DETERMINING THE SCOPE OF FREEDOM OF ASSOCIATION WITH REGARD TO RIGHT TO STRIKE

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I. Introduction

In the age of globalization, we are witnessing an ongoing battle about economic rights and social rights. The rate of unionization is decreasing while multinational enterprises (MNE's)[1] are spreading their commercial activities all over the world without being restricted by boundaries.

A new battlefield on social rights has opened in 2012 at the International Labour Conference. In labour law, traditionally, right to strike is deemed as a natural component of the freedom of association. That idea faced a strong objection raised by the employer members of the ILO's Conference Committee on the Application of Standards in 2012. They declared that ILO's Convention 87 has not any explicit article about right to strike.

As a result of that, they also claimed that the Committee of Experts[2] has no right to examine any case about "violation of the right to strike". The impasse ensued these objections, lead to a standstill within the ILO's supervisory system. This was the first time that Conference Committee on the Application of Standards could not examine any individual case since 1927[3].

As indicated by the chairperson of the Conference Committee in his concluding remarks, this was also the first time the examination of the individual cases had been interrupted and the Committee had not have any answers to offer in its difficult task to find solutions on supervision for international labour standards[4].

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1 MNE's, have been evaluated as a diminishing factor of the efficiency of strikes by Pélissier-Auzero-Dockès,1351.

2 Committee of Experts on the Application of Conventions and Recommendations.

3 For further information, Bellace, 57.

4 Report of the Committee on the Application of Standards: General Report, Para. 236, http://www.ilo.org/ilc/ILCSessions/101stSession/reports/provisional-records/WCMS_183031/lang--en/index.htm

This argument aroused by the Employers' Group once more in 2014. Regarding to their opinion, which is contrary to the traditional observations of the Committee of Experts, right to strike is not covered by the Convention 87. During the discussion before the Conference Committee, Chairperson of the Workers' Group announced that there are two options regarding to the solution of the problem. First one is the recognition of the coverage of the right to strike by the Convention 87. The other one is to submission of the dispute to the International Court of Justice in accordance with the 37th article of the ILO Constitution. [5]

With regard to the employer's standpoint, International Organization of Employers, which is the umbrella organisation representing the employers before the ILO, explained their approach towards the problem in its annual report. According to the report, any of the legal documents of ILO, especially Conventions 87 and 98 do not provide "right to strike".[6] A step ahead of that point, they stated out that neither the social parties nor the governments, intend to provide an article about "right to strike" at the time of the instruments' creation and adoption. As to their point of view, the statements which deems right to strike intrinsic to the Conventions 87 and 98 are *contra legem*. [7]

Bearing in mind that these arguments lacked support of all of the tripartite constituents of the ILO, the dispute on the right to strike must be solved in the light of the jurisprudence of ILO's supervisory system.

Besides the official texts of the Conventions, ILO's Committee of Experts, states that as long as worker organizations defined as any organization "for furthering and defending the interests of workers", by the Article 10 of Convention 87, any activity carried out for achieving these legitimate objectives are protected by the Convention.

Despite the lack of an explicit referral to the official texts of ILO Conventions 87 and 98, the key question raised at that point is that whether it is possible have freedom of association without "right to strike".

II. International texts about freedom of association and strike

[5] http://www.ilo.org/actrav/media-center/news/WCMS_321042/lang--en/index.htm

[6] IOE Annual Report 2013-2014, p.8 (http://www.ioe-emp.org/fileadmin/ioe_documents/publications/General%20Council/EN/_2014-05-21__IOE_Annual_Report_2013_-_2014__final_web_and_print_.pdf)

[7] http://www.ilo.org/public/english/bureau/leg/download/ioe_conventions_87_and_98.pdf

ILO's Convention 87 was adopted in 1948, and it entered into force in 1950. Although there is no explicit provision on right to strike in this convention; it is possible to see the change within the supervisory system even after one decade after the adoption of the Convention 87.

ILO's Convention 87 has two main articles that this debate goes around. These are the 3rd and 10th articles. According to 3rd article,

> "1.Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes. 2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof."

This article regulates the freedom of self-governance of organisations and their guarantees against possible infringements of the public authorities.

