wage suppression coupled with reinvigoration of short term foreign capital inflows. Labor markets became places in which significant shifts in income distribution were realized.¹² Wage costs in US dollars decreased substantially and enabled export earnings to rise. In this manner, Turkey once again switched back to a mode of surplus extraction in which export performance of import-dependent industrial sectors depended upon saving on wage costs rather than rising productivity. In fact, the disequilibrium could have been accommodated only by the massive flexibility displayed by real remuneration of wage-labor (Ansal *et al.* 2000, 59–63). Together with the decline in wage earners' income, the inflows of foreign capital enabled the financing of the fiscal gap and the consequent current account deficit and created the conditions of subsequent crises. On the other hand, after the 1994 crisis, many companies made their moves towards the new production systems. In particular, the multinationals and the joint-ventures with foreign capital are to be considered the avant-garde workplaces to implement the new production systems (Yücesan-Özdemir 2002).

When hit by the Asian financial crisis starting in August 1998, the Turkish economy was already under the adverse conditions of severe macroeconomic disequilibria with accelerating fiscal and current account deficits, high inflation and unemployment, and increased social unrest (Kazgan 1999). The inherent characteristics of the growth-crisis-adjustment cycles have had quite different macroeconomic dynamics in operation than they did in the pre-1994 era. During the 1990s, changes in the level and direction of capital movements generated a financial cycle of boom/bust/recovery, which, in turn, resulted in the rising instability of the growth rate (Boratav *et al.* 2000; Boratav 2003; Yeldan 2001; 2003). From 1998 onwards, IMF-oriented economic policies have played a significant role in the “discoveries” of policy makers in search of credits.¹³ Given that financial or capital account liberalization had already been achieved, the pro-

¹² Real wages in manufacturing declined by 36.3% after the 1994 crisis (Yeldan 2001, 44).

¹³ The main axis of IMF policies, especially after the February 2001 crisis, was to reach stabilization by way of rebuilding market confidence. In practice, this strategy is legitimized under the banner of the strategy of competitive disinflation aimed at creating a price advantage over the main transnational competitors. This policy assumes de-indexation of wages, a decrease in employer costs and strict control of budgetary expenditures.

market rhetoric became inadequate for the initiation of necessary measures. The Turkish working class had to confront a new bill if import-oriented industry was to go on producing. In other words, in the absence of investment patterns that would “utilize” the labor residing in Turkey, and thus, of a change in the structure of industry, placing greater reliance on “free” labor-market forces in policy-making became a political mantra serving the purpose of increasing the rate of absolute surplus-value. The overall structuration of industry ceased to respond on a material plane to the changes in the reproduction of capitalism on a global scale. The overall use of the credits entering the economy did not serve the prevalidation of values in process, which, as expected, would complete the full cycle of valorization and realization, since the Turkish domestic market was not big enough for their realization, and the industry was not open to external markets.

Deterioration of the Collective-Action Capacity of Labor

The above-mentioned circumstances correspond to significant changes in the collective capacities of labor. Firstly, unions in Turkey have been facing a very hostile legal environment since 1980. The military intervened in the main codes constituting the Turkish collective labor law. The labor-containment strategy for the post-military regime era was certainly in conformity, not with some form of a state corporatist framework, but with the general thrust of the “new right” politics aimed at putting the organized action of workers in its place (Yalman 1997; 2002).¹⁴ Secondly, the more work relations are flexibilized in Turkey, the faster the society changes into a de-unionized and unorganized risk society incalculable in terms of individual lives. Today, paid employment is becoming more and more precarious; the foundations of the quasi-social welfare state of Turkey have collapsed. Thirdly, the new workplace, under “total quality management” or “human resources management,” has generated new challenges and constraints on unions in Turkey since the mid-1990s. The emerging capital and labor relations in the contemporary workplace which draw on an ideological discourse, which is formulated to increase shared interests between managers and workers and to promote the

¹⁴ The new 1982 Constitution and the enactments of the Collective Labor Agreement, Strike and Lockout Law No. 2822, on 7 May 1983, and of Trade Union Law No. 2821, on 5 May 1983, all of which came into effect at the end of the military period, are all in conformity with this change.

end of “them and us” attitudes and behaviors, attack the union’s presence on the shop floor.¹⁵ Fourthly, the lack of job security is an important social fact against unionization. Last but not least, in the absence of class politics, the struggle of trade unions in Turkey has been unidimensional (collective bargaining), at one-level (that of the collective agreement), and on one issue (wages). In post-1980 Turkey, the “lack of democracy,” “uneven distribution of wealth,” and “human rights” have never been challenged by the questions raised nor the policies developed by unions (Dereli 1998).

