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COMMENT

Turkey, The EEC and Labor Law: Is Harmonization Possible?

If the European common market is to function successfully, every member state of the European Economic Community ("EC") must undertake the harmonization of its laws with the laws of the Community.¹ The area of labor law, in particular, is one in which EC norms are ultimately to govern. While labor law has indeed been a traditional concern of the original member states,² it, along with workers' rights, has taken on heightened importance as the unification of the European market approaches.³ As an essential step toward attaining its goal of becoming a unified market, the EC is standardizing social policy throughout the member states—and in the EC, social policy essentially means workers' rights.⁴

Consistent with this commitment, in late 1989 the Council of Ministers⁵ effectively adopted two documents, thereby spelling out "a compre-

¹ Treaty Establishing the European Economic Community, March 25, 1957, Article 100, 298 U.N.T.S. 11, 15. [hereinafter "Treaty"]. [European Economic Community, hereinafter "EC"].

² This concern is evident from both the Treaty and directives enacted by the Council of Ministers establishing principles of cooperation among member states in the area of labor law, working conditions and employment (Treaty, *supra* note 1, art. 118), equal pay for men and women (Treaty, *supra* note 1, art. 119), equal treatment for men and women (Council Directive 76/207 of 9 February 1976 The Implementation of Equal Treatment for Men and Women as Regards Access to Employment, Vocational Training and Promotion, and Working Conditions 1976 O.J. (L 39) 40. [hereinafter "Council Directive 76/207"], a recommendation for a forty-hour work week and four weeks paid vacation annually (Council Recommendation 75/457 of 30 July 1975 O.J. (L 199), [hereinafter "Recommendation 75/457"] and health and safety in the work place (Council Directive 89/391 of 12 June 1989 (L 183)).

³ See generally Donald C. Dowling, Jr., *Worker Rights in the Post-1992 European Communities: What "Social Europe" Means to United States Based Employers*, 11 NW. J. OF INT'L L. & BUS. 564 (Winter 1991).

⁴ *Id.* at 568.

⁵ Treaty, *supra* note 1, at arts. 145-154 (delineating powers of Council) (The Council of Minis-

hensive EC platform on European worker rights policy."⁶ The two documents were the Community Charter of Fundamental Social Rights of Workers and an implementing document entitled the Social Action Program.⁷ The Charter, representing the Commission's first wide-ranging declaration in the labor and social rights area, lists twelve basic social rights of EC citizens. Together, these documents outline the implementation of extensive worker rights.

In 1987, after more than twenty years of economic association with the EC,⁸ Turkey applied for full membership in the Community. When Turkey is admitted into the EC,⁹ its entry will be conditioned on the harmonization of its laws with those of the EC.¹⁰ The object of this paper is to examine the feasibility of Turkey accomplishing this task.

The paper begins by examining several preliminary questions. The first is, does EC law exist, and if so, what is it? The history of the EC will be considered briefly, and its legal structures examined. The second, more interesting query is this: Is the Charter itself EC law? In answering this, the controversy surrounding the "passage" of the Charter and the Social Action Program will be detailed and the legal status of the Charter among Europeans considered.

Next, the paper will compare and contrast Turkey's current labor law with that of the EC. This analysis will be performed with reference to past EC labor legislation, and in light of the labor norms expressed by the Council in the Charter. The differences in Turkish and EC laws will be analyzed in terms of whether and how Turkey's laws are deficient, or less beneficial to workers than the EC law. Finally, there will be a general conclusion as to whether Turkey is deficient with respect to EC labor norms, and if it is deficient, Turkey's prospects for remedying those deficiencies will be discussed. This discussion will include a short exposition

ters was established by the Treaty of Rome, and is granted the "ultimate authority in implementing EC law"). Dowling, *supra* note 3, at 576.

⁶ Dowling, *supra* note 3, at 583.

⁷ Community Charter of Fundamental Social Rights, COM (89) 471 final [hereinafter "Charter"]; Communication from the Commission Concerning its Action Program Relating to the Implementation of the Community Charter of Basic Social Rights for Workers, COM (89) 568 final [hereinafter "Social Action Program"].

⁸ Treaty, *supra* note 1, at art. 238 (Association Agreement between EC and Turkey).

⁹ This is far from a foregone conclusion. The current application is doomed to fail solely political and economic grounds. Additionally, questions about human rights abuses by the Turkish government remain. Iain Cameron, *Turkey and Article 25 of the European Convention on Human Rights*, 37 INT'L & COMP. L. Q. 887 (Oct. 1988).

¹⁰ In fact, Turkey has already agreed to take measures to comply with certain provisions of the Treaty, including those pertaining to approximation of laws. Association Agreement, *supra* note 8, at art. 16.

of other factors, political and economic, which may influence the ease or difficulty of the harmonization task.

I. DEFINING EC LAW

The EC began as a trade group.¹¹ Initially a limited international affiliation, in 1951 six countries, including West Germany, Belgium, France, Italy, Luxembourg and the Netherlands, signed an agreement known as the Treaty Establishing the European Coal and Steel Community.¹² Six years later these countries expanded their relationship, concluding the Treaty Establishing the European Economic Community.¹³ In practice, the Treaty acts as the constitutional document underlying all EC law.¹⁴ It regulates the common market relationships between the six original signatory countries, plus six countries which later ratified the document: Denmark, Ireland, Britain, Greece, Spain and Portugal.

Like the U.S. constitution, which establishes the U.S. federal government and delineates the roles of its branches, the EC Treaty creates and authorizes the EC's decision-making bodies.¹⁵ The Treaty establishes the EC Council of Ministers, granting to it the ultimate authority to implement EC law.¹⁶ European Community law may take several forms, known together as instruments: directives, which require each member state to integrate a point of EC policy into its national law;¹⁷ regulations, which bind member states directly, even without legislation on the part of the member state;¹⁸ decisions, which address fact specific situations;¹⁹ and recommendations, or opinions, which are non-binding statements of EC policy.²⁰

Under the Treaty arrangement, the Council implements these instruments only by acting upon proposals which originate with the EC

¹¹ See Dowling, *supra* note 3, at 574.

¹² TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY, Apr. 18, 1951, 261 U.N.T.S. 140, 145.

¹³ Treaty, *supra* note 1.

¹⁴ Dowling, *supra* note 3, at 575.

¹⁵ Treaty, *supra* note 1, at arts. 137-198.

¹⁶ Treaty, *supra* note 1, at arts. 145-154 (delineating powers of Council). The EC Council is comprised of the heads of state of each of the twelve member countries. See Dowling, *supra* note 3, at n. 49.

¹⁷ Treaty, *supra* note 1 at art. 189 ("Directives shall bind any member state to which they are addressed, as to the result to be achieved, while leaving to domestic agencies a competence as to form and means.").

¹⁸ *Id.* at art. 189 ("Regulations shall have a general application. They shall be binding in every respect and directly applicable in each Member State.").

¹⁹ *Id.* ("Decisions shall be binding in every respect for the addresses named therein.").

²⁰ *Id.* ("Recommendations and opinions shall have no binding force.").

Commission.²¹ It is the Commission which initiates the EC law-making process when it submits a proposal of law in the form of an instrument of one of the above-mentioned types. The proposal will receive proposed amendments from the Parliament²², after which the Commission may adopt the proposal, with or without the amendments.²³ Finally, the proposal reaches the Council. If the Council ratifies the proposal, it becomes EC legislative law.²⁴

Following ratification, the EC member-state legislatures are required to act in one of a number of specified manners. The action to be taken is dependent on the particular instrument enacted. Because it is purely a statement of Council policy, a directive is binding as to its result only. The decision of how best to accomplish the goal of the policy expressed in the directive is left to each member-state legislature, with the intent of permitting each to implement the policy as it sees fit.²⁵ A regulation, on the other hand, must be directly implemented by the member-state legislature.²⁶ In contrast to a regulation, a recommendation is less restrictive in nature. Since it does not represent a binding enactment, its passage by the Council leaves the member state two options. The state may either adopt the instrument in whatever form it deems appropriate, or it may elect not to adopt the instrument in any form. The instrument known as a decision is distinct from these other three. As the decision carries no binding force upon those other than the parties to whom it is addressed, it has far less general application to the member states.

Having examined the nature of EC law, and its relationship to the laws of the member states, we may examine harmonization itself, and then discuss the Charter in that context.

II. HARMONIZATION AND THE CHARTER

A. Harmonization

The vision of an integrated European market dates back to the Treaty.²⁷ The major barrier to this common market is the existence of

²¹ *Id.* at arts. 155-63 (powers of the Commission). The Treaty specifically empowers the Commission with responsibility over a number of "social" concerns, including employment and labor law and working conditions. See Dowling, *supra* note 3, at n. 54.

²² Treaty, *supra* note 1, at arts. 137-44 (powers of Parliament). Parliament's Treaty-authorized role is essentially limited to "consultation". See Dowling, *supra* note 3, at n. 55.

²³ Treaty, *supra* note 1, at arts. 137-198.

²⁴ *Id.*

²⁵ See *supra* note 17.

²⁶ See *supra* note 18.

