



ITF House
49 - 60 Borough Road
London SE1 1DR

Telephone +44 (0)20 7403 2733
Fax +44 (0)20 7357 7871

International Transport Workers' Federation
Federación Internacional de los Trabajadores del Transporte
Fédération internationale des ouvriers du transport
Internationella Transportarbetarefederationen
Internationale Transportarbeiter-Föderation
Международная федерация транспортников
التنظيم عالمياً، النضال من أجل حقوقنا

Submission of the International Transport Workers' Federation to the 3rd UPR Session for Turkey, 18 July 2019

1. In advance of the Universal Periodic Review of Turkey due to take place in January 2020, the International Transport Workers' Federation (ITF), a global union federation representing 18.5 million members, from around 670 affiliates in 147 countries, submits the following information on behalf of workers, union members and labour rights defenders in Turkey and around the world.

2. In summary, our major concerns include:

- Anti-union legislation in Turkey;
- Government repression of trade union activists;
- Police violence against trade union activists; and
- Imprisonment of trade unionists.

State Obligations under International Law

3. Turkey has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) of 1966, both in 2003. In accordance with articles 7 and 8 of the ICESCR, the state is obliged to respect the right to just and favourable conditions of work and the right to form and join trade unions of one's own choice, including the right to take industrial action. Article 22 of the ICCPR protects the right to freedom of association with others, including the right to form and join a trade union to protect one's interests.

4. Turkey is also a party to ILO core Conventions on the Right to Organise and Collective Bargaining, 1949 (No. 98) and on Freedom of Association and the Protection of the Right to Organise, 1948 (No. 87) since 1952 and 1993 respectively. Persistent state violations of the right to freedom of association, to join a union of one's choice and the right to strike, which is protected under article 3 of C87, are of grave concern to the ITF and are the focus of this submission.

Turkey's Previous UPR Session

5. Turkey's previous UPR session in 2015, took place with the Gezi Park protests of 2013 in recent memory. The Committee on Economic, Social and Cultural Rights in its preliminary report to this last UPR session noted with concern that the legislation in Turkey imposed severe restrictions on the right to form unions and to strike.¹

¹OHCHR Compilation for UPR 21st Session, A/HRC/WG.6/21/TUR/2, at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/210/44/PDF/G1421044.pdf?OpenElement> citing E/C.12/TUR/CO/1, para. 19.

6. In response to peer state review outcomes of the UPR session, amongst others, the Turkish government accepted and supported recommendations to adopt legal measures to prevent child labour and trafficking accompanied by effective monitoring mechanisms (148.86 (Montenegro)); to guarantee the right to freedom of association and align its legislation with international law (148.120 (Switzerland)), including by simplifying the notification requirements for planned demonstrations (148.125 (Finland)) and to increase labour inspectors, especially in the rural provinces (148.132 (Italy)). The state did note that there was work to be done to achieve progress in these aspects.

7. Furthermore, Germany recommended (at 149.36) that the state guarantee freedom of assembly and association, including by protecting protestors from ill-treatment and by investigating allegations of abuse by officials promptly, thoroughly and independently. In contrast to those above, this recommendation was considered by Turkey to have been already implemented or in the process of being implemented.

8. It is of note that a re-examination of the laws on strikes to allow greater flexibility was recommended by the United States in Turkey's first UPR session in 2010, a concern that was repeated in the second session in relation to freedom of assembly.²

National Legislation

9. Although article 51 of the Turkish constitution guarantees the right to freely form and join unions "without obtaining permission",³ national legislation has long unduly restricted the rights to organize and to collective bargaining and fails to provide adequate protection against government acts of anti-union discrimination and interference. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) provides context in recalling that "for a number of years it has been commenting on the civil liberties situation in Turkey".⁴ This comment was made in the context of a complaint from the International Trade Union Confederation (ITUC) and Education International in 2012 concerning ILO Convention 87, expressing concern in relation to the violent treatment, arrest and prosecution of trade unionists, which the government claimed was in response to terrorist infiltration of trade union organisations.