Emergence of the Concerns for Individual Labor Legislation

The 1994 crisis occurred as a crisis of confidence in the viability of the export-oriented import-substitution strategy as a dominant strategy. Import substitution as a hegemonic project disappeared from discourse but as a social reality remained decisive in the reproduction of the capitalist relations of production, despite the emergence of investment as a part of international commodity chains. New institutionality in work, together with the refusal of the aim of deepening import substitution, decreased the share of skilled workers among workers overall. Given that trade unions weakened significantly, the informal sector expanded, the pressure of the reserve army on the currently working people intensified, and the limited rigidity paradigm of the 1970s lost its meaning.

From 1994 onward, the axis of accusations in search for an excuse for the clear failure of the neoliberal policies has become the rigidities of labor legislation, which refers to the need to restrict, weaken or abolish statutory protections for workers against employer practices in the realm of technical division of labor and in the labor market. Accordingly, the Turkish bourgeoisie’s calls for a flexible individual labor law intensified (TİSK 1995; 1997; 1999a; TÜSİAD 2002; Yeldan 2001, 25). Within this context, the regulations in the organization of the technical division of labor came to be considered a source of impediments to the “successful” transformation of the existing accumulation strategy into an export-oriented strategy (Yavan 1999).

¹⁵ The new workplace, in which ample emphasis is given to the “manufacturing of consent,” has a hegemonic nature. In these hegemonic factory regimes, most of the experienced and old workers note that the new recruits are inexperienced and feel more sympathy for the company and have more pro-company attitudes (Yücesan-Özdemir 2002).

The labor market was rigid with respect to many potential factors: if the level of unemployment-insurance benefits was too high, or their duration was too long, or if there were too many restrictions on the freedom of employers to fire and to hire, or if the permissible hours of work were too tightly regulated, or if excessively generous compensation for overtime work was mandated, or if trade unions had too much power to protect incumbent workers against competition and to control the flow of work at the site of production, or perhaps if statutory health and safety regulations were too stringent, the labor market indicators of Turkey (Table 1) left little room for arguments trying to explain the necessity of the so-called “rigidities” in the formal labor market.

Despite the growing share of the informal sector in the overall production, the Turkish bourgeoisie’s efforts to eliminate the rigidities of the legal provisions in the field of the individual labor law were “genuine.” Following the 1994 crisis, the informal labor market has become highly heterogeneous, covering production units of different features and in a wide range of economic activities, as well as people working or producing under many different types of employment relations and production arrangements. Today, some important features of the informal labor market are flexibility in labor supply and demand, low levels of skill, productivity, wages and social security, and high level of exploitation. The growing informal sector in Turkey is deeply related to the waves of migration from rural areas to the cities, the growing incidence of unemployment and under-employment, the rapid growth of self-employed workers—most of whom are working on their own account—and unpaid family workers, and the lack of social security provision for a considerable number of workers (Dedeoğlu 2002; Selçuk 2002). In 2003, approximately two-thirds of the population lived in urban areas; 15.3 percent of the labor force is idle; unpaid family workers and the self-employed represent almost 50 percent, and 56 percent work without any social security (Table 1). Unlike the legal provisions in the field of the collective labor law, the regulatory power of the individual labor law legislation has a vast area of application, including the informal sector, provided that the worker succeeds in bringing his case before the court. Symptomatic of this situation have been the increasing demands of the private sector to modify the legal conditions of the labor contract, a view that on several occasions has been openly echoed by their representatives (TÜSİAD 2002).