²⁷ Dowling, *supra* note 3, at n. 61 (original 1957 Treaty had set out timetable, which ultimately was never met, for completion of a single market).

laws regarding business and trade which differ greatly between member states.²⁸ Harmonizing the laws of the member states is intended to break down this barrier to a successfully functioning market.²⁹ The Treaty's mechanism for achieving harmonization is Article 100.³⁰ Article 100 commands that the Council "shall . . . issue directives for the approximation of such provisions laid down by law, regulation or administrative actions in Member States which directly affect the establishment or functioning of the common market."³¹

1. *To What Extent Harmonization?*

As the word "approximation" implies, one important issue of harmonization is determining the degree of harmonization necessary. One may look to Article 100 for guidance. Its language appears to mandate that harmonization accomplish that degree of uniformity which would enable the common market to function uninhibited. Buttressing this interpretation is language in the article implicitly contemplating that legislation promulgated under the Treaty will necessitate the revision of national laws by member states.³² Therefore, it may be said that Article 100 contemplates a high degree of harmonization of substantive law. It is important to note, however, that the Treaty also recognizes the necessity of allowing a certain amount of latitude to the member state legislatures in enacting standard laws.³³

While the substantive latitude allowed to the state legislatures in enacting laws is not so wide as to render the directive meaningless, nor is it so narrow as to be inconsequential. The Treaty allows latitude by making the directive the instrument of choice in EC legislation.³⁴ European Community directives can be viewed as ends to be accomplished through

²⁸ 3 Common Mkt. Rep. ¶ 3300. ("The activities of business enterprises are influenced considerably by the legislation of the countries in which they are established. To engage in business in a country, enterprises must comply with numerous requirements imposed on them" and on their products, by law for various reasons of public policy, and also in areas of private law, and labor and tax legislation. Operating and production costs are both affected by the set of laws which govern the enterprise. The variation of these laws, regulations and administrative actions from one country to another "gives rise to non-tariff trade barriers affecting aspects of trade such as the free movement of goods, services, persons or capital, and the conditions of competition.") *Infra* at ¶ 3302.01.

²⁹ *Id.* at ¶ 3300.

³⁰ Treaty, *supra* note 1, at art. 100.

³¹ See *supra* note 28, at ¶ 3300.

³² *Id.*

³³ *Supra* note 28, at ¶ 3300.

³⁴ *Id.* ("The process of 'approximation' . . . must allow the national legislatures a certain amount of latitude, and, for this reason, the directives are called for as the means for achieving the ends desired") *Id.*

means chosen by the member-state legislature.³⁵ Directives give member state legislatures discretion in implementation, allowing for variations in the states' individual legal systems and economic situations.³⁶ More important than exact replication of the directive is consistency between the policy underlying the directive and underlying the member state provision, and the resulting enhancement of the operation of the single market.³⁷

However, it should be stressed that the existence of some latitude does not imply that the degree of harmonization required is low. By definition, a directive is binding as to its result.³⁸ Furthermore, the EC's goal, eliminating trade barriers, is more nearly accomplished when the degree of harmonization is high. Therefore, while latitude is necessary in allowing for different legal and economic climates, this latitude must be considered a necessary evil, for it creates tension with the goal of eliminating barriers to the common market. Accordingly, substantial harmonization is the EC's goal, as anything less would act as a hindrance to the smooth operation of the single market.

3. *The Evolution of Harmonization Since the Treaty*

Having explored the issue of the extent, we examine the evolution of harmonization in the EC since the signing of the Treaty. Although first envisioned in the Treaty,³⁹ the EC put off its goal of a single market for many years.⁴⁰ The idea was revitalized with the issuance of the White Paper, declaring December 31, 1992 as the deadline for the completing unification.⁴¹ At that time, the Commission recognized the fact that harmonization was a necessary element of unifying the market.⁴²

There are at least two major reasons for labor laws to be included within the category of laws which require harmonization. One reason is

³⁵ See *supra* note 17 and accompanying text for a discussion of the effect of a directive on the legislature of a member state.

³⁶ See *supra* note 28, at ¶ 3302.11. Relevant to understanding why some latitude is granted to the member-state legislatures is the fact that approximation is not meant to be equivalent to unification. *Infra* at ¶ 3302.09.

³⁷ *Id.* at ¶ 3302.02.

³⁸ *Id.*

³⁹ Dowling, *supra* note 3, at n. 61 (original 1957 Treaty had set out timetable, which ultimately was never met, for completion of a single market).

⁴⁰ *Id.* at n. 63 (the first wave of "Europhoria" died in the early 1960's, but re-emerged in the 1980's).

⁴¹ Completing the Internal Market: White Paper from the Commission to the European Council, COM(85)310 final [hereinafter "White Paper"]. Although the Treaty had originally proposed a single EC market, only in March 1985 did the Council set the 1992 goal for completion.

⁴² *Id.* at ¶¶ 24-218. The White Paper set out a plan for eliminating three categories of "barriers" which divide the twelve member states: physical, technical and fiscal.

the deleterious effect on employment of non-uniform labor laws.⁴³ As companies restructure in order to adapt to a growing, more competitive international market, these companies will attempt to bring down all costs, including labor. This restructuring consequently gives rise to concerns about a decrease in the standard of living and an increase in unemployment. A second reason that labor law must be harmonized is to prevent or minimize "social dumping."⁴⁴ Social dumping is the investment, by companies, in places where the wages and conditions are the cheapest, forcing workers in countries with a higher standard of living to lower their standard of living in order to compete.⁴⁵ Harmonizing labor laws, will place all the member states on the same level of competition for businesses, at least with respect to labor costs.

The relationship between labor law and the common market has been acknowledged by the EC in several ways. First, Article 118 of the Treaty states that "in conformity with its general objectives," the Commission shall "promote close cooperation between member states in the social field".⁴⁶ Matters relating to the social field include employment and labor law and working conditions.⁴⁷ Secondly, the member states agree that there is a need for improved working and living conditions for workers.⁴⁸ Finally, the Treaty provides that men and women shall receive equal pay for equal work.⁴⁹

However, although harmonization in the social field is envisioned by these provisions, the Treaty prescribes no specific measures for its realization. In reality, the Treaty is ambivalent toward harmonization in the social field. The second paragraph of Article 117, concerning living and working conditions, reveals this ambivalence.⁵⁰ The language of that article denotes a passive attitude toward harmonization, emphasizing that harmonization will simply "result" from the functioning of the common market, which will "favour" the harmonization of social systems, while only in passing, mentioning the procedures set forth in the Treaty and

⁴³ Roger Blanpain, *1992 and Beyond: The Impact of the European Community on the Labour Law Systems of the Member Countries*, 11 COMP. LAB. L. J. 403, 404 (1990).

⁴⁴ *Id.*

⁴⁵ *Id.* at n. 3 and accompanying text. European Community unionists use this slogan to convey their fear that free European trade will cause industry to abandon higher-wage Northern Europe, and exploit Mediterranean workers by denying them needed work place protections and benefits. See also Dowling, *supra* note 3, at n. 93 and accompanying text.

⁴⁶ Treaty, *supra* note 1, at art. 118.

⁴⁷ *Id.*

⁴⁸ *Id.* at art. 117.

⁴⁹ *Id.* at art. 119.

⁵⁰ *Id.* at art. 117.

the provisions on approximation of laws.⁵¹ There is some tension, therefore, between the Council and the Commission's failure to address social issues in the treaty, and the issuance of a broadly sweeping document such as the Charter of the Fundamental Social Rights of Workers.

The EC's initial reluctance to address social issues straight on, reflected in Article 117, and its overall lack of initiative with respect to labor regulation before 1985, may stem from the fact that the EC originated as a trade group.⁵² In 1985, however, the seeds of active regulation of the social field were planted.

It was at that time that the Commission issued its White Paper to the Council, in which, it finally set forth a concrete agenda for the EC's single market.⁵³ The well-known deadline by which the new market would be completed, December 31, 1992 was set. Outlining a plan for the elimination of physical, technical and fiscal barriers which divided the member states, the document became the organizational structure behind the entire single market program.⁵⁴ Conspicuously absent was an explicit acknowledgment of social barriers.⁵⁵ Notably, however, the paper briefly mentioned the need for social as well as economic union, stating that the goals of forming social cohesion and social policy were inextricably linked to the Treaty and to the central objective of a single European market.⁵⁶

Subsequent to the White Paper, the member states ratified the Single European Act ("SEA").⁵⁷ That document implements the EC single market program. Ratification had the effect of giving the White Paper's market unification program the force of EC law, and made the unification mandatory.⁵⁸ To ensure that this process could be completed by the 1992 deadline, the Act revised the legislative process of the Council. It did so by abolishing the former requirement of unanimity among Council representatives, substituting a requirement of only a "qualified majority" vote among Council representatives for adopting instruments.⁵⁹

Significantly, however, the qualified majority method is specifically

⁵¹ *Id.*

⁵² For an outline of the social policy of the Community during this period, see SOCIAL EUROPE at 51-62 (Jan. 1987) and SOCIAL EUROPE at 19-20 (Jan. 1988).

⁵³ White Paper, *supra* note 41. See generally Dowling, *supra* note 3, at nn. 64-87.

⁵⁴ Dowling, *supra* note 3, at 578.

⁵⁵ *Id.*

⁵⁶ *Id.* at 519.

⁵⁷ Single European Act, February 17, 1986, 29 O.J. Eur. Comm. No. L169, (effective July 1, 1987). See Dowling, *supra* note 3, at nn. 83-91 and accompanying text for a discussion of the Single European Act. The Act was ratified in order to give the White Paper the force of Treaty law.

⁵⁸ Dowling, *supra* note 3, at 579.

⁵⁹ Dowling, *supra* note 3, at 580 (Single European Act, *supra* note 57, at arts. 14, 16-18). "Qual-

disapplied to EC legislation "relating to the rights and interests of employed persons."⁶⁰ The SEA purports "to retain the old unanimous approval mechanism" for legislation relating to these areas.⁶¹ The only labor or social proposals which do not require unanimous approval are those concerning health and safety.⁶² So while the text of both the White Paper and the SEA give attention to social Europe,⁶³ neither actively campaigns for the progress of the concept. The effect was to relegate labor and social issues to the role of step-child to the unification program, leaving trade as the prodigal son, another reflection of the union's history as a trade group.⁶⁴

The proponents of a social Europe never saw its legislation as futile, however, and an extensive political debate ensued from the SEA. At least one author has argued that ceding priority to trade matter was a carefully calculated plan for ultimately gaining Council approval of sweeping social legislation.⁶⁵ At the time the single market program was initiated, both Britain (under former Prime Minister Margaret Thatcher) and Europe's business community opposed a cohesive social Europe, desiring instead a single market program limited to trade.⁶⁶

While the EC officially held that an efficient single market could not exist without a social rights scheme, it appears to have recognized the political reality that openly promoting "social Europe" would be deadly to the program's momentum.⁶⁷ Accordingly, the EC went about winning commitment for the SEA by emphasizing its trade aspects, namely, efficient trade and a consumer block 320 million citizens strong.⁶⁸ The results were just what the EC hoped for. The business community became an avid supporter of the 1992 plan, and by 1989, the Commission was sincerely able to claim irreversible commitment to the plan.⁶⁹

ified majority" means a vote weighted upon the member states' population. Member states' votes range from ten (W. Germany, France, Italy, U.K.) to two (Luxembourg). *Infra* at n. 85.