10. National legislation has long been used to suppress trade union organisation and activities in Turkey. Law 2911 on Assemblies and Demonstrations enacted in 1983 determines the forms, conditions and procedures that must be fulfilled to lawfully exercise the right to assemble and demonstrate and the purported breach of this has been frequently used against trade unionists as against other human rights defenders. This is despite article 3 of this law stating that "everyone has the right to assemble and demonstrate unarmed and unaggressively, without prior permission, for certain purposes

² A/HRC/15/13, (2010) para 101.8, at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/144/95/PDF/G1014495.pdf?OpenElement>; and 2015 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/076/33/PDF/G1507633.pdf?OpenElement> paras 12, 148.117.

³ Turkish Constitution, available at http://www.hri.org/docs/turkey/part_ii_3.html.

⁴ ILO CEACR, direct request concerning freedom of association and protection of the right to organise Convention, 1948, Turkey m adopted 2012, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3081150.

which are not considered crimes by law.⁵ Indoor meetings of labour unions and “meetings held in accordance with the law” are exempt from the provisions of this law, otherwise a notification of any assembly within the meaning of the law must be submitted to local authorities for approval forty eight hours in advance. See below for examples of the way in which this law is used against trade unions.

11. Act No. 6356 on Trade Unions and Collective Labour Agreements demands a “dual representativeness” threshold for a union to gain recognition for collective bargaining purposes; previously the union had had to represent 10 per cent of workers at the sectoral level and over 50 per cent of workers at the enterprise level before it could gain recognition for the purposes of collective bargaining and election of a shop steward in the company to handle grievances and supervise labour conditions on site. Intervention of a public notary was also required to become a member of or to resign from a trade union.

12. In 2014 in the context of Turkish Case 2789 before the ILO, the state informed the Committee on Freedom of Association (CFA) that by article 17, paragraph 5 of Law 6356 the intervention of a public notary was no longer required to become a trade union member. Instead, the application is now filed by e-State electronic application via the Ministry of Labour, and will be approved if not refused by the trade union within 30 days. Though this condition is less onerous for an individual worker, it falls short of free and independent membership of a trade union.

13. Furthermore, as workplace union representatives may only be appointed following official recognition of the union by the Ministry of Labour, the result is that this fundamental lifeline for workers is often severely delayed, by up to three years in practice, by the objection of the employer. This also allows time for the dismissal of union members, and in practice makes the Turkish law incompatible with the state’s obligations under C135.

14. In 2017, the state also provided an update that article 41 of 6356 had been amended to reduce the branch threshold to 1 per cent of those engaged in a branch of activity: “the workers’ trade union representing at least 1 per cent of the workers engage in a given branch of activity and more than half of the workers employed in the workplace and forty per cent of the workers in the enterprise to be covered by the collective labour agreement shall be authorized to conclude a collective labour agreement covering the workplace”. Practice shows that this is still a high bar used against trade union activity, particularly in light of the above.

15. In its recent June 2019 report, the ILO CFA recalled in relation to above Case 2789 that the granting of an exclusive right to the most representative organisation “should not mean that the existence of other unions to which certain involved workers might wish to belong is prohibited. Minority organizations should be permitted to carry out their activities and at least have the right to speak on behalf of their members and to represent them...The Committee trusts that the Government will ensure respect for this principle.”⁶ It also recalled that “workers who consider that they have been prejudiced because of their trade

⁵ English text of Law 2911, available at <http://www.judiciaryofturkey.gov.tr/Law-on-Assemblies-and-Demonstrations-is-available-on-our-website>

⁶ ILO Report of the Committee on Freedom of Association, 389th Report, June 2019 para 100.

union activities should have access to means of redress which are expeditious, inexpensive and fully impartial.”⁷

16. The CEACR has been referred the legislative aspects of Case 3021 and requires the State review of “the impact of the perpetuation of the branch threshold requirement on the trade union movement and national collective bargaining machinery as a whole in full consultation with the social partners, and should it be confirmed that the perpetuation of the 1 per cent threshold has a negative impact on the coverage of the national collective bargaining machinery [the State must] revise the law with a view to its removal”.⁸