Table 1. The Main Indicators of Turkey's Labor Market 1990–2003 (thousands) (1)

| | 1990 | 1995 | 2000 | 2003 |
|---|--------|--------|--------|--------|
| Population | 55,294 | 60,640 | 67,420 | 69,479 |
| Urban (%) | 59.0 | 65.0 | 64.9 | 64.2 |
| Rural (%) | 41.0 | 35.0 | 35.1 | 35.8 |
| Civilian Labor Force | 21,045 | 22,673 | 22,031 | 23,640 |
| Civilian Employment | 19,947 | 21,105 | 20,597 | 21,147 |
| Wage and Salary Earners (%) | 32.5 | 31.5 | 39.6 | 41.7 |
| Causal Workers (%) | 5.9 | 8.3 | 10.0 | 8.9 |
| Employers (%) | 4.3 | 5.0 | 5.3 | 4.9 |
| Self-Employed (%) | 25.4 | 24.9 | 24.5 | 24.9 |
| Unpaid Family Workers (%) | 31.9 | 30.3 | 24.5 | 19.6 |
| Unemployment Rate (%) | 8.0 | 6.9 | 6.6 | 10.5 |
| Underemployment Rate | 6.3 | 6.9 | 6.9 | 4.8 |
| Unemployment + Underemployment Rates (%) | 14.3 | 13.8 | 13.5 | 15.3 |
| Unionization (2) | | | | |
| Total (%) | 42.5 | 24.5 | 16.3 | 15.7 |
| Public (%) | 93.3 | 79.3 | 59.7 | 57.3 |
| Private (%) | 22.7 | 10.3 | 6.4 | 6.2 |
| Civilian Employment and Total Active Insured (3) | | | | |
| Total Active Insured | 7417 | 8960 | 9707 | 10,204 |
| Total Non-Insured | 12,530 | 12,145 | 10,890 | 10,943 |
| Ratio of Non-insured to Employment (%) | 62.8 | 57.5 | 52.8 | 51.7 |

Source: State Institute of Statistics, Household Labor Force Survey Results

1 Data refer to persons 12 years old and over

2 This unionization rate refers to the unionization of the workers covered by the Social Insurance Institute, the social security institution for workers.

3 In Turkey, there are three main institutions for social security; *Emekli Sandığı* covers the public sector employees, *Social Insurance* covers the waged workers, and *Bağ-Kur* covers the self-employed ones.

Against this background, and from the 1990s onwards, the protective provisions of the individual labor law remained in a context in which the recognition of conflict and its inevitability in an industrial society were left out of consideration in matters of jurisprudence. The individual labor law was affected by this discursive shift from social-democratic labor law discourse to neoliberal discourse in the envisioning of economy, including capital-labor relations. The significant changes in the discursive framework in which the judges made their decisions allowed the judiciary to apply what was in fact a socially pragmatic methodology of law, finding rather than invoking a set of substantive principles.¹⁶ Against this background, firstly, the definition of the individual labor law in jurisprudence has changed. Today, the labor law is defined as the law regulating the relations between the worker and the employer on the basis of market relations (Ulucan 2000, 299-312). This definition implies that regulation in the sense that the individual labor law states aims only at reaching a system in which labor is a pure commodity and has no collective identity against the individual capitalist who is a fraction of the collective capital. The application of the existing protective provisions of the labor law (case law) has begun to change in the direction of the law of obligations, meaning that the neoliberal discourse in labor jurisprudence has become influential.

Secondly, an intersection between the changing application of court rulings and the changing content of the discourses of production has become observable. Even in case law and the juridical comments on the law of obligations, which cover the sale of real commodities,¹⁷ the reevaluation of any kind of contract depends upon the principle of protecting the weak party. However, the reevaluations pursued by the Court of Cassation protected the industry rather than workers.¹⁸ The legitimization is achieved through the argument that

¹⁶ For similar developments in the United States and Japan, see Woodiwiss (1992).

¹⁷ The legal forms developed in private law, in general, cannot be directly applied to the field of labor law.