⁶⁰ *Id.* at 580 (SEA, *supra* note 57, at arts. 14, 16 17, 18, amending Treaty, *supra* note 1, at arts. 8b, 28, 57(2), 99, 100(a).

⁶¹ Dowling, *supra* note 3, at 580.

⁶² *Id.* at 593; *See also* 3 Common Mkt. Rep., *supra* note 28, at art. 100a § 2.

⁶³ Dowling, *supra* note 3, at 580.

⁶⁴ *Id.* at n. 91 and accompanying text.

⁶⁵ *Id.* at 581-584.

⁶⁶ *Id.* at 581. The opposition of the business community to a social Europe, no doubt, has much to do with already relatively high labor costs. Additionally, to the extent the new market will eliminate traditional national policies of protectionism in certain sectors, less competitive EC businesses are almost certain to fail. *Id.* at n. 97. Thatcher resisted not only a social Europe, but also resisted the post-White Paper movement toward EC economic and political union. *Id.* at n. 103.

⁶⁷ *Id.* at 581.

⁶⁸ *Id.* at 582.

⁶⁹ *Id.*

B. The Charter

1. *Its Passage*

The test of this commitment came in 1989. Confident that the plan was a *fait accompli*, the Commission issued the Charter.⁷⁰ The Charter, which enumerated twelve fundamental worker rights, was subsequently fleshed out by the Social Action Program ("SAP").⁷¹ Together these documents spell out a comprehensive workers' rights policy, and specifically outline a plan for the implementation of expansive worker rights in the EC.⁷² After two drafts, the Council effectively adopted the Charter, over Britain's objection, in December of 1989.⁷³

Britain's objection to the Charter raises important questions relating to its legal status, in light of the reformed voting requirements imposed by SEA Article Eighteen.⁷⁴ Article Eighteen explicitly applies the requirement of unanimous approval for passage of labor legislation, except where proposals relate to the health and safety of workers.⁷⁵ While the Charter was under consideration by the Council, its status was watered down from Directive to Solemn Declaration. This move anticipated Britain's objection and was made in hopes of changing Britain's vote.⁷⁶ But even this watering down did not sway Britain to approve the document.⁷⁷ Britain's objection frustrated unanimous passage of the Charter. The Charter deals wholly with matters concerning employed persons, and it was not technically passed.⁷⁸ Consequently, the Charter is neither a directive nor even a unanimously approved statement of EC policy.⁷⁹

⁷⁰ *Id.* (Charter, *supra* note 7). For a general discussion of the contents of the Charter, see Dowling, *supra* note 3, at 594-614.

⁷¹ Social Action Program, *supra* note 7. The Social Action Program ("SAP") documents more thoroughly the rights contained in the Charter. Furthermore, it expounds in some detail upon 47 new instruments the Commission proposes to undertake in order to implement the Charter, Dowling, *supra* note 3, at 59), and lists actions which are underway to that effect. Lastly, the SAP allocates responsibility for choosing the form and method for accomplishing its goals between the Commission and the member states.

⁷² Dowling, *supra* note 3, at 582. By U.S. standards, the Charter is relatively employer-restrictive. *Infra* at 583-84. See also Dowling at n. 108 (citing, as examples in support of this proposition, the fact that employers oppose the Charter because of clauses which encourage unionization, give workers access to company records, and give them a voice in management).

⁷³ *Id.* at 583, 590-594.

⁷⁴ Incorporated as amended Treaty of Rome art. 100a, Treaty, *supra* note 1, at art. 100a §§ 2-3, incorporating SEA, *supra* note 57, §§ 2-3.

⁷⁵ SEA, *supra* note 57, at art. 18, §§ 2,3.

⁷⁶ Dowling, *supra* note 3, at 590. The Charter is not one of the instruments of official EC law. *Id.* at 592. For discussion of the instruments of EC law, see *supra* notes 17-20 and accompanying text.

⁷⁷ Dowling, *supra* note 3, at 590.

⁷⁸ *Id.* at 592-593.

⁷⁹ *Id.* at 592. To employers, the Charter has no legal meaning as a Solemn Declaration. *Id.*

Accordingly, a question exists as to its legal status, and what, if any, binding legal force it maintains.⁸⁰

2. *The Charter's Legal Status*

Two views of the Charter's legal status exist. The EC employers' lobby argues that the Charter is a legal nullity.⁸¹ Their view stems from the requirement that the adoption of measures relating to rights of employed people may only occur upon a unanimous vote of approval. Under this requirement, imposed by the SEA,⁸² the employers view Britain's vote against the Charter as a veto, rendering it invalid as EC legislation.⁸³

The EC social lobby naturally views the Charter's status differently.⁸⁴ The social lobby believes that the Charter was legally adopted with votes to spare. Like the employers' lobby, the social lobby's view centers on the voting procedures set forth by the SEA. However, the social lobby relies, as its authority, on a different section of that document.

As the employer's lobby points out, the SEA imposes a unanimity requirement for passage of labor and social legislation.⁸⁵ However, Section Three of the same article carves out an exception, for labor legislation relating to the health or safety of workers, from the unanimity requirement.⁸⁶ With respect to health and safety measures, only a mere qualified majority of the Council is necessary to gain passage.⁸⁷ Given that the very concept of a social Europe is, in the eyes of the social lobby, essential and integral to worker health and safety,⁸⁸ it follows that all or most of the twelve points in the Charter fit within the Section Three health and safety exception to the unanimous approval requirement.⁸⁹ In this perspective, the Charter needs only a qualified majority for approval, more than furnished by the eleven to one vote.

This section has become the focus of hot debate. While employers

⁸⁰ See *id.* at 591-593.

⁸¹ *Id.* at 592-593.

⁸² *Id.* at 592. On the underlying authority of the treaty for EC social regulation, see Treaty, *supra* note 1, at Part Three, Title III, arts. 117-128. For citations to general discussions of the Treaty's authorization of such legislation, see *id.* at n. 172.

⁸³ Dowling, *supra* note 3, at 592.

⁸⁴ *Id.* at 593-594.

⁸⁵ See *supra* note 60 and accompanying text.

⁸⁶ Dowling, *supra* note 3, at n. 178 (Treaty, *supra* note 1, at art. 100, § 3).

⁸⁷ Dowling, *supra* note 3, at 593.

⁸⁸ *Id.* Evidently, the social lobby reasons *a fortiori* that anything concerned with workers' general welfare promotes better worker health. *Id.* at n. 179.

⁸⁹ *Id.* at 593-594.

perceive that each of the Charter's guarantees involve the rights and interests of employed persons generally, the social lobby takes a more abstract view of the documents, emphasizing the underlying policies of social welfare. However, while this legal debate still rages, its importance has been significantly diminished by events which have taken place since the vote on the Charter.⁹⁰

These events were initiated immediately after the eleven to one passage of the Charter, when the Commission began work on draft directives implementing the Social Action Program.⁹¹ In mid-1990, the Commission issued its first proposed directives, concerning part-time and overtime labor.⁹² By treating the Charter and Action Program as an active agenda for a social Europe, the Commission has effectively validated the documents.⁹³ In actuality, the focus of the debate over the Charter's legal status has shifted away from the legal status of the Charter to the Commission-proposed instruments under the Social Action Program.⁹⁴ The employers' lobby has increasingly addressed the 47 SAP-proposed instruments in recognition of the effective, if not technical, legal status of the Charter from which the directives are drawn.⁹⁵ The documents have taken on a political significance all their own.⁹⁶

In all, these events have "steamrolled the threshold argument that the Charter has no legal status."⁹⁷ European Community social regulation is overwhelmingly approved by Europeans generally. The social lobby has argued persuasively that the Charter falls within the health and safety qualified majority approval exception to SEA article eighteen. The Commission is at work on numerous social proposals based on the Charter and the Social Action Program, and much of the European business community has jumped irreversibly on the single market bandwagon. The Charter, as well as the Treaty and instruments issued prior to it, is

⁹⁰ See *id.* at nn. 182-188 and accompanying text for a more detailed analysis of why this debate has diminished in importance.

⁹¹ *Id.* at 595.

⁹² *Id.* Proposal for a Council Directive on Certain Employment Relationships with Regard to Distortions of Competition, COM(90)228 final SYN 280, 1990 O.J. (C 224) (Aug. 30, 1990). [hereinafter "Proposed Directive on Working Conditions"]; Proposal for a Council Directive Supplementing the Measures to Encourage Improvements in the Safety and Health at Work of Temporary Workers, COM(90)228 SYN 281 (Aug. 13, 1990). Additionally, in 9/90, the Commission issued a draft of a directive which would require a minimum 14 weeks employer-provided maternity leave. See *Maternity Leave in the EC*, WALL ST. J., Sept. 14, 1990, at A7, col. 4.

⁹³ Dowling, *supra* note 3, at 595.

⁹⁴ *Id.*

⁹⁵ *Id.* at 596.

⁹⁶ *Id.* at 595. One study has found a 70% acceptance rate of the EC-level social regulation among Europeans generally. *Id.* at n. 184.

⁹⁷ *Id.* at 595.

EC law, constituting laws with which member countries must harmonize their laws.

