TURKEY: SINTER METAL TRIAL OBSERVATION REPORT[1]

EXECUTIVE SUMMARY

1. Turkey is a member of the UN, ILO, Council of Europe and hopes to join the EU. As such it has ratified the core international treaties relating to trade union rights, including ILO Conventions 87, 98 and 158 and the European Convention on Human Rights (ECHR), the most relevant Articles being 6 (right to a fair hearing) and 11 (right to association). Although Turkey has not accepted Articles 5 or 6 (trade union rights) of the European Social Charter, the European Court of Human Rights (ECtHR) embedded into the right to association the jurisprudence of the International Labour Organisation and the European Social Charter, effectively saying that they should be applied anyway[2].

2. Yet workers in Turkey continue to struggle to realise their rights. National legislation does not fully conform to international standards[3] and what laws are in place are often not effectively enforced. In the past two years there has been judicial harassment of trade unions, severe limitations on the right to strike, obstruction of collective bargaining and discrimination and violence used against union members[4].

3. It is in this context that Sinter Metal, located in the Dudullu Organised Industrial Zone, dismissed most of its workforce between December 2008 and January 2009. As workers began to unionise in the face of increasingly harsh conditions, a number of union members were dismissed. More workers joined the union and protested against their colleagues' dismissals, leading to further dismissals and police removal of protesters by force. In all approximately 391 workers were dismissed, many of whom are now in the process of reinstatement proceedings against the company[5].

4. The Sinter Metal case is important because retaliatory dismissal is the single most common way to undermine unions in Turkey today[6]. Therefore, the ICTUR sent a legal Observer to the hearings due to take place on the 4th and 6th August 2010 with the objective of assessing the extent to which the trial process conformed to international standards[7]. Prior to each hearing the Observer met with representatives of the Birlesik Metal Workers Union and its lawyers who are representing the workers[8].

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[1] The trial Observer, Sarah Hemingway, is a practicing member of the independent Bar of England and Wales. She is not employed by ICTUR or any other trade union or affiliate. Also observing the trial was a representative from the International Metalworkers' Federation, Heywon Chong. They were both assisted by an interpreter.

[2] *Demir and Baykara v Turkey* (2009) 48 EHRR 45 in the Grand Chamber.

[3] In its 2009 October Progress Report, the European Commission reported that "the current legal framework is not in line with EU Standards and ILO Conventions, in particular as regards the right to organise, the right to strike and the right to bargain collectively, for both the private and public sectors".

[4] See the ITUC Annual Survey of Turkey 2009 at appendix 3

[5] Civil complaints brought against the defendant Company in the Labour Courts.

[6] In June 2009, around 4000 dismissed workers rallied in Istanbul to draw attention to the scale of the problem.

[7] See the Ordre de mIssion at appendix 1 and the Observers Briefing pape at appendix 3. The cases have been grouped according to the date of dismissal and the defence relied upon.

[8] Attempts were made to meet with the Judge and the lawyers representing Sinter Metal, but all invitations were declined.

5. On 4th and 6th August, in the 3rd Labour Court of Uskadur, lawyers for both parties attended before Judge Orkide Turkoglu. All Sinter Metal cases had previously been adjourned on a number of occasions, primarily due to the non-attendance of defence witnesses. Unfortunately, the witnesses again failed to attend so the cases scheduled to be heard on 4th and 6th were further adjourned to 22nd October 2010. The Judge ruled that if the witnesses for the defendant do not attend on that date then they will be arrested and brought to court.

6. The main findings of the observation mission are threefold: firstly, union activity is hindered by overly restrictive laws and regulations; secondly, whilst the national legal standards pertaining to dismissal and the prohibition on anti-union discrimination to some degree reflect international standards, the national law does not provide adequate protection for the vast majority of workers; thirdly, even where the law does apply it does not appear to be enforced effectively, in particular the procedural requirements of a prompt hearing before an independent, impartial Judiciary are not satisfied in this case.

7. It is recommended that, in the event of further adjournments, the Court should rectify breaches of international standards by ordering reinstatement on grounds of undue delay. Further, general recommendations are made in relation to the need to reform trade union laws, expand the scope of protection to all workers in line with international law, and enforce those laws that are already in place to protect workers rights. Such action as is necessary to ensure speedy hearings in reinstatement cases should be taken by the courts. Finally, possible action that could be taken at the international level is also addressed.