¹⁸ The Court of Cassation's attitude against the enforcement of collective agreements in favor of workers in times of crisis is also in conflict with the existing labor regulation, including the provisions of the Constitution (Articles 90, 119, 121), ILO Conventions ratified by the Country (No. 87 and 98), and the Maritime Act No. 2935 (Articles 10, 11).

refers to the importance of protection of the enterprise, which would in turn lead to the protection of the worker (Özveri 2002, 207–56). A kind of public interest test is then established in this argument under the principle of social utility. We can clearly track the signs of the neoliberal arguments which try to ignore the conflictual characteristic of industrial relations in the legitimizations of the Court of Cassation. In the same vein, the legal doctrine has started to change its explanations on the main principles of the labor law by referring to the importance of the public-interest tests as a counterbalancing force to the principle of the protection of workers. More so, the burden of protecting the enterprise, in conformity with the developments explained above, is now on the workers rather than on the state, which would have provided protection by way of taxes, credits, providing information, etc.

All in all, capital is always born from and developed on the basis of exploitation, transforming the concreteness of that social relationship into the abstraction of its own configuration (Hardt and Negri 1994, 104). Turkey has formed its labor law of the post-1980s under the conditions of “deconstitutionalization,”¹⁹ in which labor, even in the form of abstract labor, is condemned in its liberal and narrowest sense to the insignificance in the discursive conceptualization of economy. Living labor has become to be seen as a cost (of production) and is forgotten as a source of demand (Jessop 2002). Thus far, the inquiry in the changing envisioning of the legal regulation of the capital-labor relations has served as a base to examine some general properties of labor law in this study.

A Functional Analysis of the New Labor Act

The first Labor Act (No. 3008) came into force on June 15, 1937. The Act was prepared when a distinct Turkish bourgeoisie and working class had not yet emerged, and the conflict-limiting potential of populism and etatism was used to control the development of labor organizations. The Labor Act (No. 1475) came into force on November 12,

¹⁹ The process of the legal de-constitutionalization of labor in Turkey responded on a material plane in which collective labor law had lost its function as a determinant of Turkey’s peripheral/sectoral type of wage labor nexus, and in which individual labor law is conceptualized in a context in which its class dimension is denied in the changes in the international division of labor.

1970. It bore the imprints of a rather social-democratic discourse, and stayed in force for almost twenty-five years, up to 2003.

The new Labor Act (NLA) was enacted on May 22, 2003. Contrary to previous acts, the NLA is committed to the neoliberal conceptualization and imagination of capital-labor relations, in which labor is seen as an ordinary commodity calculable in terms of production costs. The NLA covers many areas of worker-employer relations belonging to the field of the technical division of labor, and to labor-capital relations in the labor market. The new provisions, in conformity with the existing discourses of “flexibility” and “human resource management,” include transformation in workers’ obligations, subsequent changes in the main conceptualizations of individual labor law, a shift in the regulatory scope of a labor contract, and the introduction of new types of labor contracts and new conditions of work. All of these refer to a change in the norms of production and consumption determining the ratio of surplus-value to capital (rate of profit). This means that the process of change in the relatively durable pattern of structural coherence in the handling of the contradictions and dilemmas inherent in the capital-labor relation in the peripheral capitalism of Turkey has come to a point of culmination.

This section seeks to perform a functional analysis of the individual labor law, and thus, of the power relations imbedded in the norms regulating the field of the technical division of labor and the labor contract. It will be alleged that the new provisions are in accordance with the emerging strategy of creating an export-oriented industrial schema of reproduction. The investigation into the legal borders of the capacity of control will be pursued on three grounds. We will first examine the changing conceptualization of subordination to investigate the legal borders of the capacity of control in the technical division of labor. Secondly, the shift in the regulatory scope of the labor contract in the labor market, and the subsequent introduction of new types of labor contracts referring to the changing limits of regulatory powers of the labor contract, will be dealt with. This second task also contains a survey of the legal subjects that are excluded from the protection brought about by the protective provisions that brought limits to the labor contracts. Thirdly, to conclude our attempt at a functional analysis of individual labor law, and thus our attempt to reveal the power relations embedded in the norms regulating the realm of the technical division of labor and the labor contract, we will deal with the changing conditions of work to the extent that these norms and institutions influence the notion of flexibility.