The other article is the 10th article. It states that "In this Convention the term ***organisation*** means any organisation of workers or of employers for furthering and defending the interests of workers or of employers." As it is clear from that article, workers and employers have a freedom of choosing the type of their organisation. It can be a union, federation or another type of organisation which they want to form. The important part is the aim of that organisation. Any organisation of workers and employers that aims to defend and promote the interests of workers and employers fall within the scope of Convention 87.

If we examine that issue historically from the point of view of the Committee of Experts, first comments of the Committee on right to strike for the cases on violation of Convention 87 can be found in 1959. In its third[8] general survey on freedom of association and collective bargaining, the Committee has given a brief observation on the legitimacy of prohibitions on right to strike of public officials with regard to the 3rd article of the Convention 87. The issue was once again reiterated in 1983's general survey on the same subject with a much clearer perspective, which reads as follows "the right to strike is one of the essential means available to workers and their organisations for the promotion of their social and economic interests."

[8] The general surveys on freedom of association and collective bargaining were prepared in 1956, 1957, 1959, 1973, 1983, 1994 and 2012.

As to the another supervisory body of the ILO, namely the Committee of Freedom of Association (CFA), right to strike was evaluated within the context of C87, since 1952, and the Committee states that right to strike is much more than a simple "social right". According to the CFA, strike is a right which workers and their organizations are entitled to enjoy and its aim is to promote and defend the economic and social interests of workers. Besides that, CFA estimates any peaceful action, including go-slow work, occupation of workplace that aims protecting economic and social rights of workers in the scope of right to strike. [9]

Internationally, the right to strike was widely acknowledged as a sine qua non part of the freedom of association and the right to collective bargaining by regional and international documents.

European Charter (1961) is the first international document officially states "right to strike".[10] Under the 6th article of this Charter, right to strike is regulated in relation with "the right to bargain collectively". Within the European Council which has a special quasi-supervisory body named as the European Committee of Social Rights (ECSR). The mission of that Committee is to make judgements about the practices and national legislations' conformity with the provisions of the European Social Charter. The jurisprudence of this Committee addresses the scope of right to strike in accordance with the European Social Charter.

European Social Charter regulates right to strike as a right that can be enjoyed by "workers". That means right to strike can be enjoyed by workers' organizations as well as individual workers.[11] Another important aspect of that article is the recognition of the usage of collective actions, including strike, for the conflicts that might arise out of collective agreements which are in effect between the social parties. So workers can enjoy the right to strike and/or other types of collective actions for the conflicts of interest during a collective bargaining or for the conflicts that aroused from the implementation of a collective agreement.

Another important international document which has an explicit article about right to strike is the UN International Covenant on Economic, Social and Cultural Rights (1966). According to the 8th article of the Covenant, everybody has the right

[9] Gernigon-Odero-Guido, 11-12.
[10] Pélissier-Auzero-Dockès, 1349.
[11] Gulmez (2005), 207.

to form trade unions and join the trade union of his choice, trade unions have the right to form federations and confederations, unions have the right of function freely and the right to strike. As it is clear that article regulates freedom of association and the right to strike together. This covenant was adopted at 1966 and came into force at 1976. The important point about that Convention is the lack of an article about the limitation of the restriction of the right to strike. Hence there is nothing about that, it is stated that according to that Convention it is not possible to talk about universal and common principles of the right to strike.[12]

III. Linkage between strike and unions (workers organizations)

For the determination of the relationship between right to strike and the freedom of association, the purpose of a trade union has to be examined.

What are the actions of a trade union? Why do workers create such organisations?

Workers have different tools for seeking better conditions at work. As an example, a worker can sue against employer's non-compliance with actual working conditions arising from law, collective agreement or employment contract. But how long will be the procedure will take? And will it be enough if workers do not satisfied with the "actual" working conditions as a group? On the other hand, in general the problems about a working place are not affecting only one or two workers. As a fact a general statement can be made about workplaces that have poor working conditions. These bad conditions affect all of the workers who are working there. So there is no doubt that workers need something which is effective and can be used commonly against employers in order to improve working conditions for every worker. In addition to freedom of association, strike is an effective tool for showing dissatisfaction of actual economic and/or social conditions at work. In other words, strike is a way of expression and defence of workers' legitimate rights. As a result of that, strike is evaluated as a collective freedom and an instrument of workers for defending their legitimate rights in a democratic society.[13]

The relationship between employers and workers, which constitutes industrial relations, has an important imbalance naturally. Workers are weaker in the

[12] Gulmez (2005), 115.
[13] Pélissier-Auzero-Dockès, 1347, 1349.

economical aspect on the contrary employers are rich and stronger. Workers can only balance this inequality by forming unions. This helps them to act as a powerful social party against employers. In other words, workers have the opportunity to be a powerful social party by creating unions and acting collectively. According to the Convention 87, reciprocally employers have the freedom of association in order to counterbalance broad demands of the worker's organisations.

