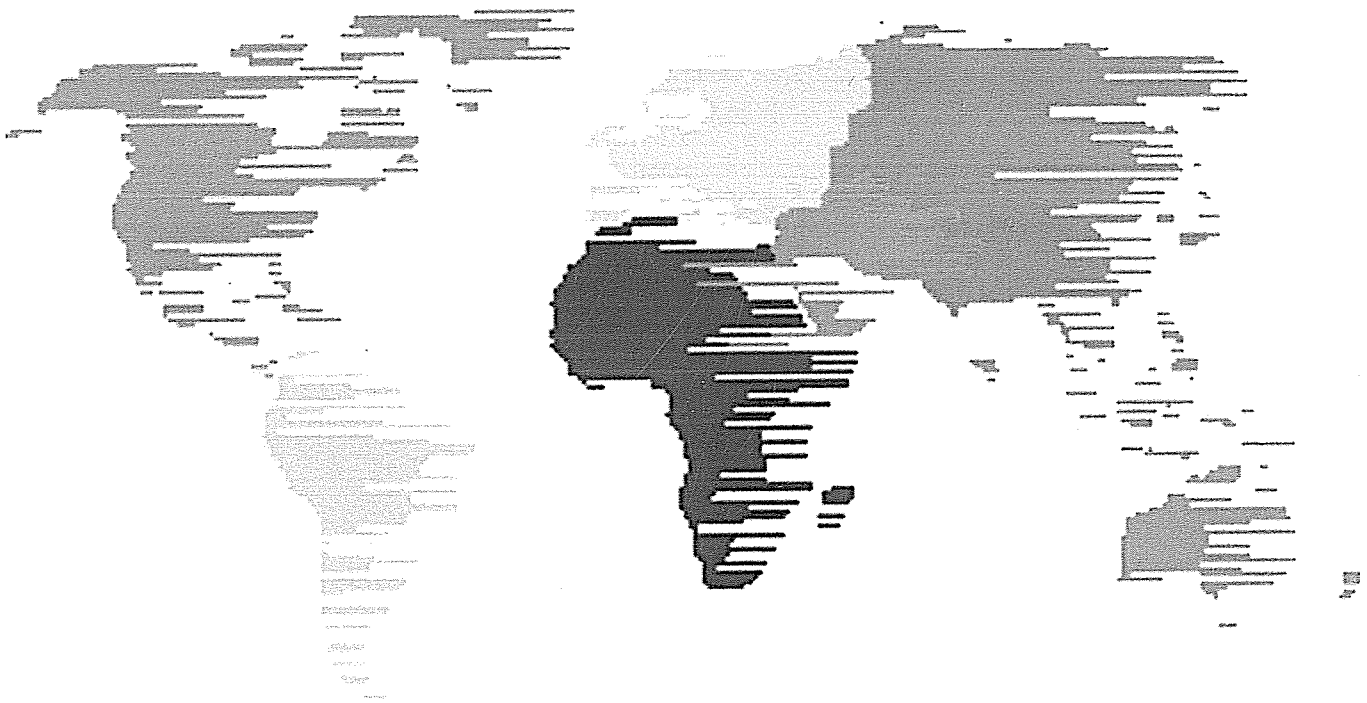
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LABOR REGULATION REFORM IN TURKEY: DOES THE LABOR ACT BRING ABOUT FLEXIBILITY?

Tekin Akgeyik, Istanbul University, Istanbul, Turkey
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ABSTRACT

Labor market flexibility is extensively seen to boost the competitiveness of companies in the context of changing markets, customer' expectations, products and technologies. Governments in many countries attempted to make their national labor regulations more flexible to respond to increasing global competitive pressures during the 1990's. The parallel tendencies appeared in Turkey during the same period. The aim of this paper is to evaluate the Labor Act of 4857 in terms of flexibility. The new Labor Act has introduced fundamental and comprehensive changes. It allows employers to respond rapidly to changeable economic and social circumstances. It also gives many options to employers in terms of flexibility including part-time work, flexibility working hours, compressed workweek, balancing system and wage flexibility.

Keywords: *Turkish labor act, flexible working time, numerical flexibility, wage flexibility, Turkey.*

1. INTRODUCTION

Labor market flexibility generally refers to speed of labor adjustment to changing economic environment (Blank, 1994). Especially, globalization has made labor market flexibility an important part of the agenda of employers and their associates, trade unions and governments. For the last three decades, in both developed and industrializing countries, there has been a strong tendency to increase labor market flexibility in order to improve the ability of the economy to adapt and adjust to changes.

Labor market flexibility is extensively seen to boost the competitiveness of companies in the context of changing markets, customer' expectations, products and technologies. Moreover the changes in the management approach, new management strategies, changing work systems and new organization forms encouraged flexibility in the workplace (Selamoglu, 1998). Secondly it is an important key to reduce rigidities in the labor market (Lehmann and Muravyev, 2009). Labor market flexibility is also considered by policy makers as a device to cope with the problem of high levels of unemployment (Bernal-Verdugo et al., 2012). As a result, governments in many countries attempted to make their national labor regulations more flexible to respond to increasing global competitive pressures during the 1990's.