KEY FACTS

8. The specific case of Sinter Metal dismissals began on 18-19 December 2008[9] when 37 workers who had recently become Birlesik Metal union members were dismissed. The Company argues that their contracts were terminated on the following grounds:

> "1-According to performance evaluation report, your performance were too low in evaluations of last 3 months and you caused your Company to suffer loss by making mistakes in production so often, 2-You did not observe tea and meal times although you were warned by both your superior and your chief and returned working back lately many times, for this reason you did not fulfil duties given to you, 3-You made irregular attendance of work malevolently by getting sick leave continually and you caused the Company to suffer loss by causing breakdowns in works necessary to be done …"[10]

[9] See Brief Chronology at appendix 4.

[10] Translated from the Labour Ministry report dated 12 January 2009

9. The Company argues that dismissal on such grounds is provided for under the Labour Law Number 4857 (Labour Act of Turkey) Article 25(II), paragraphs (g)(h) and (i). The contracts were terminated without prior notification: official notifications of termination dated 19.12.2008 were sent to workers' residences.

10. On 19 December 2009 the factory manager held a meeting with workers to explain the reason for their colleagues' dismissal and assured them that no further dismissals would ensue. It was explained that, although there would be no overtime in December due to a decrease in sales, it was expected that work would increase in January. Nonetheless, that same day, 307 workers applied to join the union and 280 concerned workers visited the Birlesik Metal Union office to ask what to do about the 37 people dismissed.

11. On 22 December 2008, workers arrived at the factory and demanded the reinstatement of their colleagues. They were told by a factory administrator, via megaphone, that persons as named would be dismissed but, due to the noise and disorder, it was not understood which employees were actually fired. 341 workers lost their job that day. No explanation was made or termination letters sent prior to dismissal. Subsequently, the Company organised a meeting with some of the workers and explained that the dismissals were necessary due to the global economic crisis. The defendant argues that the dismissals were in accordance with the Labour Act Article 17, which deals with the notice requirements for termination of contracts.

12. A number of workers organised an occupation of the factory but the police were called and they were removed by force.

13. At the request of the union, an investigation into the situation was conducted by investigators from the Labour Ministry between 22 December and 30 December[11]. The report, dated 12 January 2009 concludes that, in relation to the 37 workers dismissed on 18 December, there was no documentary evidence regarding their purported poor performance, etc, under Article 25(II) of the Labour Act; the assertions made were unsubstantiated. It was found that there was no valid reason for the dismissals and in any event the Company failed to comply with lawful procedures regarding termination of contracts under Article 29 of that Act.

14. Further, in relation to the 341 workers dismissed on 22 December, the report concluded that "*there was presumptive evidence that terminations were due to workers' being members of United Metal Workers' Union, in other words, based on unionist reasons".*

15. The Labour Ministry fined the Company136,000 Turkish Lira (TL) for termination of 378 jobs without notice. More importantly, on 7, 8 and 12 of January, just prior to the publication of the report, reinstatement cases for 279 of the dismissed union members were opened in the Labour Court.

16. It should be noted that there were 9 purported sub-contractors operating on the premises but the Labour Ministry investigators determined that all sub-contractors were

[11] See Report of the Labour Ministry Investigators dated 12 January 2009, English translation, at appendix 6.

actually a part of the principle Sinter Metal Company and so employees of the sub-contractors should actually be regarded as employees of the principle employer [12]. After the dismissals, there were about 37 blue collar workers and 70 white collar workers left working ostensibly for the principle company. It is claimed that on 22 January 2009, 16 of the blue collar workers in the quality control section, all of whom were in the union, were informed orally by the President of the Board of Directors and the Production Manager of the companies that their jobs were being sub-contracted and they were to be re-assigned. If they refused to accept the change they would be dismissed and any severance pay pursuant to Article 17 of the Labour Act was contingent upon them signing a declaration stating that they resigned and they do not intend to open a reinstatement case. They refused and consequently were dismissed without severance pay on 29 January. Again, the Company relies on the global economic crisis as a valid reason for terminating those contracts.

17. There was one further dismissal of a union member that took place on 1 April 2009.

18. A total of 291 reinstatement claims were therefore opened in the Labour Court. The cases were divided into groups largely on the basis of dates of, and thus reason for, termination and all have been adjourned on several occasions[13]. Since opening the cases, a number of claimants have withdrawn their cases.