Subordination: Redefining the Concept

Workers' subordination to the employer in the performance of a certain job is the fundamental prerequisite of working relations. The power to determine the actual deployment of labor in the production process depends particularly on this obligation of the worker. Only by way of subordination can the conditions of extraction of surplus-value be established. The notion of subordination appears as the nodal point at which the individual capitalist's right to control labor-power finds its legal expression. Thus, the way in which the concept of subordination is conceptualized is central to legislation concerning labor-capital relations in the workplace.

The subordination inherent in the capital-labor relations in the workplace is mainly established by the authorization of the labor contract. The worker shall be considered as a person who works under a labor contract (Article 2 of the NLA). In the previous Labor Act (No. 1475), the concept of the individual employment contract was not defined. The judiciary would refer to Article 313 of the Obligations Act, stating that the labor contract was "a type of contract whereby the employee undertook to perform a 'definite or indefinite' service in return for the employer's obligation to pay a certain wage." The change in the meaning of the concept of subordination can be traced down within the definition brought about by the NLA. The first sentence of Article 8 of the NLA defines the labor contract as a "type of contract whereby a party (employee) undertakes to perform, under subordination, a service in return for which the other party (employer) undertakes to pay him a certain wage". The removal of the terms "definite or indefinite," which were stated in Article 313 of the Obligations Act, indicated that subordination cannot be limited by defining a certain form of it as definite. The role of the "nature of the specified service," which would be carried out by the workers in compliance with the legal framework established by workplace rules, case law, and the protective measures brought about by the law, ceases to be the determinant when assessing the limits of subordination under these conditions. With the removal of the terms "indefinite and definite service," the concept of subordination acquires a new meaning in which the powers of the employer in the determination of the conditions of work are increased in the face of a decrease in the restrictive role of the notion of "the nature of work" in question.

The discourse of the NLA disregards the principle of the protection of the worker in the light of the principle of social utility. Classical labor law aimed to protect workers due to the power imbalances in the nature of the work relation (Esin 1982; Talas 1992; Tunçomağ 1971). This approach was consistent with the specific character of the commodity in question. Today, the protection of the worker is considered to be related to the protection of the existence of the enterprise, which in turn provides the worker his or her wage. The change in the importance of the principle of the protection of the worker can be considered in regard to the change in the notion of subordination. The legal impediments over the individual capitalist's enjoyment and use of labor-power disappear in face of the priority given to the protection of the enterprise.

Terms of Employment

Employment practices, whether acknowledged and regulated by the NLA in the form of a certain type of labor contract or approved by the policy makers and the courts implicitly, indicate the forward march to the "ecological dominance of capitalism" (Jessop 2002) in the peripheral capitalist economy of Turkey. To investigate these practices, we will deal, firstly, with the juridical forms used to overcome the normative constraints before the enactment of the NLA due to their frequent application: fixed-term contracts, contract work, subcontracting, and homeworking. Secondly, the forms established by the NLA will be discussed: temporary employment relationships, work on call, compulsory work, and overwork.

First, a change in the dominant legal form regulating the construction of labor contracts is observed: the new dominant legal form emerges in the form of fixed-term contracts, while the labor contracts for an indefinite period lose their place as the principal form. A contract for a definite period (that is a fixed-term contract) has a specified duration, while a contract for an indefinite period is open-ended. While a contract signed for a definite period expires automatically at the end of the duration specified in the contract, without requiring the employer to pay severance pay, the cancellation of contracts signed for an indefinite period by the employer generally ends up with severance pay in legal practice. The slippage to fixed-term labor contracts provides the necessary discursive apparatuses to the lawmakers (in Turkey and around the world) to pursue new restrictions on the protective provisions under the banner of liberalizing princi-

ples. The protective provisions of the ILO Conventions and *Acquis Communautaire* generally direct their regulatory influence to the labor contracts for an indefinite period. Thus, accepting the protective provisions of the ILO Conventions regulating the contracts for an indefinite period, and transforming the dominant legal form of labor contracts from contracts for indefinite period to the fixed term contracts, helped lawmakers to overcome the limits brought about by these agreements. Indeed, the introduction of flexibility clauses into ILO conventions provided room for this massive change.