The parallel tendencies appeared in Turkey during the same period. Especially at the second half of 1990's, employers strongly requested for the reform of labor regulations in favor of flexibility. Moreover, the 1994 and 1999 economic crises strengthened the expectations of labor market flexibility. Consequently, the government that came to power in 2002 made labor regulation reform a core element of its program.

The aim of this paper is to analyze new Turkish Labor Act (Act No: 4857) in terms of flexibility. The paper is organized into two parts. In the first part, the history of labor regulation in Turkey, and the background of the labor act are explored. Secondly, the paper explains the flexible regulations that The Act of 1475 brings about.

2. TOWARDS A NEW ACT OF LABOR

2.1. History of Labor Regulation in Turkey

The history of labor regulations goes back to 1936 when the Turkish Parliament enacted the first Labor Code (Act No: 3008). Although the Act of 1936 was very modern and systematic in the conditions of the

period, it was insufficient from three perspectives. Firstly, the Act did not include trade unions and collective bargaining rights. Also there was a prohibition on the right to strike. For collective labor disputes, it adopted compulsory conciliation and arbitration. Secondly, the 1936 Act did not cover all employees. It excluded the employees working in the agriculture sector, and the workplaces with less than 10 workers. Also the Act made a separation between blue and white collar workers, and did not cover the latter. Finally, the 1936 Act did not come into effect until the establishment of Ministry of Labor in 1946 (Ekin, 1994).

1960's were golden years of Turkish labor regulation. The Constitution of 1961 guaranteed employees the right to organize in trade unions and to strike. In the new era, individual and collective labor regulations were separated into three laws. While the Trade Union Act and the Collective Bargaining Law regulated the collective labor relations, the Labor Act that was approved in 1971 (Act no: 1475) covered the individual employment relations.

The Act of 1475 covered all workers, employers and industries. But employees and employers in agriculture sector were still excluded with some exceptions. The Labor Act of 1475 remained in force until 2003, for more than 30 years. 67 years later after the first Labor Code, a new Labor Act (Act No: 4857) was enacted by the Turkish Parliament on May 22, 2003.

2.2. Background of New Act

In 1990's the employer associations sought the deregulation of labor legislation to struggle with global competitive pressures, and to improve their ability to adjust to fluctuating demands. They demanded a new labor law including part-time work and flexible work hours. They believed that the economy could not be able to survive competition without labor market flexibility.

In 2002, the government formed a commission to prepare a labor law. The commission included 9 professors who were the representatives of trade unions, associates of employer and government. The work of the commission took approximately a year. Finally, the Parliament enacted the new Labor Act in May 2003

The Labor Act of 4857 has introduced fundamental and comprehensive changes. The main characteristic of Labor Act is flexibility that has provided employers working time flexibility, numerical flexibility and wage flexibility.

There have been a lot of new terms and regulations in the Act. For example, "temporary employment relationship", "part time contract", "balancing system", "short-time work", "compensatory work" and "free time" are some of these. Moreover the Act has ensured job security for the workplaces with more than 30 workers, and for the workers with indefinite term contract and at least 6 months tenure in their current jobs (Dereli, 2004).

3. LABOR ACT AND FLEXIBILITY

3.1. Flexibility of Working Time

Flexibility in working time means variation in operational hours in a way corresponding to current demand (Hakansson and Isidorsson, 2003). It permits employers to be able to increase or decrease work hours based upon market conditions by using overtime, flexible scheduling and compressed workweeks.

In the Labor Act of 4857, the weekly working time is forty-five hours, which may be broken equally by the days of the week worked (5 or 6 days). On the other hand the Act permits the parties (i.e. employers, employees and trade unions) to have flexible work schedules by using compressed workweek and balancing system (Dereli, 2014).

3.1.1. Compressed Workweek

According to the Article 63, the parties do not have to distribute weekly work schedules equally among the days of the week worked. The Labor Act allows for variations in weekly working hours in line with

economic fluctuations. The employers may lengthen the daily working hours to a maximum of 11 hours a day without paying extra compensation.

3.1.2. Balancing System

The balancing system enables employers avoid overtime work and overtime pay. The overtime means extra working hours exceeding the normal statutory hours (i.e. forty-five hours in a week). The balancing system allows employers to incorporate weekly working hours in a time period of two months (360 hours, 8 weeks*45 hours). During the balancing period, the parties may work up to 11 hours a day and 66 hours a week. At the end of the balancing period the parties must not exceed 360 hours. The balancing system may be carried out for shorter time periods such as for a month or fifteen days. According to the Law, collective agreements may increase the balancing period up to four months (Dereli, 2013).

3.2. Numerical Flexibility

Numerical flexibility means adjusting the number of employees to changing organizational needs (Reed and Deakin, 2000). It may enable employers to have more external labor market flexibility by using contract, temporary and agency workers (Eyck, 2003).

The numerical flexibility also allows employers to divide their workforces into a "core" and "periphery". While the core workforce is composed of fulltime, regular and long term employment, the periphery workforce is more flexible and lower cost, which is characterized by part time, fixed term, temporary and casual workers (Deery and Jago, 2002).