II. THE CHARTER AND THE DIRECTIVES

The Charter is a bill of twelve guarantees to all EC workers. These include free movement, fair pay, and improved working conditions. Furthermore, provisions concerning social security, collective bargaining, and vocational training are also included. Equal treatment of men and women, worker consultation and participation in management, and health and safety in the work place, along with protection of children and adolescents, and of the aged and the handicapped are the remaining guarantees.⁹⁸

In addition to the rights guaranteed under the Charter, some other worker protections have been established by either the Treaty or by Council instruments. The Treaty itself prohibits discrimination in pay based on sex.⁹⁹ A directive provides procedural protections against collective redundancies (mass lay-offs),¹⁰⁰ and a recommendation which suggested the adoption of a uniform forty hour work week along with a minimum of four weeks paid vacation per year for each employee has also been approved.¹⁰¹ The guarantees of the Charter, the Treaty and several instruments will be examined at length in the next section, which treats the comparative aspects of EC labor law and Turkish labor law.

III. COMPARISON OF TURKISH AND EUROPEAN COMMUNITY LAW

Having recently submitted an application for full membership in the EC, Turkey must concern itself with harmonization issues.¹⁰² Turkey needs to initiate measures for harmonizing many areas, but this article will concentrate on labor law issues. In analyzing current Turkish labor law, it is helpful to briefly review the contemporary history of labor legislation in Turkey.¹⁰³ The period after World War II was a formative one. Turkey permitted the formation of free trade unions, although their ac-

⁹⁸ *Id.* at 590 (Charter, *supra* note 7).

⁹⁹ Treaty, *supra* note 1, at art. 119.

¹⁰⁰ Council Directive 75/129 of 17 February 1990 Approximation of the Laws of the Member States Relating to Collective Redundancies, 1990 O.J. (L 48).

¹⁰¹ *See supra* note 2.

¹⁰² *See supra* note 9 and accompanying text.

¹⁰³ For a detailed historical analysis of this subject, *see generally* Shabon, A. & Zeytinoglu, I., *The Political, Economic and Labor Climate in Turkey*, (University of Pennsylvania, Wharton School, Industrial Research Unit, 1985); or Dereli, T., *Turkey, International Handbook of Industrial Relations, Contemporary Developments and Research*, (Albert Blum, ed., Greenwood Press, Westport, Conn., 1981).

tivities were restricted.¹⁰⁴ Furthermore, Turkey achieved significant organizational development by establishing a Ministry of Labor, a Social Insurance Organization, and an Employment Service Organization.¹⁰⁵ Additionally, social security and worker's insurance systems were developed.¹⁰⁶

As a consequence of democratic changes after 1960, many labor reforms took place.¹⁰⁷ First, because of worker support, organized labor assumed a highly respected place in society.¹⁰⁸ Additionally, while the 1961 Constitution stressed economic and social development, it also emphasized basic rights of minimum wages and social security.¹⁰⁹ The rights to organize, to bargain collectively and to strike were guaranteed by the 1961 Constitution.¹¹⁰

However, major changes have occurred in Turkey since the reformation period. Turkey's current atmosphere has become increasingly hostile to labor, much like the period prior to 1960. Recent legislation constricts worker rights that had been granted as a result of the 1961 Constitution. After the military take-over of 1980, the 1961 Constitution was abolished,¹¹¹ a new one took its place in 1982.¹¹² The 1982 Constitution brought major changes to the Turkish industrial relations system. More specifically, it restricts the individual and collective rights of the workers.¹¹³

The current curtailment of worker rights in Turkey contrasts sharply with the expansion of worker rights occurring in the EC. We have seen that the EC has adopted broad social policy, worker rights and worker protections.¹¹⁴ Indeed, European employment related policy consists of legislated rights guaranteeing substantial worker benefits, and

¹⁰⁴ Shabon, *supra* note 103, at 133.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* This period of hospitable treatment of labor came as a reaction to the suppression of labor during the reign of the Democratic Party, and to developing industry and increasing numbers in wage-earning labor groups. *Id.* at 133-134.

¹⁰⁸ *Id.* at 133.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 136 (TURK. CONST. OF 1961, arts. 46 & 47).

¹¹¹ *Id.* at 134.

¹¹² *Id.* at 134-135. TURK. CONST. (The Constitution of the Republic of Turkey, 1982) [hereinafter "Constitution"] This version of the Constitution is still in place. *Id.* See *Turkish Public Workers Get 160% Raise*, REUTERS LIBRARY REPORT, July 23, 1991. Furthermore, as of July, 1991, the current labor laws were those which were passed subsequent to the military coup of 1980. See Shabon, *supra* note 103, at 134-136.

¹¹³ Shabon, *supra* note 103, at 135.

¹¹⁴ See generally Dowling, *supra* note 3.

assurances of job tenure.¹¹⁵ This comment closely examines the current labor law situation in Turkey and exposes glaring deficiencies in Turkish law, when compared with EC law.

A. Wage Determinations

One major change in working conditions brought by the new Constitution is a decrease in wages. The 1961 Constitution required a minimum wage to be determined with reference to the goal of improving the individual worker's living conditions, rather than a business's ability to pay.¹¹⁶ In contrast, the new constitution provides a new procedure for setting the minimum wage.¹¹⁷ Minimum wages are now set not only according to the general economic climate,¹¹⁸ but also according to the economic condition of the specific industries, and area-wide differences in social and economic situations.¹¹⁹ When contrasted with the 1961 Constitution, the pro-employer nature of the 1982 Constitution is clearly revealed.

The wage provision is a prime example of the divergence of Turkey's law from EC law. The Charter assures that employment "shall be fairly remunerated" with an "equitable wage sufficient to enable [workers] to have a decent standard of living."¹²⁰ The EC determination of wages intended to assure maintenance of a certain standard of living for the EC worker is more in line with the provision of the abolished 1961 Constitution than with Turkey's new constitution. So while European workers are guaranteed fair pay in the Charter,¹²¹ minimum Turkish wages are set without reference to a minimum standard of living.¹²²

In addition to losing a standard of living-based minimum wage, Turkish workers may also lose their constitutional right to paid annual leave and paid weekend rest, formerly required under the 1961 Constitution.¹²³ While this does not mean that all workers have lost their paid annual leave or other benefits,¹²⁴ the worker is forced to rely solely on

¹¹⁵ *Id.* at n. 14 and accompanying text.

¹¹⁶ See Shabon, *supra* note 103, at 135.

¹¹⁷ *Id.* at 135.

¹¹⁸ *Id.* Turkey's general economic climate has been in steady decline for several years. The Consumer Price Index, with 1983-100, was 899.3 in 1988. *Turkey*, FOREIGN LABOR TRENDS, released by U.S. Department of Labor, Bureau of International Labor Affairs, prepared by American Embassy, Ankara, 1988 [hereinafter FOREIGN LABOR TRENDS].

¹¹⁹ Shabon, *supra* note 103, at 135.

¹²⁰ Dowling, *supra* note 3, at n. 202 and accompanying text (Charter, *supra* note 7 at ¶ 5).

¹²¹ *Id.*

¹²² See Shabon, *supra* note 103, at 135.

¹²³ *Id.*

¹²⁴ Turkish workers earn wages and fringe benefits which vary according to contract negotiations.

contract negotiations in order to win benefits which had previously been guaranteed to him or her. Because the employer is no longer obligated to provide these benefits, prospective employees may choose to forego them in order to undercut competition for jobs. This situation may continue until it is no longer possible to locate a position with these particular benefits.

This loss of benefits directly opposes EC law. The EC Council long ago issued a recommendation for a forty hour work week with four weeks annual paid vacation.¹²⁵ The EC Council's message in this recommendation is that in the interest of social progress, and of equalizing competitive conditions, limiting and standardizing work-weeks and giving annual leave was an immediate objective for all member states.¹²⁶

Another wage problem in Turkey is wage disparity among workers in the private sector, the public sector (state-owned industry) and civil servants. According to statistics, wage disparities between categories of workers are significant and growing.¹²⁷ For example, in 1988, the private sector labor movement generally won collective agreements which kept pace with inflation.¹²⁸ Furthermore, some private sector unions claim to have kept up with inflation over the five year period of 1983-1987.¹²⁹

The public sector, however, has not done as well in that period.¹³⁰ In fact, public sector real wages trailed private sector wages by a significant margin.¹³¹ Furthermore, civil servants, or government workers, earn significantly less than public sector workers.¹³² In light of this situation, Turkey's government has proposed a new constitutional provision

Textile workers' negotiators, for example, have won the following "not atypical" benefits which translate to extra payments to workers: Allowances for children; for the wedding of a worker or his/her dependent; for heating fuel; the death of a relative, four extra months salary yearly; bonuses three times yearly; lump sum prior to annual vacation and 25 days of leave per year and others. Foreign Labor Trends, *supra* note 118, at 7.

¹²⁵ See Recommendation 75/457, *supra* note 2.

¹²⁶ 3 Common Mkt. Rep. ¶ 3910.25.

¹²⁷ See Foreign Labor Trends, *supra* note 118, at 3.

¹²⁸ *Id.* However, using 1983 price and wage levels as 100, real wages in the private sector were down to 85.2. *Id.*

¹²⁹ *Id.* at 4. This claim seems to have been substantiated in light of the agreements won in 1988. *Id.*

¹³⁰ *Id.* at 4.

¹³¹ *Id.* On the scale of 100, public sector wages were only 74.4 in 1987. *Id.* at 3. One major factor for this lag is that State Economic Enterprises ("SEEs") have traditionally provided workers many benefits which workers in the private sector have traditionally enjoyed, thereby decreasing actual wages. *Id.* at 4.

¹³² Shabon, *supra* note 103, at 135. This is due to the fact that they are denied the right to bargain collectively. See Dereli, *supra* note 103, at 563. This problem is exacerbated due to the government's policy of construing the term "civil servant" broadly. This policy has resulted in many public sector employees, who meet the legal definition of "worker", being termed civil servants. *Id.*

for accomplishing the elimination of wage disparities.¹³³ Incredibly, the government proposes to solve inequalities by decreasing the wages of all workers to the level of the lowest paid civil servants.¹³⁴

While it is the EC Commission's view that wage-setting is a matter for the member states, labor and industry alone,¹³⁵ Turkey's policy is nonetheless inconsistent with EC policy. Charter wage policy is twofold: maintaining the EC worker's standard of living, and preventing social dumping.¹³⁶ According to the Commission, the single market "would be pointless if the standard of living and of social protection attained by the average European were called into question."¹³⁷ It follows that, under the Charter, the EC Council would not tolerate a wage determination method, like Turkey's, which produced wages substantially below a pre-ordained standard-of-living-based wage. Since both degradation of the standard of living and social dumping would follow such deviation, such a method would be against the policy underlying the Charter.