There is no doubt that better working conditions are principle interest of workers. So, workers are founding unions in order to defend their rights and improve their working conditions. ILO's Convention 87 defines organisations as "any organisation of workers or of employers for furthering and defending the interests of workers or of employers". Any organisation of that kind has a freedom of organise their activities in order to achieve their main purposes. As a result of that freedom, a worker's union can choose to go on a "strike" for defending its affiliated workers' rights and/or improving their conditions. On the other hand they can choose other types of activities. The type of the collective action is the choice of the workers.[14] They can organise a press meeting or file complaints to public authorities. The important point is the freedom of choice of the workers' organisation about determining the type of the activity in order to defend their rights. If they choose to go on a strike in order to defend their rights, it is in the scope of C87, because of the Article 3. Otherwise, employers can claim that workers organisations cannot make a demonstration because of the lack of an explicit article in the text of C87.

Strike is the most powerful tool for defending workers' rights and interests.[15] Strike is a temporary action that aims improving working conditions in general, by ceasing to work. In addition to that strike has a strong solidarity aspect within the workers. It is a form of progressive, strong and effective solidarity between workers.

From their beginnings, organizations of workers are and will be seeking for better conditions. Generally collective actions are evaluated as more effective for improving working conditions compared to individual applications.

If strike is not in the scope of freedom of association, what will be the meaning of that freedom? In other words "freedom of association" means only establishing

[14] Pélissier-Auzero-Dockès, 1347.
[15] Bellace, 45.

organisations and let workers to be a member of them? If so, how we can separate unions among other legal entities?

It is doubtless to say that strikes are struggles between social parties. During a strike, workers are taking the advantage of their power arising from production against employers. If there is no production there is no commerce and there is no profit. Strikes are economical pressure tools that can be used by workers to show their legitimate interests to employers and to public. It eliminates the vulnerability and economic weakness of individual workers against employers by giving workers the advantage of acting as a group.

Strike is not a conflict solely by itself. It is a tool that can be used for resolution of an industrial conflict.[16]

Strike also provides the continuity of collective bargaining process. According to Spyropoulos, right to strike is the development of the freedom of association, a logical state and an inevitable consequence, hence freedom of association covers right to strike also.[17]

Strikes are essential for creating and maintaining a democratic society and also for freedom of speech. Freedom of association without right to strike means nothing more than freedom of speech without words.

Collective social rights are linked to each other firmly; if the system does not let one to exist the others also cannot be enjoyed by people.[18] The linkage between freedom of association and right to strike has a natural characteristic rather than a legal relation. If one of them is limited in a system, the other one will be hard to be enjoyed. According to the 4th article of ILO's Convention 98 " Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements."

[16] Camerlynk/Lyon-Caen, 743; Pélissier-Auzero-Dockès,1347.
[17] Spyropoulos,317.
[18] Ulucan, 69; Narmanlioglu, 14, 17.

As a result of these articles, workers' have the right of forming organisations in order to defend their rights, including conducting the negotiations with the employers' and/or employers' organisations in order to achieve a collective agreement.

During the negotiations, if the parties couldn't reach to a collective agreement what will be the next step? Any right without an effective implementation has no chance to be put into practice totally.

The argument that right to strike is not covered by C 87 and C98 will raise another question. What will workers' organisations can do if employers' or their organisations are not negotiating with them about working conditions or signing a collective agreement? Do the workers' have to withdraw their claims and keep on working with the actual conditions as they do before? How can they make an improvement about their working conditions unless the employers want to do? Whether one constituent of the ILO like it or not, strike is the natural and effective sanction of two fundamental rights of the workers. Workers' have the right to strike in order to enjoy their freedom of association and freedom of collective bargaining. So, freedom of association covers right to strike by its very nature.