17. Article 63(1) of Law 6356 allows even lawful strikes or lockouts to be suspended by the Council of Ministers for 60 days with a decree “if it is prejudicial to public health or national security” has been used in conditions which do not reach this threshold to postpone legitimate strike activities.⁹

Labour Rights Situation on the Ground

18. The ITF has consistently criticised the Turkish government’s persecution of trade unions and their members and can confirm that, despite limited legislative changes outlined above, harassment of trade union activists continues. The ITF remains unconvinced of any change in approach or genuine commitment to bring state legislation, regulations and practice into line with international law on freedom of association and assembly. In contrast, our experience with individual cases of union and worker suppression is typically of a catalogue of violations of the Convention 87 rights to freedom of association and the right to organise carried out in the lead up to a government crackdown on legitimate trade union activities.

19. The Erdoğan regime has, in 2016 and since, been participating in a retrospective crackdown on those who participated in the 2013 protests, with criminal prosecutions being brought. On 21 July 2016, the Turkish Government notified the Secretary-Generals of both the UN and the Council of Europe that, in a situation of declared emergency, it was invoking article 4 derogation of the ICCPR and suspension of the European Convention on Human Rights. UN experts noted this derogation article could only be called upon where there was a “threat to the life of the nation”, which was arguably not met, that it could not be used as a carte blanche to purge dissent and called on Turkey to uphold its core human rights obligations despite any attempted coup.¹⁰ We call on the Turkish government to uphold core international labour standards at all times.

⁷ Ibid, para 101.

⁸ ILO Report of the Committee of Experts on the Application of Conventions and Recommendations, 108th Session, 2019, page 169, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_670146.pdf

⁹ English version of Law 6356 available at <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/91814/106961/F2018685492/TUR91814%20Eng.pdf>

¹⁰ UN experts urge Turkey to adhere to its human rights obligations even in time of declared emergency, 12 August 2016, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20394;> https://www.coe.int/en/web/portal/news-2016/-/asset_publisher/StEVosr24HJ2/content/secretary-

20. It is of note here that the first decree with the force of law, “Kanun Hükmünde Kararname”, KHK/667 (Decree 667), issued in the context of this derogation and state of emergency attempted to effect the immediate closure of 19 trade unions (as well as 1 125 associations, 104 foundations, 15 universities and other bodies). It also provided for a simplified administrative procedure for the disbanding of further organisations (Article 2). The Council of Europe Commissioner for Human Rights noted that these provisions raise “very serious questions of compatibility...with rule of law principles, even taking into account the derogation in place”.¹¹

Turkish Motor Workers’ Union Workers

21. There are a litany of historic actions against the ITF-affiliated Turkish Motor Workers’ Union (TÜMTIS). The ITF would bring particular attention to case 3098 brought to the ILO CFA by the Turkish Motor Workers’ Union (TÜMTIS), the ITF and ITUC on 7 August 2014, which is still ongoing. The complainants protest the misuse and abuse of criminal conspiracy laws to arrest, detain, prosecute and, ultimately, suppress independent trade unions and criminalise several leaders of the ITF-affiliated TÜMTIS. The National President Kenan Ozturk and Ankara Branch President Nurettin Kılıçdoğan were arrested and prosecuted for allegedly criticizing the new labour law and holding an illegal demonstration. Nurettin Kılıçdoğan remains in prison in 2019.

22. The ITF and its affiliates rallied to support 30 members of TÜMTIS who had been dismissed by the logistics company DHL Turkey on what the ITF believed to be a series of trumped-up allegations. Charges were brought against fourteen members arrested during dawn raids in 2007 for “founding an organisation [that is a trade union] for the purpose of committing crime, violating the right to peaceful work through coercion in order to obtain unfair gain and obstructing enjoyment of union rights”. Prosecutions, with terms varying from six months to two years, were upheld by the Turkish Supreme Court, despite national union and ITF protest and abuse of process.