It follows from the above analysis that Turkey's constitutional wage determination provisions are deficient with respect to EC wage laws. A minimal standard of living is irrelevant to the new wage determination process, and does not even mention improving that standard. Furthermore, the constitution proposes to lower the wages of both private and public sector employees down to the level of the civil servant. If Turkey joined the EC today, social dumping would become reality — businesses in Europe would vie for Turkish locations to take advantage of the low wages. Additionally, the Charter's express policy of improvement in standard of living could not be accomplished. Therefore, the single market would be defeated.

B. Trade Union Rights, Collective Bargaining and Right to Strike

The trend toward pro-employer policy and diminished worker rights in Turkey is evident in more areas than one. It is also evident in restrictions on collective rights in general. For instance, although the 1982 Constitution permits unionization,¹³⁸ it still restricts the activities of the unions in comparison to the abolished constitution.¹³⁹ Workers enjoy the freedom to join a union and the right to be free from coercion

¹³³ Shabon, *supra* note 103, at 135.

¹³⁴ *Id.*

¹³⁵ Social Action Program, *supra* note 7, § 2.

¹³⁶ See *supra* notes 43-45 and accompanying text.

¹³⁷ See Dowling, *supra* note 3, at 588 (Social Dimension of the Internal Market — Commission Working Paper, Foreword).

¹³⁸ See Shabon, *supra* note 103, at 136 (Constitution, *supra* note 112, at art. 51).

¹³⁹ *Id.* (Constitution, *supra* note 112, at art. 52).

to join or not join.¹⁴⁰ However, a worker may be a member of no more than one union or trade guild.¹⁴¹ Moreover, unions are absolutely prohibited from cooperation or affiliation with, or participation in, any political activity.¹⁴² Additionally, the government maintains tight controls on union finance, restricting the ways in which the union may spend its money.¹⁴³ In the same vein, the constitution prohibits active young political leaders from attaining influential union positions by prohibiting workers with less than ten years experience as laborers from holding executive positions.¹⁴⁴

Not only union rights, but collective bargaining and strike rights were restricted by the 1982 Constitution. The 1961 Constitution gave workers a right to bargain collectively and to strike without specified limitations and with express permission to strike over disputes relating to economic and social status.¹⁴⁵ The 1982 constitution, on the contrary, explicitly limits collective bargaining to issues of wage determination and working conditions.¹⁴⁶ The right of Turkish workers to strike over any issue but these two is eliminated.¹⁴⁷

It is further apparent that if any workers retain a right to strike at all, it is a merely technical right, and not an effective one.¹⁴⁸ First, all strikes of solidarity, sympathy, political or general types are expressly prohibited.¹⁴⁹ Second, lawful strikes¹⁵⁰ are not permitted for many workers,¹⁵¹ and if permitted, may take place only after mandatory arbitration fails.¹⁵² Third, not all disputes may legally justify a strike. The

¹⁴⁰ *Id.* (Constitution, *supra* note 112, at art. 51).

¹⁴¹ *Id.* (Constitution, *supra* note 112, at art. 51).

¹⁴² *Id.* (Constitution, *supra* note 112, at art. 52).

¹⁴³ *Id.* (Constitution, *supra* note 112, at art. 52).

¹⁴⁴ *Id.* (Constitution, *supra* note 112, at art. 51).

¹⁴⁵ See Shabon, *supra* note 103, at 137.

¹⁴⁶ *Id.* at 137. (Constitution *supra* note 112, at art. 53). Furthermore, collective bargaining procedures are set forth by the government. *Id.* The government has much power over this process. For instance, it may postpone for one month or prohibit the strike, where, in its own judgment, there is a national emergency. *Id.* at 170.

¹⁴⁷ *Id.* at 139. The 1961 Constitution allowed strikes over rights disputes, in addition to sympathy, secondary, political or general strikes. *Id.*

¹⁴⁸ See generally *id.* at 163-171, for a more detailed analysis of the Collective Bargaining, Strike and Lockout Act of 1983, No. 2822.

¹⁴⁹ See Shabon, *supra* note 103, at 139.

¹⁵⁰ Lawful strikes are only those which have as their aim improving or safeguarding the economic or social condition of the employee. Shabon, *supra* note 103, at 169.

¹⁵¹ *Id.* Workers in some "crucial" industries (public or private, presumably) do not have the right to strike at all. *Id.* at 171. Furthermore, this ban on strikes has been extended to other industries, such as public sectors services (e.g. transportation, waste collection, health services and power plants) and also to many other public sector workers, such as civil servants (who have neither the right to bargain collectively or strike). *Id.*

¹⁵² *Id.* at 167 ("Disputes and Meditation"), 169 ("Strikes and Lockouts"). There must be sixty

Collective Bargaining Act distinguishes between interest disputes and rights disputes.¹⁵³ An interest dispute is one in which the parties are unable to agree over a new contract issue.¹⁵⁴ A rights dispute, on the other hand, is one which stems from disagreement over the interpretation of an existing contract.¹⁵⁵ Strikes are permitted only when an interest dispute occurs, and are prohibited when a rights dispute occurs.¹⁵⁶ Lastly, the procedures and regulations pertaining to striking appear to be intentionally designed to frustrate and discourage workers from striking.¹⁵⁷

The views of the Constitution expressed inside Turkey confirm that it is unfavorable to the worker. The reaction to the 1982 Constitution has been severe. Reportedly, even members of the Constitutional Commission have expressed great dissatisfaction with the document.¹⁵⁸ Turk-

days of negotiation before a strike may be called. If one of the parties does not appear for negotiations or if no agreement occurs after sixty days, the government intervenes by assigning a mediator. *Id.* at 167. The Supreme Arbitration Board, an entity comprised of a built-in majority of government and employer representatives, attempts to resolve impasses. This mechanism *virtually prohibits* the only power of the union, strike. *Id.* at 169. Sharing this view is Turk-Is, Turkey's largest labor union. Since 1985, Turk-Is has refused to send representatives to the Board, reasoning that labor will never prevail over government and employer members which they feel will always win together. *Foreign Labor Trends, supra* note 118, at 8.

¹⁵³ Shabon, *supra* note 103, at 168.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* When mediation has failed to resolve a rights dispute, the disagreeing party must bring the dispute before a labor court. *Id.*

¹⁵⁷ See generally *id.* at 169-171 ("Strikes and Lockouts"). The government clearly expresses an anti-employee pro-employer view. The law emphasizes that workers on strike must leave the work place. The employer may engage in production with non-striking employees, although he may not hire new employees. The law protects workers by preventing the termination of employment, but prohibits employees from finding other employment for the duration of the strike while permitting the employer to take goods, inventory and machinery outside the plant. Furthermore, picketing is effectively prohibited; only two striking union members may picket at the plant; the public may not be informed of the strike by way of placards or pamphlets; and strikers are even forbidden from erecting shelter from bad weather outside the plant. *Id.* Moreover, whether or not a strike is lawful, the workers will be responsible for damages to the work place stemming from the strike; yet there is no corresponding duty on the employer to compensate the workers for losses stemming from an employer's lockout. *Id.* at 139. A startling example of the government's hostile attitude toward striking workers is a ban on "song and dance" by workers while picketing, in which the government further threatened the use of "anti-guerrilla commandos" in case of "industrial violence". (*Turkey Bans Song and Dance on Picket Lines*, REUTERS LIBRARY REPORT, October 5, 1989.)

¹⁵⁸ See *id.* at 139 (Marvine Howe, *Turkey's Charter Seems to be Winning*, N.Y. TIMES, November 8, 1982, at A3; Marvine Howe, *What Turks Said in Voting*, N.Y. TIMES, November 9, 1982, at A5.) There is a feeling among many politicians, legal professionals, associations, and TURK-IS officials alike that the new constitution will serve only to perpetuate a dictatorial scheme in Turkey. *Id.* For instance, the Minister of Labor was quoted as saying that "the constitution is not compatible with Turkish traditions," and a member of Assembly stated that "the aim of building a strong state by the constitution has been overdone." *Id.* (These critics have been labelled "traitors" by the government. *Id.*) These sentiments are reflected in the headline of a newspaper article, Metin Munir, *Turkey's*

Is, the largest labor union in Turkey,¹⁵⁹ has criticized the constitution, saying that it will forever prevent a pluralistic democracy from being established in Turkey, and that the "concept of the state being a protector of social rights (social state) will be lost . . . ; individual liberties, *including the right to strike*, will be endangered; and the trade unions would be faced with the possibility" of being banned (emphasis added).¹⁶⁰ Turkey's bar association agreed wholeheartedly.¹⁶¹

Together, these statements confirm that although Turkish workers technically maintain the freedom to associate, to bargain collectively and to strike, these freedoms are not as real as those enumerated in the Charter of Fundamental Social Rights. The lack of freedom for the Turkish worker to bargain collectively and to strike are serious issues which Turkey must deal with. Currently, collective bargaining is limited in scope to wage determination, and workers may strike only over economic issues. Furthermore, the 1982 Constitution is seen as threatening even these limited freedoms.

This situation is irreconcilable with the rights which already exist in the EC member states, and with the rights enumerated by the Charter. For example, the freedom of association and the freedom of collective bargaining are established fundamental rights in all the member states.¹⁶² Moreover, the right to strike is a right which the Commission has referred to as fundamental.¹⁶³

But what is more, the Charter is meant to expand collective bargaining rights beyond their present scope. It is evident from the language of the Charter that the negotiation not just of standard economic issues, but also of workers' social rights under collective agreements is to be inferred from the Charter.¹⁶⁴ Because the primary methods for implementation

Constitution Prompts Fears of Return to Days of the Sultanate, FINANCIAL TIMES, July 27, 1982, at 2.