19. There is evidence to suggest that the workers who have opened cases against the Company are being intimidated with threats to sue them for losses incurred by the Company of up to 250,000 EUR. A letter was sent to the workers committee, the union and workers[14] in that regard. In addition, workers were then invited by the Company to enter into bargaining. It is suspected by the union that 15,000 TL has been offered to individual workers to withdraw their claims.

20. Whilst the official line of the Birlesik union is that the Judge has been 'bought' by the defendant to prolong proceedings and thus hinder the workers' ability to access justice[15], the union's lawyers representing the workers give a slightly more generous account: they believe that the Judge is not very experienced in labour law and is being manipulated by the tactics employed by the defence legal team[16]. Thus, the Judge allows the defendant to repeatedly delay the legal process where other, more experienced labour court Judges may have refused to hear the defendant's witnesses and decided the case on the papers and oral evidence on the part of the claimants in order to ensure the workers' rights are effectively protected. The cases have been adjourned approximately 8 times to date. Arguably 4 of those occasions were as a result of tactics deployed by the defendant. In submitting that the cases should not be adjourned, or at

[12] See Article 2 of the Labour Law number 4857.

[13] See Brief Chronology at appendix 4.

[14] See appendix 10 / 11 (letter threatening to sue for Company losses)

[15] Interview with Mr Goktas, President of Bilesik Metal Workers' Union on 4th August 2010. He explained that the Judge must have been bought by the defendant in order to delay proceedings over an 18 month period. He stated that, "Justice delayed is justice denied".

[16] Interview with the claimants' lawyers at the Birlesik Union offices on 3rd August 2010.

least not for any significant period, the claimant's lawyers have relied on Article 20 of the Labour Act that provides in termination cases:

> "The court must apply fast hearing procedures and conclude the case within two months. In the case the decision is appealed, the court of cassation must issue its definitive verdict within one month"[17]

21. It can also be inferred from Article 21 of the Labour Act that proceedings should take less than 4 months to complete because in the event that the employee is not re-engaged in work until the finalisation of court proceedings, he shall be paid only up to 4 months wages and other entitlements in respect of that period of unemployment[18].

22. Any appeal from the Labour Court will lie in the Supreme Court Labour Division.

HEARING ON 4 AUGUST 2010

23. The cases relating to 11 of the 16 workers dismissed on 29 January 2009 and 1 worker dismissed on 1 April 2009 were scheduled for 9.00am.

24. Trade union members explained that a demonstration outside the court was officially banned under restrictive regulations[19], and in any event many workers were in temporary employment pending the conclusion of their case and could not get leave to attend. However, if enough workers/trade union members attended then, *de facto,* there would be a demonstration of workers demanding basic labour rights. This indeed did happen and, partly due to the fact that an international observer was present, there was a significant media presence including national television stations[20]. Short press statements were made by the ICTUR Observer and the IMF Representative as well as the National Trade Union Representatives and workers.

25. The legal basis for bringing the claim for reinstatement[21] is that the act of subcontracting quality control was contrary to Article 2 of the Labour Act which prohibits the main activity from being subcontracted or divided and assigned to subcontractors, except where there are valid operational or technological reasons to do so. The claimants say that the expertise rests with the worker who is trained in using his own eyes for checking quality and the exceptions to Article 2 do not apply in this case. They claim that the Company made this change in order to get rid of union members. The claimants also state that the change in conditions and termination of contracts was not done lawfully because written notice was not served on the workers.

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[17] Translated from Article 20 Labour Law number 4857 (see appendix 5)

[18] Translated from Article 21 Labour Law number 4857 (see appendix 5)

[19] As prescribed by law under Article 34 of the Turkish Constitution.

[20] Anadolu Ajansi (agency), İhlas Haber Ajansı (agency), Etkin Haber Ajansı (agency), Ulusal (television), Hayat (television), Evrensel (newspaper), Günlük (newspaper), and Sol (newspaper).