23. The ITF challenged the continued stifling of free and democratic trade unionism by letter of March 2017 and urged the overturning of these politically motivated convictions. An ITF fact-finding delegation to Turkey from the 4th to 8th September 2017 was prevented from visiting unjustly imprisoned union colleagues including Nurettin Kılıçdoğan, who had been moved to a high security prison simply because of his status. Amid continuing police violence against union members, the Ministry of Justice declined the ITF request for talks. The ITF did meet with the undersecretary and deputy undersecretary of the Ministry of Labour and Social Security to express ITF concerns over employers’ anti-union behaviour and the imprisonment of trade unionists in Turkey.

24. This delegation warned of a further wave of government repression against trade unionists and workers and in late 2017, warehouse workers at a large cargo company in

[general-receives-notification-from-turkey-of-its-intention-to-temporarily-suspend-the-european-convention-on-human-rights](#)

¹¹ <https://www.coe.int/en/web/commissioner/-/measures-taken-under-the-state-of-emergency-in-turkey>

Gaziantep attempted to join TÜMTIS. The company attempted to coerce these workers to leave the union, dismissed nine workers when they refused and violently removed them from the premises. Incapacity reports issued to the workers by the health services show the severe level of violence meted out to the workers.

25. When the workers formed a picket line to protest this harassment, the Governor of Gaziantep outlawed strike action under a state of emergency and riot police proceeded to break up the demonstration. TÜMTIS president, Kenan Ozturk, and four other union officials visited these unfairly dismissed workers and held a press conference. For this reason alone, they were charged with breaching Law 2911 (above). The prosecutor is seeking jail terms of 18 months to 3 years. The second hearing was due to take place in July.

Prevention of Trade Union Formation

26. In case 2789, referred to above, the ILO was unable to reach a determination of the issue of anti-union pressure and coercion, despite certain workers expressing the belief that union membership could result in dismissal from the company.

27. By way of illustration of recent abuse of Law 6356, when workers at the Kocaeli Vehicle Inspection Station became members of TÜMTIS, the employer filed an objection and subsequently dismissed every single union member while the lawsuit was ongoing. At the end of proceedings, there were no union members left and no individual that could be appointed as representative.

28. A major international logistics firm, in dispute with another ITF-affiliated union Nakliyat-İş dismissed 168 workers at the same time that the union was filing its application with the Ministry of Labour. The ITF does not believe that the mass dismissals at the same time as the filing for collective bargaining was a coincidence.

Prevention of Strike Action

29. In a recent example of interference with legitimate industrial action, on 8 January 2019 a strike called by the ITF-affiliated railway union in Izmir was officially suspended under Section 63(1) of Law 6356 by presidential decree. It was determined to be disruptive to urban public transport in a decision that the Izmir Bar Association termed “a blow to labour rights, democracy, and the right to strike” which was “devoid of any legal basis and is contrary to the Constitution, national laws and international conventions.” We add our plea to the Turkish government to allow all workers to exercise their full trade union rights in freedom.

30. The arrest of trade unionists, dismissals of workers and breaking up of strike action, creates a climate of fear and intimidation prejudicial to the freedom of association and development of trade union activities.

Recommendations to the state

31. The ITF urges the Turkish government to:

- As a matter of urgency, release TÜMTİS leader Nurettin Kılıçdoğın and any other trade union activists unjustly detained and/or prosecuted for legitimate organising activities.
- Drop trumped up charges against Kenan Ozturk, and four other union officials, who face imprisonment for visiting their union members following unfair dismissals and simply holding a press conference.
- Abolish Law 2911, or otherwise remove the significant arbitrary requirements for preliminary authorisation of demonstrations and assemblies, and stop the use of such requirements to interfere with legitimate trade union activities.
- In accordance with ILO Case 3021 recommendations from the CEACR, review the impact of the perpetuation of the 1 per cent branch threshold requirement in Law 6356 on the trade union movement and national collective bargaining machinery as a whole. This must be done in full consultation with the social partners and, should it be confirmed that it has a negative impact on coverage of national collective bargaining, revise the Law with a view to the removal of this threshold.
- Bring all labour laws into line with ILO Conventions 87 and 98.
- Ensure adequate penalties for employers that repress union activity.
- Provide an effective remedy for workers unfairly dismissed, including reinstatement, payment of unpaid wages and maintenance of their rights under international law.