¹⁵⁹ Foreign Labor Trends, *supra* note 118, at 8. Turk-Is dominates the labor scene in Turkey, counting as its members roughly two-thirds of Turkey's unionized workers. *Id.* at 10.

¹⁶⁰ Shabon, *supra* note 103, at 140.

¹⁶¹ Munir, *supra* note 158. The president of the Bar Association attacked the constitution, saying that it "manifests distrust towards the judiciary while, on the other hand, investing excessive powers in the executive and could enable governments to establish authoritarian rule." SHABON, *supra* note 103, at 140.

¹⁶² See Social Action Program, *supra* note 7, at § 6 ("The right to freedom of association and collective bargaining exists in all the Member States of the Community"). *Id.*

¹⁶³ *Id.*

¹⁶⁴ See generally Bob Hepple, *The Implementation of the Community Charter of Fundamental Social Rights*, 53 MOD. L. REV. 643, (Sept. 1990). "If the process of 'implementation' [of the Charter] is effective, one may expect the 'fundamental social rights' themselves to have a dynamic character, moving from their present anaemic state towards a full-blooded system of individual rights within a framework of freedom of association, *collective bargaining* and industrial democracy." (em-

of the Charter itself are to be both legislation and collective bargaining,¹⁶⁵ and because there is no pre-determined preference for legislation over collective bargaining,¹⁶⁶ the possibility that many or all of the Charter's rights are potential bargaining issues follows naturally. Confirming this view, the Commission expressly seeks the inclusion of a social dialogue in the collective bargaining process.¹⁶⁷

It follows from the Commission statement that social issues sought to be included in the collective bargaining process are those specified in the Charter. Examining the Charter from this perspective, it becomes apparent that the scope of collective agreements in Turkey is far narrower than the scope of EC collective agreements will be in the near future. This difference is more readily perceived by distinguishing among two types of social rights found in the Charter. First, there are rights more closely identified with economic issues. Examples of economic issues which, under the Charter, may potentially be negotiated collectively include working time standards (including total weekly hours and overtime provisions), weekly rest periods and paid annual leave.¹⁶⁸ These issues appear to be highly oriented to remuneration and related to social concerns less directly. It is only these issues which may be addressed by Turkish collective agreements.¹⁶⁹

However, as discussed above,¹⁷⁰ the Charter envisions collective agreements as encompassing all the other enumerated rights as well. As opposed to the above-mentioned economically-oriented rights, other Charter rights are recognizable as socially-related issues, or at least issues which are less directly related to the economics of employment. Such issues include health and safety, worker participation and consultation,

phasis added) *Id.* at 643. Expansion of the scope of collective bargaining is actually envisioned by the Charter itself. Part II of the Charter contemplates its implementation at both a national and Community level. *Id.* Article 27 casts responsibility on the member states to guarantee the fundamental social rights in the Charter and to implement the measures as part of a strategy of economic and social cohesion. *Id.* The methods of implementation are "notably through legislative measures or collective agreements." (emphasis added) Brian Bercusson, *The European Community's Charter of Fundamental Social Rights of Workers*, 53 MOD. L. REV. 624, 641, (Sept. 1990). It may be important to note that the adjective, "notably", connotes that legislation and collective agreements are, as legal measures, on the same level. *Id.*

¹⁶⁵ See Bercusson, *supra* note 164, at 641.

¹⁶⁶ *Id.*

¹⁶⁷ Social Action Program, *supra* note 7, at § 6.

¹⁶⁸ See *supra* note 98 and accompanying text for enumeration of the fundamental social rights identified in the Charter.

¹⁶⁹ See *supra* Part III, § 2 for discussion of the scope of Turkish collective agreements. See also Foreign Labor Trends, *supra* note 118, at 7 for a discussion of a "typical" collective agreement.

¹⁷⁰ See *supra* notes 164-168 and accompanying text, relating to the inclusion of social issues in the collective bargaining process in the EC.

social protection, vocational training and improved working conditions.¹⁷¹ None of these issues, however, are allowed to be negotiated within a collective agreement in Turkey.¹⁷² In Turkey, these issues fall entirely within the scope of a collection of government regulations, known as the Labour Law Act.¹⁷³

C. Working Conditions

The major instrument of Turkish labor legislation is the Labour Law of 1983.¹⁷⁴ The Labour Law controls the fundamental rules of labor-management relations.¹⁷⁵ It encompasses most industrial workers, defining the concepts of work place, worker, employer and employee and employee representative.¹⁷⁶ In addition, it explains the participative management and profit sharing programs put into place by the executive branch.¹⁷⁷ The major provision of the Labour Law is the requirement of individual service contracts with the employer.¹⁷⁸

1. Individual Service Contracts

According to the Labour Law, all contracts with a duration of longer than one year must be written.¹⁷⁹ A legal distinction is made between permanent employees and temporary employees (defined as employees who contract for 30 days or less).¹⁸⁰ The Labour Law, in large part, does not apply to temporary employees.¹⁸¹ The effect is that temporary employees do not receive the protections of the Labour Law with respect to working conditions. Consequently, the temporary employee is at a disadvantage, because she must resort to negotiating these conditions into her own contract, presumably at a high cost.

¹⁷¹ See Charter, *supra* note 7.

¹⁷² See Shabon, *supra* note 103, at 137.

¹⁷³ The Labour Law of 1971, Act No. 13943 (amended 1983, No. 1475).

¹⁷⁴ See Shabon, *supra* note 103, at 141. The Labour Law deals strictly with the individual employment relationship, where the employee works under a service contract, an individual contract of employment at a specified wage for an employer at a specific job. *Id.* For a comprehensive summary of the Labour Law's provisions, see *id.* at 141-145.

¹⁷⁵ *Id.* at 145.

¹⁷⁶ *Id.* The law covers most of the industrial workers in Turkey. *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* In practice, if there is no collective bargaining agreement to cover the worker, the parties do not sign a written contract, and an oral contract or paycheck substitutes for the contract. *Id.* at 146.

¹⁸⁰ *Id.* at 147.

¹⁸¹ Toker Dereli, *Turkey, in 10 INT'L ENCYCLOPEDIA FOR LAB. & INDUS. REL.* at 81-82 (Blanpain ed., Kluwer, Netherlands, 1982).

This situation contravenes the dual policies of the Charter.¹⁸² Forcing an employee to negotiate his or her own working conditions under circumstances of high competition exacerbates social dumping and the deterioration of the standard of living. Furthermore, in the case of short-term employment, employers are encouraged to take advantage of their presumably superior bargaining position. The EC Commission appears to have recognized these facts themselves. Among the first post-Charter directives proposed by the Commission in 1990 was a directive which would require employers to treat part-time and seasonal employees the same as full-time indefinitely-employed workers in matters of benefits, collective bargaining and other matters.¹⁸³ Turkey's practice of different treatment for temporary and permanent workers is clearly inconsistent with the EC view.

2. *Working Time Standards*

Aside from differences in treatment of temporary versus permanent employees, the Labour Law appears sufficiently employee protective, with respect to working conditions, to meet the standard which would be set by other directives proposed by the Commission. For instance, the standard work week is limited by the Labour Law to forty-five hours,¹⁸⁴ while the maximum allowed workday is seven and a half hours, not counting one hour of mandatory total rest period during the day.¹⁸⁵ Overtime is allowed for reasons such as national necessity, the nature of operations, or the need for increased output.¹⁸⁶ Finally, legal overtime may not exceed three hours per day, or a total of ninety days per year.¹⁸⁷

Complementing the Labour Law provisions concerning the work week, rest periods and overtime, are sections guaranteeing paid days off. Workers are given eleven legal paid holidays during the year, including

¹⁸² See Blainpain *supra* notes 43-45 and accompanying text for a discussion on maintenance of living standard and social dumping as two major policies underlying Charter right of standard wage.

¹⁸³ Dowling, *supra* note 3, at 601. The directive would also require employers to treat both classes of employees as identical for purposes of training, worker representation, social security, access to social services, and recruitment. *Id.* at 600 n. 214. Although not specified, one can easily imagine that equality with respect generally to working conditions is proposed as well.

¹⁸⁴ See Shabon, *supra* note 103, at 147.

¹⁸⁵ *Id.* at 141. (Labour Law, *supra* note 173, at art. 64) Most establishments are operated six days per week. If the establishment operates only five days per week, a longer workday is permitted. Shabon, *supra* note 103, at 147.

¹⁸⁶ *Id.* at 142. An employer must inform and receive permission from the Regional Labor Directorate for overtime work. *Id.* at 148. Furthermore, the Ministry of Labor may prohibit a night shift if it determines that no economic necessity exists for the shift. *Id.* Each worker retains the right to decide whether or not he or she will work overtime. *Id.*

¹⁸⁷ *Id.*

seven religious holidays.¹⁸⁸ Workers wishing to work on these days earn double the regular wage.¹⁸⁹ In addition, workers are entitled to one rest day on the weekend or, if they work on the weekend, a paid rest day during the week.¹⁹⁰ What is more, completing one year of service entitles every employee a certain amount of paid annual leave.¹⁹¹ The number of days to which the employee is entitled increases after specified intervals of continuous employment, but in no case does it exceed twenty four days.¹⁹²

Considering these provisions, it appears that the Labour Law more substantially complies with the Charter than most Turkish law. The Charter, like the Labour Law, calls for a guaranteed annual paid leave and weekly rest period to all EC workers.¹⁹³ Additionally, proposed directives issued under the Social Action Program in 1990 are similar to Labour Law provisions, in that they called for tight regulation of working time, rest periods, night work, and overtime.¹⁹⁴

However, the Turkish and EC laws do not mesh entirely. A directive related to working time has been proposed which would effectively limit the number of hours per week beyond which an employee could work, regardless of the overtime rate.¹⁹⁵ Furthermore, because a provision such as this is rooted in the EC policy of reducing unemployment,¹⁹⁶ by its nature it must be inflexible. But the standard Turkish work week is five hours longer than the proposed EC work week. Additionally, overtime and holidays may be worked at the employee's discretion. Considering these facts, whether Turkey is in compliance with both the spirit and letter of EC law is arguable. The point is that while Turkey protects the worker by placing a fairly rigid limit on working time,

¹⁸⁸ *Id.* at 152. Before 1981, workers were entitled to more than eleven legal holidays. *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.* Note that as of the printing of Shabon, *supra* note 103, constitutional provisions for paid annual leave were in the process of being repealed. See *supra* note 122 and accompanying text.