[21] See Claimants' statement of case at appendix 7

26. The defence[22] is based on two grounds: firstly, it is argued that the court does not have jurisdiction to hear the cases because the Company manufactures products for the Turkish army and therefore Article 30(4) of the Labour Law 2822 ('Collective Agreement Strike and Lock-out Act 1983)[23] applies; it provides that it is unlawful to call a strike or order a lock-out in "*Any establishment run directly by the Ministry of National Defence, General Command of Gendarmeries or Coast Guard Command".* The Company relies on that law to assert that the matter is one to be determined by the Ministry of National Defence, not the Labour Courts. Secondly the defendant argues that there is a valid reason for dismissal, namely that it was necessary to subcontract the quality control process in order to increase profits at a time of global economic crisis in the automotive industry. It argues that the dismissals were not related to trade union activity (on grounds that it did not consider membership prior to dismissing workers) and that dismissal was reasonable in the circumstances.

27. Proceedings started on time in a small courtroom in the 3rd Labour Court. The Judge sat in a raised position with the lawyers for both parties at equal distance before her. Both lawyers could see a monitor linked to the court clerk's desk, who makes a note of proceedings based on the Judge's summary of the lawyers submissions - proceedings are not fully transcribed. None of the parties was present in the courtroom. There were a few seats for the public to the right side of the courtroom, where the observers sat.

28. Due to a problem with communication the trial observers were not present for the first 15 minutes of the hearing but were told that the court referred to earlier hearings in the case and both parties repeated previous demands made: the claimant repeated earlier submissions that the process was being unnecessarily delayed and requested that the Judge decide the cases today; the defendant argued that the Judge should consider the DVD of the occupation of the 22 December 2008, which will be brought at the next hearing. The Judge refused both parties' submissions. Regarding the DVD, she will not consider it as it does not relate to the instant dismissals which took place on 29 January 2009.

29. In the presence of the observers, lawyers for both parties confirmed that their arguments had not changed since the last hearing. The defendant's lawyer attempted to add a further ground of defence (low productivity/poor performance of workers) but it was refused by the Judge.

30. The defendant lawyer explained to the Judge that the four witnesses for the defendant were not present at court, although invitations had been sent to three of them. The matter was therefore adjourned to 22nd October to enable the defendant to secure the attendance of its witnesses. It was ordered that the witnesses have 10 days in which to confirm their intention to attend, if they do so but do not attend at the next hearing they will be arrested and brought to court.

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[22] See Defendant's statement of case at appendix 7

[23] See relevant national law at appendix 5

31. The defendant also submitted a technical report relating to the need to reorganise and subcontract certain processes but the claimant lawyer objected to it on grounds that a technical report is not relevant to these dismissals (the issue is whether sub-contracting and re-assignment was lawful) and in any event the report was commissioned by the defendant Company and was not written by the usual state agency. The Judge agreed that it was not entirely relevant but would place the report on the file and re-evaluate the file before the next hearing.

32. Withdrawal statements for 2 of the 11 claimants were submitted by the defence lawyer. It was suggested by the claimants' lawyer that the statements were prepared by the Company and the workers received money in return for their signature and resignation from the union. Given that the claimant lawyer was no longer representing those 2 workers she was not entitled to participate in proceedings and she left the courtroom. The Judge and defence lawyer then dealt with the issue of withdrawal.

33. In reaction to the adjournment the claimants' lawyer was very positive and said that the adjournment of 2.5 months was relatively short in comparison with earlier delays and she hopes the matter will soon conclude in the workers' favour.

HEARING ON 6 AUGUST 2010

34. The cases relating to the 37 workers[24] indirectly employed through a purported subcontractor and dismissed on 18-19 December 2008 were scheduled for 9.00am.

35. The legal basis for bringing the claim for reinstatement[25] is that dismissals on grounds of low performance ("*capacity or conduct"*) fall under Article 18 of the Labour Law Act and require notice of termination and severance pay. Contrary to the company's assertion, they claim that Article 25(II) of the Labour Act does not apply as it relates to immoral, dishonourable or malicious behaviour on the part of the worker who can then be dismissed without those procedural safeguards. The Labour Ministry investigation[26] found there were no grounds to suggest that either of these Articles could properly apply because there was no evidence of poor performance or malicious behaviour etc. The claimants argue that the real reason for dismissal is union activity, which cannot be a valid reason in law.

36. The defence[27] is based on two grounds: firstly, it is argued that the claimants cannot bring a case against the defendant because they were subcontracted and therefore any claim lies against that different company[28]; secondly, it is argued that the workers were

[24] Only 13 out of the 37 case files were dealt with on 6 August – the remaining 24 will be dealt with in a similar way on Monday 9 August.

