

An aerial photograph of an agricultural field. The field is filled with rows of crops, likely corn, which are covered with a white plastic mulch. In the upper left corner, there are several blue and white structures, possibly greenhouses or storage sheds. A dirt road or path runs through the field. The overall scene depicts a large-scale agricultural operation.

ANALYSIS OF LEGISLATIVE GAPS AND RECOMMENDATIONS

IN THE CONTEXT OF PREVENTING CHILD LABOUR IN AGRICULTURE



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Source: mediadiversified.org/2014/01/15/cheap-labour-child-labour-part-1/childlabour3/

This report is dedicated to all children working in agricultural production, commemorating ten years old Ellen Hooton who gave testimony to an official commission inquiring into the employment of children in English textile factories 185 years ago...

Ellen Hooton (Manchester-Wigan)

Ellen, born in 1822 in Manchester, England, was the only child of her mother, Mary Hooton, who was a single mother, trying hard to earn her living as a weaver. Ellen lived with his father, who was also a weaver, until she turned seven, then was brought to a nearby factory by her mother to contribute to family income. She received no wages for the first five months, then started to work with pay in the spinning factory where many children were employed. What makes Ellen different from the other millions of workers was that she was the first child to be invited to give testimony to the Central Board of His Majesty's Commissioners for inquiring into the employment of children in English textile factories. Ellen, only ten years old and very scared, explained what she went through as a worker with two years of experience in the cotton factory.

The invisible actors of production and development are usually not remembered anywhere. Their names and contributions remain unknown. We know about Ellen who worked under very difficult conditions, sometimes being subject to violence and punishment, and gave testimony to the commission about the situation of working children.

Commemorating her name, we dedicate our report to all children who contributed to agricultural production. We hope that our work will contribute to their improved access to decent opportunities and rights that enhance their development, health and education, instead of working in orchards or fields.

Source: Sven Beckert (2018), Pamuk İmparatorluğu, Say Yayınları, İstanbul.



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ACRONYMS

EU.....	European Union
GNP.....	Gross National Product
FRS.....	Farmer Registration System
ILO.....	International Labour Organization
IMF.....	International Monetary Fund
IPEC.....	International Programme on the Elimination of Child Labour
MoNE.....	Ministry of National Education
TBMM.....	Grand National Assembly of Turkey
TÜİK.....	Turkish Statistical Institute
UN.....	United Nations
US.....	United States of America

FOREWORD

The Development Workshop has since 2002 been conducting baseline studies on children working in seasonal agriculture on the basis of crops and locations; sharing data and information obtained from these studies with governmental agencies, civil society organizations, professional organizations, international agencies, the media, private sector firms and UN agencies; and using all available platforms to advocate for reducing and ultimately eliminating the number of children working in seasonal agriculture, which is considered as one of the worst forms of child labour, and improving their working and living conditions.

To obtain information in this context, the Development Workshop attaches importance and priority as far as possible to areas and issues where there are gaps and conducts various studies and surveys to fill these gaps. One of these important gaps has been identified as the lack of compilation and analysis of national legislation on agricultural employment and employment of children in seasonal migrant agriculture in comparison with international norms and in terms of their adequacy in preventing the child labour in seasonal migrant employment in agriculture in Turkey.

The present project supported by the Embassy of Netherlands aims at investigating risks that migrant child workers face in citrus fruit, cotton and hazelnut culture due to their working and living conditions and evaluating existing legislation and institutional capacity in

preventing child labour in seasonal migrant agricultural works. The present report titled “Analysis of Legislative Gaps and Recommendations in the Context of Preventing Child Labour in Agriculture” is one of the three that are prepared in line with project objectives.

We are indebted to representatives of government institutions, academics and civil society organizations who contributed to the report on *Analysis of Legislative Gaps and Recommendations in the Context of Preventing Child Labour in Agriculture* by sharing their knowledge and experience and for their feedback in the meetings held in Adana and Ordu provinces during which research findings were presented.

We maintain our hopes that outcomes of the survey will contribute to the improvement of lives of children together with our hope that decent work conditions will soon be in place. We wish we can realize our hopes together for all working people, children in the first place.