The Labor Act of 4857 provides employers with a number of tools to externalize labor and adopt numerical flexibility to response to conditions in the external environment. Part time work, definite terms employment, work on call and agency work are these tools.

3.2.1. Part-Time Employment

Part time work is one of the main components of flexible employment forms, drawing some groups into labor force such as women with family responsibilities, students and older workers who might not otherwise be available for work (Fagan et al., 2014).

The Labor Act of 4857 allows employer to employ part time workers who may work up to 30 hours in a week. Employer also may change the status of a worker from full-time to a part-time to vice versa.

3.2.2. Definite Terms Employment

In the former labor act, the definite term contracts could not be extended more than twice; otherwise, it automatically became an indefinite contract. The distinction between employment contract for definite and indefinite terms is very important in Turkey as the majority of the labor regulations are in favor of indefinite term contracts that provide many protections to employees.

The Labor Act of 4857 strengthens definite term contracts. Firstly, it is possible to renew the definite term contracts more than twice. Secondly, the workers with definite term contracts do not have the right to job security. Finally, they may be fired without notice for any cause.

3.2.3. Work On-Call

The Labor Act of 4857 regulates work on call as a form of part-time employment. Work on-call lets employers to easily adjust the level of staffing based upon fluctuating levels of market demand. By using work on call shifts, employers can quickly replace employees who are absence. Work on-call contracts may be scheduled on weekly, monthly or yearly bases.

3.2.4. Temporary Employment Relationship

The Labor Act of 4857 allows employers use temporary agency workers to maximize their efficiency and flexibility. According to the Article 7, employers may use temporary workers for up to 8 months from employment agencies. The number of agency workers in the workplace may be up to 25 percent of the permanent staff. Moreover, the Act also lets firms to transfer their employees temporarily between the subsidiaries of the holding company or affiliated companies within the Group for 18 months (Dereli, 2013).

4. WAGE FLEXIBILITY

Wage flexibility is an important instrument for responding to asymmetric macroeconomic shocks (Eichhorst et al., 2009) It represents a shift from traditional fixed to more flexible wage systems including greater use of bonus (Eyck, 2003). It makes the labor market more flexible and faster to adjust to the rapid changes of economic environment contributing to competitive advantage (Dillon, Froning and O'Driscoll, 2001). The increased use of flexible employment contracts such as part-time and temporary agency workers supports wage flexibility.

The Labor Act of 4857 allows employers to avoid overtime work pay (balancing system), pay lesser compensation for extra work hours than for overtime work, apply to short-time work without payment, and employ handicapped persons with less costly.

4.1. Extra Working Hours

According to the article 41, in the workplaces where the weekly working time is less than forty-five hours, additional working hours to 45 hours is not overtime. The Act defines these additional working hours as "extra working hours". According to the Law, extra working hours are paid twenty-five percent more in comparison to hourly regular wage. However, overtime working is paid fifty percent more by than normal hourly wage. Consequently, the workplaces where weekly work time is less than 45 hours have a wage advantage of 25 percent for additional working hours.

4.2. Short-Time Work and Its Pay

In the Act of 4857, employer may shorten the weekly working time or temporarily suspends work partly or completely in general economic crisis conditions or force majeure. In these conditions, employers may stop working in the workplace up to six months (Dereli, 2013).

According to the law, during the period of short-time work the employer does not pay wages of workers. During the period of short-time work the wages of the employees are paid by the Unemployment Insurance Fund. Therefore, employers may avoid the burden of wage for the duration of the extraordinary conditions. The article 65 of 4857 was moved into Unemployment Insurance Law in 2012.

4.3. Handicapped Persons

The Act of 4857 gives an option to employers to avoid social insurance payments partly. According to the Article 30, despite being not obligated, the employers who employ disabled persons pay only 50% of their social insurance share of contributions.

5. CONCLUSION

The dynamics of the global competitive, fluctuating economic conditions, technological transformations and the requirements for innovative products and services have forced organizations to become more flexible for the last 30 years (Velde and Berg, 2003).

Moreover, in some countries, macroeconomic requirements like high unemployment rates have increased the need of labor market flexibility. Flexibility also is important for employees as it helps to establish a balance between work-life and personal life. Consequently flexibility has seen an economic and social necessity for employers, governments and employees in both developed and industrializing countries (Sen, 1996). In this context, many countries have undertaken structural reforms in their labor regulations as a result of the flexibility demands by employers and employer organizations since 1980's.

Similarly, in 1990's in Turkey, there was an increased expectation by employers for labor market flexibility and reforms in labor law. They considered labor flexibility as an effective tool to develop their ability to adjust to global competitive.

As the pressures for labor market flexibility grew, the government attempted to reform labor regulations in 2002. On 22 May 2003, the Turkish Parliament approved the Act of 4857. The new Act has brought about

new and major changes. The main characteristic of Labor Act has been flexibility that allows employers to respond rapidly to changeable economic and social circumstances. The Act of 4857 has given many options to employers in terms of flexibility including part-time work, flexibility working hours, compressed workweek, balancing system, agency work and wage flexibility.

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