[25] See Claimants' statement of case at appendix 8

[26] See the Labour Ministry report dated 12 January 2009 at appendix 6

[27] See Defendant's statement of case at appendix 8

[28] It should be noted that the Labour Ministry report concluded that all companies operating as subcontractors were actually all part of the principle Company Sinter Metal and that the employees of the subcontractors were,

performing badly and despite verbal warnings they did not improve their behaviour, therefore the Company was entitled to dismiss without severance pay under Article 25(II).

37. As on 4th August, proceedings started on time in the same courtroom[29]. Witnesses of the Defendant were called for but none was present. The matter was adjourned to 22 October. Again, the defendant's lawyer submitted a technical report but the Judge considered it is not relevant to the reasons for dismissal in these cases. Nevertheless, the report was left on the file. The defendant's lawyer again requested that the Judge view the DVD of the 22 December 2008 and that she conduct an investigation inside the factory to see what the current situation is. The Judge refused to do so on this occasion, but accepted that such considerations may be necessary in relation to the dismissal of 341 workers on 22 December 2008.

38. The defendant's lawyer raised a further issue as to whether the union membership subscriptions were genuine and requested that the matter be investigated before any decision is made. The Judge ruled against her.

39. The defendant lawyer explained to the Judge that the witnesses were invited to attend today. As on 4th August, the Judge ordered that the witnesses have 10 days in which to confirm their intention to attend, if they do so but do not attend at the next hearing they will be arrested and brought to court.

40. Withdrawal statements for 4 of the 37 claimants were submitted by the defence lawyer. The Claimant's lawyer remained in the courtroom whilst the Judge and defence lawyer then dealt with the issue of withdrawal.

EVALUATION OF THE HEARINGS/TRIAL PROCESS (extent complied with international standards)

Legal framework

41. The main international standards relevant for the purposes of this report are set out in ILO Conventions 87, 98 and 158 and the ECHR Articles 11 and 6, all of which have been ratified by Turkey.

42. In the case of *Demir and Baykara v Turkey* (2009) 48 EHRR 45, the Grand Chamber unanimously held that Article 11 of the ECHR should now be interpreted in line with the jurisprudence of ILO committees (as well as the standards and principles enshrined in

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in law, employed by the principle employer. It is also assumed by the union that the subcontracting companies have now been dissolved.

[29] Observers were present in court prior to the Judge entering.

the European Social Charter). Of particular importance is the interpretation of the convention by the ILO Committee on Freedom of Association[30]. It recognised that:

> "769. Anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardise the very existence of trade unions.[…]
>
> 771. No person should be prejudiced in employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment."

43. And in relation to the need for rapid and effective protection, the ILO Committee on Freedom of Association noted that: (*emphasis added)*

> 817. The government is responsible for preventing all acts of anti-union discrimination and it must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be **prompt, impartial and considered as such by the parties concerned**.
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> 818. The basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are **inadequate when they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed**.
>
> 820. Respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have **access to means of redress which are expeditious, inexpensive and fully impartial**.
>
> 824. The Committee has recalled the need to ensure by specific provisions accompanied by civil remedies and penal sanctions the protection of workers against acts of anti-union discrimination at the hands of employers.
>
> 827. In a case in which proceedings concerning dismissals had already taken **14 months**, the Committee requested the judicial authorities, in order to avoid a denial of justice, to pronounce on the dismissals without delay and emphasized that any **further undue delay in the proceedings could in itself justify the reinstatement of these persons in their posts**.
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> 828. Complaints against acts of anti-union discrimination should normally be examined by national machinery which, in addition to being speedy, should not only be impartial but also be seen to be such **by the parties concerned, who should participate in the procedure in an appropriate and constructive manner.**

44. It is worth noting that Turkey's accession to the European Union is contingent upon full trade union rights being respected in line with EU standards and the relevant ILO conventions, in particular as regards the right to organise, the right to strike and the right to bargain collectively. But whilst it is anticipated that necessary reform will eventually take place, the unions and workers continue to operate without full protection in law.

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[30] See the Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO (ILO, Geneva, 2006)

45. Currently, the relevant international standards and principles are reflected to a degree within the national legal framework, but they are subject to wide ranging restrictions.