Development
Workshop
July 2018
Ankara



EXECUTIVE SUMMARY

168 million children in the age group 5-17 globally, 11 percent of total child population, are working as child labourers throughout the world. 50 percent (85 million) of these children are in works that threaten their health, safety and development. Sector wise, agriculture stands as the one, which employs 59 per cent of working children.¹

According to 2012 data, there are 893,000 children in the age group 6-17 who are working. This corresponds to 5.9 per cent of all children in that age group and to 15.6 per cent of children in the age group 15-17. 52.6 per cent of children are wage earners while 46.2 per cent are unpaid family workers. Of all working children 44.7 per cent (399,000) are in agriculture.²

Employment of children under age 15 is prohibited by the Labour Code No. 4857 presently in effect in Turkey. Children in the age interval 15-18 can be employed given that this employment does not interfere with their education and that their health and safety is fully secured. Since these conditions are not met, seasonal migrant labour in agriculture is defined as *'one of the worst forms of child labour'* and the minimum age for admission to employment in this sector was set as 18.

However, as outlined above, child labour still persists in many sectors and agriculture is still the sector where child labour is observed most commonly. One of the major factors leading to this situation is the ineffectiveness of the existing legislation in preventing child labour in agriculture. In this context, the *"Project for Reducing Legal and Institutional Gaps in*

Prevention of Child Labour in Seasonal Agriculture" implemented by the Development Workshop with the financial support of the Embassy of Netherlands (September 2017 – August 2018) aims to identify legal and institutional gaps in efforts to prevent child labour in seasonal agriculture in Turkey as well as measures that must be adopted in the light of risks that child workers face.

The objective of this report, prepared in the context of the above mentioned Project, is to assess the compatibility of national and international legislation related to the employment of children in agriculture and to identify legislative gaps that lead to the employment of children in forms that contradict with the relevant international standards. The report covers international conventions of which Turkey is a State Party, directly or indirectly related to agricultural activities as well as national legislations.

Legislation on Agricultural Labour

We see that first official arrangements in Turkey related to employment relations date back to Mecelle (Ottoman civil code) before the Republic and various statutes on implementation. Although the steps to introduce a legislative framework to employment relations started from the early years of the Republic, the process spread over a rather long period.

The first arrangement related to employment relations is the *Law No. 394 on Weekly Rest* (1924). The Law on Weekly Rest, however, covered settlements

with population of 10,000 or more, thus leaving out rural areas where agricultural labour was mainly present. Following this law, the *Law No. 2739 on National Holidays and General Vacation Days* took effect in 1925.

The *Code of Obligations No. 818* which took effect in 1926 is the first legislative act concerning all workers including those in agriculture. However, the code had no specific arrangements related to agricultural works. Yet, a significant part of population in this period was in that sector.

The *Public Health Law No. 1593* taking effect in 1930 is the first law in Turkey concerning safety and health status of workers in industry and trade.

In 1936, the first *Labour Code* (No. 3008) was adopted. However, these laws do not cover people working in agriculture neither and in industry they are limited to enterprises employing at least 10 workers.

The Convention No. 45 on Underground Work (Women) was signed, ratified and given effect as one of the 11 conventions adopted after 1936 when Turkey became a full ILO member.

The *Law on Associations* taking effect in 1938 is the first legislation providing for the right to organize.

The *National Protection Law No. 3780*, taking effect in 1940, prevented the implementation of the provisions of the Labour Code No. 3008 until 1960. This law was repealed in 1960.

The *Law on Provision of Land to Farmers* adopted in 1945 is significant in that it aimed to support landless peasants and farmers with tiny plots and to eliminate extreme unfairness in land distribution. The law underwent many changes until the year 1973 and it was eventually diverted from its original purpose.

In 1946, the *Law on the Establishment and Duties of the Ministry of Labour* took effect. It is also the year when the ILO Convention No. 14 on Weekly Rest (Industry) which was adopted in 1921 took effect in Turkey.

The *Law on Paid Leave for Workers on Weekends and General Holidays* was adopted in 1951. In the 14 years that followed 1946, 13 more ILO conventions were ratified by Turkey. These were important conventions related to employment agencies, right to organize and collective bargaining, prohibition of forced labour and minimum age in some trades.

The *1961 Constitution* envisages the protection of agriculture and farmers for adequate nutrition of people and increase in agricultural output to the benefit of society as whole. It requires the “adoption of necessary measures to value the labour of” people engaged in agriculture as a part of this responsibility. Despite, there were two initiatives, in 1964 and in 1978, to draft a special labour code for agriculture, but they were not finalized and enacted.

Under the title “*Provisions Related to Employment*”, the 1961 Constitution safeguarded many rights in working life including the right to work, prohibition of drudgery, right to rest, fair remuneration, right to organize, collective bargaining and strike and the right to social security. Constitutional guarantee for the right to work was provided for the first time in Turkey with the Constitution of 1961. This was followed by the taking effect of the Law on Trade Unions in 1963.