This conceptual approach was reflected in several cases before the CFA for years. CFA, declares that, "workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests" (ILO, Freedom of Association, para 484). As it is clear from that, according to CFA strikes should not be limited solely to the industrial conflicts which will be resolved by signing a collective agreement.[19]

By looking at the decisions of CFA, one can understand that Committee has a point of view that broadens the scope of right to strike instead of limiting it. If necessary, CFA makes an interpretation of the term "strike" in a broad sense. CFA considers political strikes or sympathy strikes within the context of the freedom of association in a limited sphere. However, the important point is that CFA does not reject those cases at first glance. Instead, CFA prefers to make a proper investigation about them. As an example, according to CFA, if the former strike is legitimate, another strike that can be called as "sympathy strike" could not be evaluated as

[19] Gernigon-Odero-Guido,13, 33-34.

"illegal" and cannot be banned.[20] Although there is not any explicit article concerning right to strike, CFA has created a case law about right to strike by interpretation of Convention 87's articles 3,8 and 10.[21]

IV. A vulnerable social right: Right to strike in Turkey

Turkey had several industrial disputes during the last decade. The important disputes relating to the subject of this paper are the conflicts that workers could not enjoy the right to strike as a consequence of an administrative decision.

In Turkish legislation concerning collective bargaining and strike, there is an article that gives a great power to the Council of Ministers. According to the 63rd article of the Law On Trade Unions And Collective Labour Agreements, numbered 6356,[22] Council of Ministers can suspend a strike or lock-out for 60 days, on the grounds of public health or national security, by a decree. During that postponement, social parties can conclude a collective agreement. On the contrary, if they cannot be able to conclude a collective agreement, they don't have the opportunity to go on a strike or lock-out. In other words in Turkish legislation if a strike is suspended by the decree of Council of Ministers, it means a "prohibition" of strike actually. Because the system regulates the solution of the conflict as a compulsory arbitration by High Board of Arbitration. Over 12 years, seven strikes have been suspended by decrees in Turkey and as a result of that more than 34.000 workers at 73 workplaces could not enjoy the right to strike.

For giving further information about that issue examples should be given. First example is from 2003. Petrol-İş, a union founded in "oil, chemistry and rubber (tyre)" sector called for strike for the workplaces where tyres are produced. This strike was suspended on the grounds of national security by the decree of Council of Ministers, numbered 2003/5816.[23]

Another suspension decree for a legal strike was given again in 2003. A workers' union, Kristal-İş, called for a strike at the glass industry, as a result of a conflict at the end of the collective bargaining period. This strike was evaluated as a

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[20] Gernigon-Odero-Guido, 14-16.
[21] Gulmez (2005), 115.
[22] For the english version of this law http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/91814/106961/F2018685492/TUR91814%20Eng.pdf
[23] RG 1.07.2003, 25155 M.

threat for national security by the Council of Ministers and suspended.[24] Kristal-İş, appealed against this decree at the Council of State and demanded stay of that decree. The demand was approved by the Council of State but Council of Ministers published another decree for re-suspension of the strike. This time the reasons were national security and public health.[25] The strike was suspended once more for these obscure reasons. Kristal-İş appealed to ILO and ILO declared that these process was against C87. Kristal-Is, claimed that consideration of any strike in the glass industry as a threat for national security is unreasonable, unlawful and unfair.[26] At the end of the process, the Committee's recommendation is stated as;

"In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee notes with regret that a strike has been once again suspended and compulsory arbitration imposed in the glass industry, and requests the Council of Ministers to ensure in the future that such restrictions may only be imposed in cases of essential services in the strict sense of the term, public servants exercising authority in the name of the State or an acute national crisis.

(b) Noting that the legislation does not provide for the possibility of appeal to an independent body of a Council of Ministers' decision to suspend a strike, the Committee requests the Council of Ministers to take the necessary measures for the amendment of section 63 of Act No. 6356 so as to ensure that the final decision whether to suspend a strike rests with an independent and impartial body. It requests the Council of Ministers to keep it informed of the progress made in this respect."[27]

One year later in 2004, another union called Lastik-İş called for strike at the tyre industry and it was suspended by the decree of Council of Ministers numbered 2004/6998[28], on the grounds of "threatening national security". This strike was concerning more than 5000 workers at the tyre production industry.