46. The Turkish Constitution protects the rights and freedoms of association in Part Two: Article 33 allows for everyone to form or become a member of an association without prior permission; and Article 34 protects the right of everyone to hold peaceful meetings and demonstration marches without prior permission, although that right can be restricted by law on a number of grounds and "the formalities, conditions and procedures governing the exercise of the right to hold meetings and demonstration marches shall be prescribed by law"[31]. The right to strike, whilst protected on the face of it by Article 54 of the Constitution, stipulates that a strike "shall not be exercised in a manner contrary to the principle of goodwill to the detriment of society, and in a manner damaging national wealth" and certain union activities are prohibited, such as politically motivated strikes, solidarity strike, occupation of work premises, labour go-slows and other forms of obstruction. Articles 138 -140 of the Constitution provide for the independence of the courts (including Judges) and the security of tenure of Judges.

47. In terms of the subordinate labour laws regarding anti-unionisation and termination of contracts, relevant to the cases observed, the following provisions fail to fully comply with international standards:

    - Article 18 of the Labour Act requires termination of contracts to be justified by a valid reason in accordance with ILO C158 Articles 4 and 5. However, the provision is limited to those employed in an establishment with 30 or more workers[32]. Notwithstanding that there are certain categories of workers that may be excluded from the 'valid reason' protection in accordance with ILO C158 Article 2, the limitation operates to directly exclude 95 percent of Turkish workplaces[33] so that the vast majority of workers have no unfair dismissal protection at all. Thus, Article 18 fails to comply with the principle that such protection should apply to all branches of economic activity and to all employed persons[34];

    - Article 19 of the Labour Act regarding the procedure for termination to some extent accords with the standards set out in ILO C158 Article 7, yet the reservation in relation to Article 25(II) is wide ranging and provides a way for employers to avoid Article 19;

48. On a more positive note:

    - Article 20 of the Labour Act requires speedy procedures in dismissal cases (to be concluded within 2 months). This complies with the principle of prompt and

[31] It is those restrictions that prohibited a demonstration taking place before the court hearing on 4 August 2010.
[32] Article 18 of the Labour Act (no.4857).
[33] See the ITUC Annual Survey of Turkey 2009
[34] ILO C158 Article 2(1).

expeditious procedures expounded by the ILO Committee on Freedom of Association[35]; and

- Article 31 of the Trade Unions Act (no. 2821) prohibits any discrimination on grounds of union membership, including termination of employment, in accordance with the principles set out specifically in ILO C98 Article 1.

49. Since the full hearing was not effective in any of the Sinter Metal cases observed, it was not possible to assess whether the court applied the substantive law in conformity with international standards and principles.

50. However, it can be said that there are significant concerns regarding the procedural aspects of these cases: firstly in terms of the delay; secondly in terms of the perceived partiality of the Judge; and thirdly in terms of the defendant's conduct.

51. The issue of delay is clearly pressing. Notwithstanding that the international standards require a speedy process - a delay of 14 months has proved sufficient for the ILO to suggest that reinstatement be ordered upon further delay – and national laws stipulate a maximum period of two months for concluding a dismissal case, these cases have already been running for over 18 months. By any standard that is a considerable delay, and one which is difficult to justify where individual workers are left in often dire situations pending the outcome of the trial. From the information made available to the Observer, there does not appear to be a good reason for such a protracted process. There have now been 8 adjournments in total, often for seemingly unnecessarily lengthy periods.

52. It is the responsibility of the government to ensure that complaints of anti-union discrimination are examined promptly and impartially and where this is not achieved, as appears to be the case here, then the regulations alone are rendered inadequate[36].

53. According to Article 6(1) of the ECHR, everyone is entitled to a fair and public hearing within a reasonable time. Where there has been undue delay, an applicant may take a case before the Court in Strasbourg (ECtHR) immediately under Article 35 of the Convention, without exhaustion of local remedies. In assessing whether the time taken is (un)reasonable, the Court considers six criteria: the complexity of the case; the conduct of the applicant; the conduct of the competent authorities; what is at stake for the applicant in the proceedings; and the state of those proceedings. Time periods of cases considered by the Court varied from 1 year and 11 months[37] to 12 years and 10 months, with the majority of delays being in a of 5-7 year range.

54. It is arguable that the Sinter Metal case is a reasonably straight forward labour dispute which has been delayed through no fault of the would-be applicants, who have a lot to

[35] As set out above at paragraph 43 (817, 820 of the extract).