¹⁹² *Id.* at 152 (Labour Law, *supra* note 174, at art. 49). Currently, the formula provides for twelve days annual leave for between one and five years of work; 18 days for five to fifteen years; and 24 days for 15 or more years. *Id.*

¹⁹³ Charter, *supra* note 7, at art. 8. Given that the EC Council see limiting work time as a way of spreading around existing jobs and thereby eliminating unemployment, and that a prior recommendation passed by the Council (See Directive 75/457, *supra* note 2) called for a maximum standard work week of 40 hours and minimum four weeks annual paid leave, it is logical that the new directive will call for working condition standards at least as employer-restrictive as those in the recommendation.

¹⁹⁴ See Dowling, *supra* note 3, at n. 111 (Proposed Directives issued 6/90 and 7/90).

¹⁹⁵ See Proposed Directive on Working Conditions, *supra* note 92.

¹⁹⁶ See Dowling, *supra* note 3, at n. 212. The provision aims to reduce unemployment by spreading around existing work.

the length of the Turkish work week and the ease of collecting substantial overtime reduce the Labor Law's effectiveness in lessening unemployment.

3. *Collective Redundancy*

Collective redundancy, or mass layoffs, is an area in which Turkey has already made legislative inroads. Article Twenty-Four of the Labour Law requires that notice be given to the Regional Labor Directorate by an employer who wishes to lay off more one-tenth of his work force.¹⁹⁷ Furthermore, if, within a six month period, the employer needs to refill the vacancies, he must notify the laid-off employees and rehire those who wish to return to work.¹⁹⁸

The Turkish regulation is simultaneously more and less worker protective than EC collective redundancy measures. The EC directive concerning collective redundancy,¹⁹⁹ like Article Twenty-Four of the Labour Law, requires written notice be given to public authorities by the employer in the event that he/she wishes to lay-off more than ten percent of the total work force.²⁰⁰ Furthermore, the projected lay-offs may not occur within thirty days of notice to public authority.²⁰¹ But EC law has no equivalent to the Turkish provisions for the rehiring of workers who are laid-off. In this respect, therefore, the provisions of the Turkish regulation are more worker-protective than the EC standard.

However, the EC directive requires something of the employer which is not required by the Turkish law. The directive requires that notice of an anticipated layoff must be given to worker representatives.²⁰² The worker representatives are then entitled to require the employer to consult with them so that an agreement concerning the layoff may be reached.²⁰³ The consultation must include conversations pertaining to ways and means of reducing or avoiding the lay-offs (perhaps an agreement permitting workers to work fewer hours, thereby minimizing lay-offs).²⁰⁴ In order to facilitate the discussion, the employer must provide relevant information to the representatives, including the alleged reasons

¹⁹⁷ See Shabon, *supra* note 103, at 151 (Labour Law, *supra* note 174, at art. 24).

¹⁹⁸ *Id.*

¹⁹⁹ Council Directive 75/129 of 17 February 1975 Approximation of the Laws of the Member States Relating to Collective Redundancies, 1975 O.J. (L 48) 29, 30.

²⁰⁰ Like the Directive, the Labour Law also requires notice to the government in the event that ten percent of the total workforce is to be laid off. See Shabon, *supra* note 103, at 151.

²⁰¹ See *supra* note 199, at art. 4.

²⁰² *Id.* at art. 2.

²⁰³ *Id.*

²⁰⁴ *Id.*

for the lay-offs.²⁰⁵

In contrast, the Labour Law contains no such provision. Turkish employers are not obligated to consult with worker representatives. However, neither is the EC employer obligated to recall laid-off workers. On one hand, the EC solution of forced consultation is arguably more worker protective (as it may prevent lay-offs in the first place). On the other hand, Turkey's regulation is more worker protective than the directive as a consequence of the rehiring provision.

D. Social Protection

Social insurance is one particular area in which Turkey has legislated quite extensively. Protective regulation of workers began in 1863.²⁰⁶ The enactment of the Social Insurance Act of 1964 was Turkey's most significant accomplishment in this area.²⁰⁷ The act and its amendments cover varied aspects of the work place and beyond, including workers' compensation, occupational hazards, sickness, maternity, disablement, old age and death.²⁰⁸

Under the Act, all employees are automatically insured upon entering into employment on the basis of a contract.²⁰⁹ Additionally, sickness benefits are paid up to six months after the worker is incapacitated, sometimes up to eighteen months, and range from one-third to full salary, depending on whether there are dependents and/or hospitalization.²¹⁰ When employment related accidents or diseases occur, the employee is entitled to medical and collateral costs for as long as the disability remains.²¹¹

In addition to workers' compensation, Turkey provides some unemployment compensation.²¹² Rather than providing unemployment insurance, however, Turkey relies upon a system of severance pay.²¹³ Upon dismissal of a Turkish worker, he or she receives a lump sum payment equal to thirty days pay for each complete year of employment.²¹⁴ Furthermore, Turkey's social insurance program provides social security for

²⁰⁵ *Id.*

²⁰⁶ See Shabon, *supra* note 103, at 171.

²⁰⁷ *Id.* Social Insurance Act of 1964.

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 172.

²¹⁰ *Id.*

²¹¹ *Id.* at 173.

²¹² *Id.* at 151.

²¹³ *Id.*

²¹⁴ *Id.* However, the latest amendment to the law on severance pay provides that this pay will be calculated according to the wages of civil servants. The effect will be to reduce severance payments, as civil servants have always been paid less than other workers. *Id.*

elderly workers in the form of retirement payments, paid out upon the completion of a requisite number of workdays.²¹⁵ Traditionally, upon retirement, the employee is entitled to retirement payments based on his or her average pay over an extended period.²¹⁶ Finally, Turkey maintains an employment services organization, which acts as a national employment agency.²¹⁷ Turkey's social insurance scheme compares favorably with the scheme envisioned by the EC Charter.

Charter provisions concerning social insurance are not yet laid out as extensively as Turkey's Social Insurance Act. The Charter guarantees social protection,²¹⁸ which means assuring adequate social security, a minimum level of aid and social assistance to jobless persons, and possibly unemployment compensation drawn from employer contribution.²¹⁹ As described in the Social Action Program, this right would grant minimum sustenance to the jobless, and minimum unemployment compensation.²²⁰ Additionally, the Commission stresses assistance to the elderly in the context of social protection.²²¹

Upon analysis, Turkey's social insurance system does not seem inferior to the EC system. Rather than providing for a system of unemployment insurance, Turkey relies on a system of severance pay. At the very least, both methods assure workers some income in case of termination, joblessness or retirement. On the whole, the two methods appear equivalent.

E. Remaining Categories of the Charter

Numerous additional labor law issues remain for harmonization by Turkey, as many other areas of Turkish law could be subsumed under the remaining guarantees in the Charter. Most of these areas are beyond the scope of this paper. However, several areas merit a brief analysis.

²¹⁵ *Id.* at 176.

²¹⁶ This remains true. However, the percentage of the workers' previous earnings, upon which severance payments were proportionally calculated, has been reduced substantially, resulting in lower payments. *Id.* at 175-176. Monthly retirement payments were lowered from 70% of the previous three years earning to only 60% of the previous five year's earnings. *Id.* At the same time, the minimum number of workdays required to earn the pension has been increased by nearly 50%. *Id.* at 175-176. The period for which the premiums have to be paid has been increased from 5000 to 7400. *Id.*

²¹⁷ See Dereli, *supra* note 103.

²¹⁸ Charter, *supra* note 7, at art. 10.

²¹⁹ *Id.*; See also Dowling, *supra* note 3, at 601.

²²⁰ See Dowling, *supra* note 3, at 601.

²²¹ See Social Action Program, *supra* note 7, at art. 11.

1. *Equal Treatment of Men and Women*

Turkey provides legislative assurances of equal pay for men and women.²²² This is consistent with the policies of the Treaty²²³ and of the Council.²²⁴ But, the provision concerning equal pay is Turkey's only equal treatment legislation,²²⁵ and the Council directive calls for extensive equal treatment measures. These measures include equal access to employment, vocational training and promotion, and working conditions, as well as equal treatment on the job.²²⁶ The fact is that women in Turkey are prohibited from night work, and also from many jobs classified as heavy or hazardous.²²⁷ Conversely, the EC has mandated the access to women of all jobs, and the abolition of all laws, regulations and administrative provisions contrary to the principle of equal treatment.²²⁸

2. *Vocational Training*

The Charter guarantees the right to a lifetime of vocational training.²²⁹ The Commission believes, as well, that vocational education is of great consequence.²³⁰ In Turkey, the government places no legal obligation on itself to maintain programs for job skills training.²³¹ There, vocational training originates with the trade unions, who are legally obligated to spend five percent of all income to "improve the occupational skill and knowledge of employees."²³² However, it is questionable whether in most cases the unions fulfill this obligation.²³³ Turkey's position on this issue is obviously in stark contrast to the position taken by the Commission.

²²² See Shabon, *supra* note 103, at 142 (Labour Law, *supra* note 174, at art. 26). No distinctions may be made on the grounds of sex in terms of pay when employees are performing the same job with the same efficiency. See Dereli, *supra* note 181, at ¶ 195.

²²³ Treaty, *supra* note 1, at art. 119 (Equal Pay for Men and Women).

²²⁴ See Council Directive 76/207 *supra* note 2.

²²⁵ See Dereli, *supra* note 181.

²²⁶ Council Directive 76/207, *supra* note 2.

²²⁷ See Shabon *supra* note 103, at 144 (Labour Law, *supra* note 174).

²²⁸ Council Directive 76/207, *supra* note 2, art. 3, §§ 1, 2a.