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[24] RG 8.12.2003, 25310 M, Decree no:2003/6479.

[25] RG 14.02.2004, 25373, Decree no: 2004/6782.

[26] For more information about that case (no 3084) "Rapport où le comité demande à être informé de l'évolution de la situation - Rapport No. 374, Mars 2015." http://ilo.org/dyn/normlex/fr/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID,P50002_LANG_CODE:3237754,en

[27] http://ilo.org/dyn/normlex/fr/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID,P50002_LANG_CODE:3237754,en

[28] RG 21.3.2004, 25409.

In 2005, a strike concerning 400 workers in mining industry was suspended by the decree numbered 2005/9306[29] for the reason that this strike is evaluated as a threat for national security.

There are other suspensions of strike decrees concerning other industries. In 2014, Kristal-İş called for a strike that was concerning 5800 workers at the glass industry. As it happened in 2003, that strike was suspended again by the decree numbered 2014/6524, on the grounds of national security and public health[30]. Kristal-İş appealed against that suspension at the Council of State. Their demand was rejected by the majority of the 10th Circuit of the Council of State. Same year another suspension decree, numbered 2014/6691 was published[31] for the mining industry, concerning several workplaces where production of coal was made for the thermal power plants. The reason was the same as others: threatening national security and public health.

2015 is the most important year concerning industrial disputes for Turkey. The main industrial branch for Turkish economic system is metal industry. There are 1.445.331 workers in that sector according to the latest statistics published in January 2015 by the Ministry of Labour and Social Security. In that industry there are "group collective agreements"[32] signed by different workers' unions with the same employment organization. The biggest workers' union in metal sector named Turkmetal signed a collective agreement with the employers organization named MESS. Another union, Birlesik Metal-İs and MESS could not conclude a collective agreement during collective bargaining period. After having completed mediation process, Birlesik Metal-İs called for a strike at 29.01.2015. This union has 25.595 workers, and the strike they have decided was concerning more than 15 thousand of workers, working in 22 factories in 10 different cities. Council of Ministers suspended that strike by the decree numbered 2015/7251 at 30.01.2015, on the grounds of national security.[33] Birlesik Metal-İs appealed against that decree to the Council of

[29] RG 2.9.2005, 25923M
[30] RG 27.6.2014, 29043
[31] RG 24.7.2014, 29070 M
[32] Group collective labour agreement refers to collective labour agreement concluded between a worker's trade union and an employer's trade union which covers the workplaces and the enterprises in the same branch of activity belonging to more than one employer. (Law numbered 6356 art. 2/1,ç) http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=91814&p_country=TUR&p_count=781&p_classification=02&p_classcount=44
[33] RG 30.01.2015, 29252M.

State but that demand was rejected. At the end of the 60 days of suspension, social parties could not be able to sign a collective agreement. Hence High Board of Arbitration settles down the conflict between Birlesik Metal-İs and MESS by regulating a collective agreement.

During that period, some of the employers resign from MESS and signed collective agreements with Birlesik Metal-İs. According to these collective agreements, employers accepted to increase the wages of the workers. That was meaning more rise to the wages that was agreed in the collective agreement made by the High Arbitration Board. After that promotion, in some workplaces in the metal sector, some of the workers' raised their dissatisfaction from the collective agreement signed between MESS and Turkmetal. These workers were the members of Turkmetal. They claimed that, the promotion made by their employers regarding to the collective agreement was much more less than the other workplaces where the employers resign from MESS and conclude collective agreements with Birlesik Metal-Is. According to them this situation led a great inequality in the same sector. This dissatisfaction gave rise to protests began as refectory actions but converges to occupation of workplaces. In the middle of May 2015, workplace occupation at Renault factory began. It spread to other automobile factories founded in Bursa. In a short time occupation of workplaces and ceasing work protests spread to other metal industry workplaces in different cities like Kocaeli and Ankara. The demands were simple and common: promotion of wages, election of their own representatives instead of nomination of the representatives by the union, not to be dismissed on the grounds of participation to that protests. The protests continued nearly for a month and the employers accepted to make a promotion to the wages. During that protests many workers resigned from the membership of Turkmetal. In June 2015, production at that factories has begun as well as dismissals. It seems that dissatisfaction and struggle between social parties in metal industry will continue because of the dismissals of some workers who are evaluated as responsible of the occupation movements by employers.