Contract work as a temporary employment model (including some characteristics of fixed-term contracts) has become an overriding recruitment strategy in public-sector companies that were scheduled to be privatized after the mid-1980s (Cam 2002). Contract work is an interim category used to transfer the legal status of public servants to the category of worker. In contract work, the exhaustion of the time mentioned in the contract automatically brings the work relation to an end without any further costs. A significant share of the white-collar workers in the state economic enterprises were employed in contract work, and blue-collar workers were included in this strategy by the extension of contract work at the end of the 1990s (Boratav 2003).

Another form employed during the last ten years to increase the pressure over the labor market has been the subcontracting system. The coercion practiced by way of the implicit authorization of the demand side in the labor market to pursue strategies aimed at overcoming legal regulations on the rigidity of the labor contract are apparent in these types of contract. The pressure of the labor market on individual workers provided individual capitalists with the necessary social means to use subcontractors. Secondly, the generality of the condition set up by contractualism inherent in the neoliberal discourses of production—that is, the universal principle of the freedom of contract—provided the same individual capitalists legal means to fill their vacancies with workers provided by subcontractors and/or home-based workers, instead of permanent ones. Thirdly, in the Turkish case, deregulation did not imply additional hiring and thus did not imply the development of employment, yet corrupted the existing conditions of work by way of creating vacancies that would be filled by temporary workers or by workers provided by subcontractors. Fourthly, subcontracting has been intensively used by privatized companies.

Another form of labor to be mentioned is homeworking. This refers to a kind of work relation by which the work is carried out in the dwellings of the workers. Workers are paid by piecework after the submission of the products of their labor to individual capitalists and/or small merchants who, in many cases, work for the individual capitalists. The responsibility of the individual capitalist is limited to the payment of the necessary amount. Especially after the 1990s, with the general acceptance of flexible production norms in some industries, including consumer durables production, employers narrowed their core workforce, and the application of home-based work in industrial cities increased significantly (Selçuk 2002, 22). Homeworking is prevalent in artisanal production, such as carpets or embroidery, as well as in the garment and footwear industries. Homeworking is generally conducted through privately-run putting-out networks.

In accordance with the above-mentioned changes in the social context after the 1990s, the NLA introduced the temporary employment relationship into Turkey's industrial relations literature. The new Act provided employers with more than what they expected; that is, the right to "transfer" the worker to another employer without abolishing the existing contract (Article 7).²⁰ The NLA enabled the employers to transcend the benefits of the subcontracting system, which is only appropriate for small businesses that are able to serve mid-range and big companies, and which is not operational for the industry. Subcontractors are incapable of providing the industry with the skilled or semi-skilled workers, who were trained by the conditions of the operation of industrial workplaces. With the materialization of the temporary employment relationship, the industry acquired the power to use the core workers without bearing the cost of paying wages in times of recession.

²⁰ The transitory work relation brought by the NLA into Turkey's law can be best illustrated by a short comparison with the "*shukko*" (the worker's transfer to related firms) of the Japanese law. Woodiwiss (1992) argues that, in Japanese law, which is the prime site of the patriarchal labor-law discourse, "*shukko*" is the point at which the patriarchal obligation of employers to provide "lifetime employment" comes into force. In Turkey, in the absence of such a patriarchal obligation, and of high wages and life time employment, this new obligation seems to increase the deterioration in the working conditions of workers and produces new legal problems whose solution lies not in the contractual condition, but in the way in which individual judges understand the needs of the economy and the public interest.

Moreover, this formulation is also in conformity with the organizational patterns of the Turkish industry.²¹ Groups are now able to “transfer” the labor-power they already have in “stock” from one of their companies to another. Thus, they have acquired, against their workers, the right to demand the performance of various jobs under the same labor contract. The neoliberal argument that flexibility creates jobs is completely inconsistent with the situation in the transitory work relation. The preamble of Article 7 clearly demonstrates this “support” by overtly stating that the labor contract, like other sales contracts, can be assigned to a third party. Workers’ duty to perform a certain task in a certain place for a certain employer is now, under the conditions of the transitory work relation, transferred to a duty to be in any place and to perform any task required by any employer.