[36] As set out above at paragraph 43 (817, 818 of the extract).

[37] *Meier-Sax v. Switzerland, 12421/86 :* 1 year, 11 months and 19 days, 11/05/1988 (admissible).

lose (indeed, have already lost a lot), and the proceedings would appear to be dragging on indefinitely in the event of further adjournments. Whilst it is unlikely that the Sinter Metal case would be admitted under Article 35 to the ECtHR at this stage, any delay beyond the scheduled October hearing could be a basis on which to take the case straight to the ECtHR for a breach of Article 6.

55. As to the perceived partiality of the Judge by the Union, it is clear that the lawyers for the claimants do not agree that the Judge is bought; rather she is not strong enough to deal effectively with the tactics adopted by the defendant. Although there does not appear to be objective evidence to prove the suspicions of the union, their subjective perception is still of utmost importance, if that view is shared by the claimants[38]. A failure to instil public confidence in the judicial system is a failure on the part of any democratic state based on the rule of law.

56. Finally, the conduct of the defendant appears to have been geared towards delaying proceedings by any means necessary. The failure to ensure the attendance of witnesses, requests for further investigations, demands for irrelevant information to be considered by the court and other such 'tactics' have all operated to prolong matters, seemingly without good reason. Such behaviour is not in line with that promoted by the ILO Committee on Freedom of Association[39]. It is for the state machinery to prevent such behaviour where it prejudices the rights of others, in this case the rights of the claimants.

57. All of the issues above impede access to justice for the claimants.

CONCLUSION

58. Due to the hearings being adjourned, it has not been possible to comment on the extent to which the court applied, or interpreted, the law in line with international standards.

59. Notwithstanding that set back, it has been possible to draw conclusions about the general conduct of proceedings and the nature of the legal protection afforded to union members in Turkey.

60. Whilst there appears to be legal provision for union membership and activity in the national legal framework, the wide ranging restrictions set out in primary and secondary legislation undermine that legal protection. The same can be said for the level of protection afforded to workers facing dismissal (most of whom enjoy little or no protection at all). To that extent that it cannot yet be said that Turkey complies with international standards in this area: there is partial compliance.

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[38] See para 817 of the Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO (ILO, Geneva, 2006), as set out above.
[39] As set out above at paragraph 43 (828 of the extract).

61. One of the main issues addressed in this report is the failure to enforce the laws even where they are protective of workers' rights. In particular the requirement to conclude dismissal hearings within 2 months has not been satisfied in these cases. There is no apparent good reason for such delays. One theory is that the Judge has been 'bought' by the defendant company. Whilst this may not be true, the fact that this is perceived to be the case is concerning. The defendant does seem to have been permitted to delay matters beyond what could be considered a reasonable time in the circumstances. For that reason it is concluded that there has been a failure to comply with international standards at a procedural level.

RECOMMENDATIONS

Specific recommendations – to rectify breaches of international law:

- In the event of further adjournments not caused by the claimants, it is submitted that the Court should rule in favour of the claimants and order reinstatement on grounds of undue delay, in accordance with the interpretation of Convention rights by the ILO Committee on Freedom of Association.

General recommendations – possible reform:

- The legislature should provide for greater protection of trade union rights and freedoms in line with international standards; and
- The rights and freedoms provided for in law should be expanded to cover all workers in line with international standards; and
- There should be effective enforcement of the rights enshrined in national labour laws (and the rights provided for in international law);
- The judiciary should ensure speedier hearings in cases of dismissal, particularly in reinstatement cases.

Possible actions

- In the event of further delays it is potentially open to the claimants to complain of the unreasonable delay to the court and to pursue their case before the ECtHR in Strasbourg.
- The claimants make a complaint to the ILO Committee on Freedom of Association regarding the delay in proceedings, lack of judicial law enforcement and non-compliance with the principles of freedom of association.

Appendices:

1. **Ordre de mission**
2. **Observers mandate**
3. **Summary of situation in turkey**
4. **Chronology**
5. **Copies of relevant national legislation**
6. **Report of labour ministry,**
7. **Statements of case re: 11 workers dismissed on 29/1/09**
8. **Statements of case re: 37 workers dismissed on 18/12/08**
9. **Letter threatening to sue for Company losses (original)**
10. **Letter threatening to sue for Company losses (translation)**