As it is clear from that examples, workers' right to strike, which was guaranteed by international treaties and national legislation, is vulnerable. Specific examples from Turkey, stress out that, even an executive decision made by Council of Ministers can take away the right of strike from workers in practice.

On the other hand the jurisdiction about right to strike is prosperous. In Turkish legal system public servants do not have right to strike. In 2003, a public school teacher, joined a strike called by Egitim-Sen, was punished by a cut in the salary. First instance court, has rejected the application made by the union on behalf of the teacher about this punishment. Egitim-Sen appealed against this judgement and the result was positive for the applicant. According to the Board of Administrative Circuits of Council of State, that punishment has evaluated as illegal. The reason of that decision is founded on the basis of the 11th article of European Convention on Human Rights.[34] After that decision, another application was made by the applicant to the Constitutional Court. As a result of this constitutional complaint, numbered 2013/8463, the Constitutional Court stated that, applicant's "right to organize" regulated in the 51st article of the Constitution was violated, and the fees during the jurisdiction process made by the applicant should be compensated by State.[35]

The most important decision about workplace occupation was given by 7th Circuit of Court of Appeal. In 2013, approximately a hundred workers in Mersin Port, occupy their workplace by placing working machines to the gates and preventing other workers came into the workplace. After that occupation, employer dismissed the employment contracts of several workers. One of them, who was the representative of union at the workplace, sued against that dismissal, first instance court rejected the case, stating that the dismissal was rightful on the grounds of participating an illegal strike. The applicant appealed against that decision and 7 th Circuit of Court of Appeal declared that according to ILO Conventions, European Convention on Human Rights and European Social Charter, collective actions, including strike, are human rights. In the light of these international legislation and the 90th article of the Turkish Constitution[36], workers' actions, which are aiming to promote working and living conditions, including occupation of workplace, on the condition of a peaceful basis, have to be evaluated as enjoying a democratic right.

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34 http://www.calismatoplum.org/sayi41/gulmez.pdf. Detailed information can be found about this decision in the article by Gulmez, Mesut (2014a); Sendika Kararına Uyarak Toplu Eyleme Katılma, 'Disiplin Suçu' Değil 'Mazeret'tir, Calisma ve Toplum, V.41, 191-203.

35 http://www.resmigazete.gov.tr/eskiler/2014/12/20141204-10.pdf

36 Article 90 states that "International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional.In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail."

These collective actions cannot declared as illegal, on the condition that the actions are comply with the proportionality principle. As a result, 7th Circuit of Court of Appeal, stated that dismissal is unlawful and the worker has to be reinstalled to his work by employer.[37]

V. Conclusion

Law is not about the terms and words solely. It is far beyond that point. Law is a tool for bringing justice and a mechanism for providing guarantees on rights and freedoms. The purpose of a right is important rather than the words that define it.

The most important point about law is enforcement and efficiency. Another question has to be asked within the relation of our subject. If a contradiction appears between the text of a legal document and the real meaning of that legal document, how one jurist or enforcement agency may proceed? Which one will be superior to the other one? Do the terms defining a right or freedom; have more power than the right or freedom itself?

These questions are all about interpretation methods. The problem between the Employers' Group and Workers' Group has aroused by the different interpretation of Convention 87. The strongest arguments of the Employers' Group are founded on two basis. First one is "there isn't any explicit term referring to right to strike in Convention 87" and the other one is "during the years it was never suggested to make an amendment to this convention, in order to put an explicit term about right to strike."[38] The Employers' Group insisted on that there is no explicit term regarding the right to strike within the context of the convention, so there cannot be a case regarding right to strike as an infringement to the Convention 87.

An important comment has been made to that argument by using a "historical" aspect. According to Bellace, "terms that were used in 1919 or 1948 may have different connotation today. Because the context for the terminology used reflected the mind-set of the day, it is vital to identify correctly the meanings shared by the

[37] Y7HD, 11.6.2014, 7358/13055, For further information Calisma ve Toplum 2014/4, Mesut Gulmez (2014b), 233-256.