Another difference between this legal “discovery” and the previous forms of subcontracting is that, unlike subcontracting, the worker’s obligation to obey the orders of the employer doubles, meaning that s/he is now under the obligation to serve two employers with one labor contract.²² It may be alleged that Article 7 requires the written approval of the worker for the initiation of a transitory work relation, and this written approval can be considered a new labor contract. The bizarre point here is that one cannot sign a new labor contract without abolishing the previous one. In contrast, EU regulation 2001/23/EC, dated March 12, 2001, regulating the transfer of the work or of the labor contracts, does not bring with it the novelty of creating two employers for one worker.²³

The NLA enables employers to realize contracts by which workers would come to work in case they are called. The new Act formulates that work on call is a “work relation in which the worker’s duty to work begins when the service of the worker is required by the em-

²¹ The Turkish industrial bourgeoisie is not simply a distinct fraction of the total Turkish capital; rather, it is organized in “groups,” which are capable of investing money capital both to industry and, when needed, to financial institutions (Sönmez 1998, 26-31).

²² “... [The second employer] has the right to give instructions” (Article 7/1).

²³ Directive 2001/23/EC relates to the safeguarding of the employee’s rights in the event of transfers of undertakings. The defenders of the new Labor Act have referred to the Directive to prove the universal application of the transitory work relation regulated by the new Labor Act. Yet given that the dual obligation of the worker in a transitory work relation does not exist in Directive 2001/23/EC, reference to the EU directive seems to be illusionary.

ployer,” and that this kind of work relation should be realized by way of a part-time labor contract as the most convenient legal form (Article 14). This legal form allows the employer to determine the time and the duration of the total work demanded from the worker. In cases where the duration of work is not determined clearly by the labor contract, the duration of weekly work is considered to be 20 hours (Article 14). Work on call leaves the worker in total uncertainty as to when s/he will be called to work. Moreover, this contract defines the worker as an economic being who does not have any social and/or private life and who is always ready to be called to work.

Another striking feature of the NLA is that it introduces a new conceptualization to Turkish Law: overtime work. Article 41 of the NLA states that

overtime work is work that exceeds forty-five hours a week. ... In cases where the weekly working time has been set at less than forty-five hours by a contract, work that exceeds the average weekly working time ... 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.

In cases of labor contracts that are less than 45 hours, the wages for extra work shall be only 25 percent above the normal hourly rate. In cases of labor contracts that are more than 45 hours per week, extra work shall be 50 percent above the normal hourly rate. In other words, if an employer sets regular working time at less than forty-five hours a week in the labor contract, s/he will be entitled to demand that the worker work for less pay for extra work, of course under the vague conditions set up by the law. Accordingly, to work for 45 hours a week is considered a duty of the collective worker in the NLA. Here a peculiar/negative kind of protection for the workers appears. In this case, limitation works for the benefit of employers, meaning that protective provisions have become protective for the individual capitalists.

Working Conditions

Another step in the erosion of the rights of the individual worker in the workplace is the change in the norms regulating the conditions of work. In classical labor law, the worker's obligation ends when s/he provided her/his service under the command of the employer,

whether the employer used her/his service or not. The NLA empowers individual capitalists to regulate working hours in a way that overcomes the restrictions on overtime work, at no additional costs. This change was demanded by the bourgeoisie in various meetings and booklets after the 1994 crisis (TISK 1995; 1999a; 1999b; TÜSIAD 2002). The new regulation of working time (Article 63) is an “invention” and/or a “discovery” to prevent the worker from gaining receiving a wage in some particular cases in which the employer lacks the ability to use his/her labor-power. The way the different structural power differentials are shaped by the labor contract, and the relevant legislation under the neoliberal discourse of law, are observed here. In other words, the correlation between the new legal discourse and the changing content of the right of the individual capitalist to control labor-power within the framework of the codes regulating the labor relations in the society becomes apparent.²⁴