²²⁹ See Dowling, *supra* note 3, at 603.

²³⁰ Social Action Program, *supra* note 7 at § 9. "Vocational training is at the forefront of Commission priorities to spearhead a new and indispensable effort to invest in people, in their skills, their creativity and their versatility." *Id.*

²³¹ No source purporting to treat Turkey's labor laws gives any attention to the subject of government sponsored vocational training, while an affirmative obligation is placed on the labor unions to promote training.

²³² Dereli, *supra* note 181, at ¶ 197.

²³³ *Id.*

3. *Health and Safety*

In Turkey, worker health and safety legislation is basic. It gives particular emphasis on measures to protect women and minors, and also to health and safety problems of other workers. Legislation is scattered among different sources.²³⁴ Furthermore, health and safety regulations are issued not by one agency, but rather by the Ministry of Labor jointly with the Ministry of Health and Social Welfare.²³⁵ Significantly, the Labour Law places the burden of health and safety regulation on the employer.²³⁶ The Ministry of Labor retains the right to come in and inspect the workplace, and shut down plants when it deems necessary.²³⁷

The Council's approach is more regulation oriented. Rather than imposing a direct duty on the employer to take all necessary measures, the EC aids the employer in understanding its obligation through the existence of extensive regulation.²³⁸ This appears to be a different approach than Turkey's. However, because a thorough explication of Ministry regulations is beyond the scope of this article, meaningful analysis on the substantive effects of these contrasting approaches is impossible.

²³⁴ Health and safety law is contained in such various sources as the Labour Law, and also the Social Insurance Act and the Public Health Act, as well as being promulgated by government agencies.

²³⁵ See Shabon, *supra* note 103, at 153. Only three basic health provisions exist in the Labour Law; relating to minimum working age, prohibition of women from night-time and hazardous work, and paid leave for pregnant women. *Id.*

²³⁶ *Id.* The government accomplishes this by asserting an affirmative duty upon the employer to take all necessary measures for the protection of employees on the job. *Id.* Additionally, medical reports are required for minors, showing that they are fit to perform the work required of them. These reports are also necessary for heavy and hazardous work employees. *Id.*

²³⁷ *Id.* Furthermore, a plant may be shut down, despite the fact that it has fulfilled its legal and initial health and safety requirements, by the decision of a three person committee, consisting of an employee, an employer, and a government representative. *Id.*

²³⁸ The Council's first directive concerning this area was 89/391, a document intended to encourage measures improving the health and safety of workers. (Council Directive 89/391 of 12 June 1989 Introduction Measures to Encourage Improvements in the Safety and Health of Workers at Work, 1989 O.J. (L 183) 1. This directive imposes great obligations on employers, ranging from evaluating risks and changing circumstances to adapting new and less harmful technologies and giving appropriate instruction to employees. Furthermore, all employers are required to have emergency plans for fires, imminent dangers and evacuation, to make reports of work accidents and consult employees and allow them to take part in discussion of future measures regarding their safety. *Id.* However, the Council has also issued two other types of directives. The first type is of a highly technical nature. A number of directives were issued prior to the Charter, concerning protection of workers from certain chemical and isotopes widely used in certain industries. The second type of directives have been issued as "annexes" to Directive 89/391. The "annexes" both supplement and expand upon Directive 89/391 by providing detailed regulation of all parts of physical plants. [e.g. Council Directive 89/391 of 30 November 1989 Concerning the Minimum Safety and Health Requirements for the Workplace (first individual directive within the meaning of Article 16(1) of Directive 89/391), 1989 O.J. (L 393) 1.

IV. CONCLUSION

Comparing Turkey's laws to EC laws reveals that Turkish law is substantially deficient in a number of areas. The first deficiency concerns the manner of wage determination.²³⁹ While the Charter requires EC member states to base their minimum wage on a desired standard of living, Turkey bases its minimum wage on an employer's ability to pay. Moreover, Turkey intends to solve income inequality by lowering the income of higher paid employees, rather than increasing the salaries of lower paid employees. Turkey's wage determination methods lead to results which the Charter attempts to avoid, and are therefore against EC policy.

The second problem relates to the right to associate, to bargain collectively and to strike.²⁴⁰ Turkey's workers are free to join a union, but only one. The unions are weak, their finances are controlled by the government, and they are prohibited from engaging in political activity. In sum, the unions are effectively government controlled and highly restricted. Collective bargaining is restricted to economic issues, and the right to strike is extremely limited. This contrasts with the powerful, multinational EC unions, with broad collective bargaining powers, and a fundamental right to strike created by and found within the Charter.

Two other harmonization problems face Turkey, the equal treatment of men and women, and vocational training.²⁴¹ Although Turkey does provide for equal pay, no affirmative programs exist to ensure equal access to employment, training, promotion and working conditions. In fact, women do not share equal opportunity for a portion of the work in Turkey. Furthermore, the government provides little if any vocational training to workers. Again, equal treatment and vocational training are both guaranteed by the Charter.

There are several areas in which Turkish laws are more closely aligned to EC law. Turkey's working time standards provide a cap on regulation and overtime work, and also grant rest days.²⁴² These employee protective regulations, are substantially as rigid as the analogous EC standards. In addition, Turkey's collective redundancy statute contains a clause providing priority rehiring for laid-off workers.

However, it must be noted that even in the areas of working time and mass layoffs, Turkish law remains suspect. Turkey's standard work

²³⁹ See *supra* Part III, § 1 for discussion of wage determination issues.

²⁴⁰ See *supra* Part III, § 2 for a discussion of association, collective bargaining and striking.

²⁴¹ See *supra* Part III, §§ 5A & 5B for discussion of equal rights and vocational training.

²⁴² See *supra* Part III, § 3, for a discussion of working time standards, individual service contract, and collective redundancies in Turkey.

week is five hours longer than the EC's. Furthermore, Turkey's collective redundancy statute does not provide, as does the Council directive, for consultation with worker representatives with a view toward avoiding layoffs. Lastly, Turkey's laws do not extend equal protections to part-time employees and to full time employees. EC directives, on the other hand, mandate equal protection of part-time or seasonal, and full time employees.

Taken together, the deficiencies in Turkish law pose a formidable obstacle to harmonization. Although the harmonization process is often set up within a timetable²⁴³ and latitude exists in enacting the law, the goal remains substantial harmonization of the laws. Major deficiencies exist, but it is arguable that Turkey's poor economic condition allows it wider latitude to tailor EC law to its own capabilities. Furthermore, Turkey has time to enact appropriate legislation.

Turkey possesses many of the necessary mechanisms with which it may enact the appropriate legislation. First, Turkey is formerly a much more worker-protective country, experienced with labor legislation. Its Labour Law dates back to the early 19th century, and has undergone many revisions. It contains the seeds for vocational programs and worker participation in management and health and safety policies. Furthermore, the Constitution of 1961 granted many rights to workers. Finally, the Ministry of Labor has been, in recent times, headed by worker-friendly leaders.²⁴⁴

A potential positive is that some reform may be relatively simple, albeit controversial. As it has been stated, many or all of the guarantees in the Charter are issues potentially negotiable through collective bargaining. Therefore, Turkey could go a long way in returning to a worker-protective environment by merely restoring an all-encompassing freedom to bargain collectively to its workers.

However, it is clear the work needed to be done is great. If Turkey were to join the EC today, its current law would act to obstruct the operation of the single market, as a consequence of its sometimes radical divergence from EC law. What is more, until Turkey provides a standard-of-living based minimum wage, the potential for social dumping is great. Exacerbating Turkey's problems is the divergence of Turkish law from EC law in many other areas which are beyond the scope of this paper. Factors such as a bad economy, and the ongoing privatization of Tur-

²⁴³ See e.g., Association Agreement, *supra* note 8, at art. 12. The Association Agreement provides, for example, that free movement for workers was to be achieved between the end of the 12th and the 22nd year following the Agreement's entry into force.

²⁴⁴ Foreign Labor Trends, *supra* note 118, at 11.

key's state-owned enterprises,²⁴⁵ further complicate harmonization.²⁴⁶

Finally, harmonization will have to be accomplished in a strongly employer-protective atmosphere. Examining Turkey's recent labor history reveals diminishing worker rights and an entrenched pro-employer attitude.²⁴⁷ Constitutional worker rights have been taken away, and what constitutional rights remain are considered, even by government officials, to be threatened. Recently, unions and government have become increasingly hostile toward each other.²⁴⁸ Furthermore, instead of using friendly labor officials to their advantage, the unions did not regard their appointment as an opportunity for cooperation with government.²⁴⁹ However, the likelihood of meaningful cooperation between unions and government is doubtful, considering the poor attitudes of government officials towards unions and union leaders.²⁵⁰

In conclusion, at a time when Europe is accelerating toward the realization of a social Europe, Turkey is an inhospitable place for the expansion of workers' rights. The harmonization of Turkish with EC labor law will necessitate overcoming Turkey's strongly pro-employer atmosphere, and a reversal of its trend of diminishing worker rights. Although harmonization is always possible, it seems unlikely in the foreseeable future.

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²⁴⁵ *Turkey*, SOCIAL AND LABOR BULLETIN 540 (April 1987). In 1987, more than half of Turkey's economy was in the government's, in the form of State Economic Enterprises. *Id.* In 1985, the government began the process of privatizing the SEEs. *Id.* at 541. By 1989, it was estimated that unemployment had dropped by 65,000 workers and over 360,000 jobs had been created. *Turkey*, SOCIAL AND LABOR BULLETIN 182 (February 1989).

²⁴⁶ Because so much of Turkish industry belongs to the government, privatization means restructuring the Turkish economy. SOCIAL AND LABOR BULLETIN 541 (April 1987).

²⁴⁷ The government of Turkey has come under increasingly severe criticism from the International Labor Organization, the AFL-CIO and other organizations, for constitutional restrictions on worker rights. Foreign Labor Trends, *supra* note 118, at 12.

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ Prime Minister Ozal "prides himself on his understanding of industrial dynamics and the foibles of trade unions and union leaders." *Id.*