[38] IOE, Do ILO Conventions 87 and 98 Recognize a right to strike?, October 2014, 1.(http://www.ilo.org/public/english/bureau/leg/download/ioe_conventions_87_and_98.pdf)

tripartite members of the ILO at a given point in time."[39] This statement depends on a principle in the interpretation methods of law. As it's well known from the legal discussions, the interpretation of a legal document can be conducted by various methods. The key legal question is that the terms in the text will be understood as the meaning of the time when it was adopted or will it be understood considering the meaning of it at the time of the application. In order to answer this question, needs of parties have to be evaluated at the time of the application.

Neither Convention 87 nor Convention 98 does not explicitly mention "the right to strike" ILO supervisory bodies namely the Committee of Experts and CFA, have been protecting the right to strike by their interpretation of the above mentioned conventions.

This argument leads the ILO constituents to a tripartite meeting in February 2015. At the end of this tripartite meeting a joint statement has been made by Workers' & Employers' Groups. First sentence of that statement is "The right to take industrial action by workers and employers in support of their legitimate industrial interests is recognised by the constituents of the International Labour Organisation."[40]

This sentence is very important. First of all according to my opinion the ongoing debate about the scope of Convention 87 concerning right to strike has come to an end. Following the tripartite meeting held on 23 - 25 February 2015, every action that supports "legitimate" interests of workers has to be deemed within the scope of Convention 87 because of the usage of the term "industrial action".

References

Bellace,J.R.: The ILO and the right to strike, ILR, V.153, 2014/1, 29-70.

Camerlynk, G.H/Lyon-Caen, G: Droit du travail, Paris 1980.

Gernigon, Bernard - Odero, Alberto- Guido, Horacio: ILO Principles Concerning the Right to Strike, ILO 1998.

[39] Bellace, 31.

[40] http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_351479.pdf (GB.323/INS/5/Appendix I, p.1)

Gulmez, Mesut: Sendikal Haklarda Uluslararası Hukuka ve Avurpa Birligi'ne Uyum Sorunu, Ankara 2005.

Gulmez, Mesut (2014a); Sendika Kararına Uyarak Toplu Eyleme Katılma, 'Disiplin Suçu' Değil 'Mazeret'tir, Calisma ve Toplum, 2014/2, 191-203. (http://www.calismatoplum.org/sayi41/gulmez.pdf)

Gulmez, Mesut (2014b); Toplu Eylem Hakkına Dahil Protesto Grevleri, Yasa Dısı Eylem Degildir; Calisma ve Toplum 2014/4, 233-256.

ILO; Freedom of association: Digest of decisions and principles of the Freedom of Association Committee of thh Governing Body of the ILO, Forth (revised) edition, Geneva, 1996.

- Report of the Committee on the Application of Standards: General Report, Para. 236, http://www.ilo.org/ilc/ILCSessions/101stSession/reports/provisional-records/WCMS_183031/lang--en/index.htm

- Rapport où le comité demande à être informé de l'évolution de la situation - Rapport No. 374, Mars2015.http://ilo.org/dyn/ normlex/fr/f?p=NORMLEX PUB:50002:0::NO:: P50002_COMPLAINT_TEXT_ID,P50002 _LANG_ CODE: 3237754,en

-http://www.ilo.org/actrav/media-center/news/WCMS_321042/lang--en/ index.htm

-http://www.ilo.org/public/english/bureau/leg/download/ ioe_conventions_87 _and _98.pdf

-http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/91814/106961/ F2018685492/TUR91814%20Eng.pdf

IOE Annual Report 2013-2014, (http://www.ioe-emp.org/fileadmin/ioe_documents/ publications/General%20Council/EN/_2014-05-21__IOE_Annual_Report_ 2013_-_2014__final _web_and_print_.pdf)

IOE: Do ILO Conventions 87 And 98 Recognise A Right To Strike, 2014.

Narmanlioglu, Unal; Grev, Ankara 1990.

Pélissier, Jean-Auzero, Gilles-Dockès, Emmanuel: Droit du Travail, éd.25, Paris 2010.

Spyropoulos, Georges; La liberté syndical, Paris 1956.

Ulucan, Devrim: Toplu Is Sözleşmesi Ozerkliği ve Hukuki Niteligi, İstanbul 1981.