The NLA enables employers to regulate the distribution of weekly working hours at their discretion, up to 11 hours a day (Article 63/2).²⁵ The new Act also states that the employer can force the worker to work 11 hours a day, provided that within a time period of two months, the average weekly working time of the employee shall not exceed normal weekly working time. What’s more, this two-month period can be extended to four months, when included into the collective labor agreement (Article 63/2). Second, the new Act clearly empowers employers to regulate the working hours within the 24-hour time period at their discretion (Article 67).²⁶ The flexibility brought by this Article is known as “slippage in the duration of work” in central

²⁴ Given the poor levels of productivity in Turkish industry, the further extraction of surplus-value from workers under current conditions necessitates an increase in currently extracted levels of absolute surplus-value from the collective worker. This issue is clearly in harmony with our investigation of the socio-economic level of Turkish capital-labor relations, which stresses the crisis of productivity due to the impasse of the import-substitution accumulation strategy.

²⁵ Article 63/2 of NLA states “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 does 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.”

²⁶ Article 67 states, “The beginning and ending of the daily working time and rest breaks shall be announced to workers at the establishment. Depending on the nature of activity, the beginning and ending times of work may be arranged differently for employees.”

capitalist countries, and has been in application since the early 1970s (Tuncay 2003, 3–18). The power of the employer is enlarged in two dimensions by this legal technology. The first dimension is the power to determine the starting time of the working day (simple slippage). The second dimension is the power to determine, not only the starting hours of the working day, but also the duration of the working day (qualified slippage). By stating that the starting and finishing time of daily work is declared to workers by the employer, the new Act in Article 67 opens the way for qualified slippage. Third, the NLA empowers the employer to regulate, not only working hours, but also non-working hours, in other words, break times. The NLA, in conformity with the demands of the Turkish industrialists (TISK 1999a) and with EC Directive No. 104, leaves the regulation of break times to the employer. This situation is clearly associated with the new institutionalism, which signifies the changes in the mass production patterns, in which masses of workers start to work, eat together, and leave work at the same time.

Conclusion

This study has attempted to establish a framework in which labor law can be understood in relation to the social relations surrounding its provisions. In the course of this study, the task of elucidating the structural constraints and powers of individual and collective subjects in the sets of relations, amidst which they live, required two implicit historical questions to be posed: Why and under what circumstances was the NLA introduced into industrial relations at a particular point in time? What were the particular legal interventions of the NLA, in order to achieve greater levels of flexibility in Turkey in the 2000s?

Within this context, the article has argued that the deterioration in the organizational capacity of class forces (together with a decline in the protective capacity of collective labor law) led to an extraordinary application of individual labor law in labor-capital relations. The labor law of the post-1980s was shaped by the conditions of deconstitutionalization of labor, in which labor, even in the form of abstract labor, is condemned to insignificance in the discursive conceptualization of economy in its liberal and narrowest sense. When legal constraints embedded in a wide range of protective provisions regulating collective bargaining and individual labor legislation are eradicated, the changes imply the rule of the market.

Before the 1994 crisis, the Turkish state's function of securing capital's rights to control had never reached a level at which the ruling classes benefited from the extraordinary absorption of relative surplus-value. Since 1994, "thanks" to the crisis and to the deterioration in the organizational capacity of class forces, deliberate attempts of the bourgeoisie and the "discoveries" of policy makers overtly focused on reaching such a level. The enactment of the NLA represents a culminating point within this venture. The change in the meaning of the concept of subordination, the new definition of the employer and worker, terms of employment and working conditions, and the forms of new institutionality in Turkish practice and legislation were among the elements of the expansion of the individual capitalist's right to control labor within and outside the workplace. The new provisions conform to the existing discourses of production, covering many areas, including a transformation in the obligations of the worker, and the subsequent changes in the main conceptualizations of individual labor law, a shift in the regulatory scope of labor contracts, and the introduction of a new type of labor contract. Today, individual labor law has become an increasingly important determinant of the development of norms of production, which, in the absence of an international rate of profit as a limit for exploitation, have become dependent on political action.

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