Besides the *Trade Union Law, the Laws on Primary Education and Education and the Social Security Law* which had indirect relevance to working age and employment of children took effect during the early years of this period. It was followed by the ratification of the ILO Convention No. 100 on Equal Remuneration in 1966. In the period of 10 years from 1966 to 1976, 10 ILO Conventions were ratified. In 1967, The Labour Code No. 931 was adopted, but later annulled by the Constitutional Court. A new Labour Code adopted in 1971 took effect. It was followed by the Law on Agricultural and Land Reform taking effect in 1973.

Differing from the earlier Constitution, the 1982 Constitution is not interested in the labour of the farmer; it adopts as a principle that farmer’s product should

be accorded its value, but makes no suggestion as to ways of realizing this.

In the years following the adoption of the Constitution, firstly the *Trade Union Law and the Law on Collective Bargaining, Strike and Lockout* were amended and with the Trade Union Law adopted in 1983 agricultural workers were recognized as 'worker' in terms of their collective rights which differs from the Labour Code.³ This recognition, however, did not mean much in practice.

Two legislative acts related to social security coverage were adopted in 1983: The *Law on Social Security of Agricultural Workers* covering those employed on the basis of service contract and the *Law on Social Security of Self-Employed in Agriculture* covering those without any service contract with any employer.

The Law No. 3308 on Vocational Education that is related to child labour was adopted in 1986. This law which was amended 12 times up to 2017 covers vocational and technical education and training schools and institutions. Practices of vocational training in agriculture started in 1887 with the School of Agriculture, it continued with agricultural vocational high schools under the Ministry of Agriculture until 2006, and finally these schools whose number was already reduced were transferred to the Ministry of National Education in 2006.⁴ Upon the Council of Ministers decision No. 2005/139 in 2005, the name of Directorates of Agricultural Vocational High Schools was changed as "Directorate of Centre of Agricultural Extension and In-service Training" before becoming "Vocational High Schools of Agricultural Technologies" after 2016. Presently these institutions deliver training in industrial fruit and vegetable culture, decorative plants and landscape, agricultural instruments and machinery and crop farming.⁵

After 1980, during the rule of the military regime there was a halt in the process of acceding to international treaties and legislation making; and when transi-

tion to democratic regime began, first the European Social Charter which was signed in 1961 was ratified and given effect. In the period of 10 years from 1989 to 1998, 12 ILO and one UN convention were adopted and ratified. Among these the following were directly related to child labour: The UN Convention on the Rights of the Child, Convention No. 123 on Minimum Age (Underground Work), Convention no. 59 on Minimum Age (Industry-Revised), Convention No. 130 on Minimum Age in Admission to Employment and Convention No. 138 Concerning Minimum Age for Admission to Employment.

The most important commitment of the 7th Development Plan, prepared in this period, concerning workers is that "*Agricultural Labour Code will be enacted for wage earners in agriculture*"⁶, but this commitment is not fulfilled.

The adoption of the *Unemployment Insurance Law* in 1999, at the end of the period was a development to the interest of workers; yet, there is no possibility of actually implementing this law with respect to both self-employed and agricultural workers.

It is also the period when Turkey was engaged in EU accession negotiations. In line with the atmosphere of this process first the *Labour Code* No. 4857 took effect in 2003 and many regulations were issued.

While agricultural enterprises employing 51 and more workers will be regulated by the Labour Code (No. 4857), others employing less than 50 will be subject to the Code of Obligations (No. 6098). The Labour Code also makes a distinction between temporary and continual work and envisages the application of the Code of Obligations in the former. But there is an exception to this rule. Those provisions of the Labour Code relating to such fundamental rights as working periods, minimum age in employment, prohibitions on child employment, paid weekly rest and other paid leaves are to be applicable to "temporary works" as well. Further, there is no distinction of temporary and continual works when it comes to ins-

pections to be conducted on enterprises operating under the Labour Code. Therefore, although seasonal agricultural works are considered as temporary, agricultural enterprises employing 51 or more workers are subject to labour inspection. The remaining falls in the jurisdiction of the Code of Obligations when breach of contract provisions occurs. In addition to this duality with respect to the main roof there are also arrangements in more than one legislative text in matters such as prohibition of employment and minimum age. Moreover, some of these legislative acts are not essentially related to employment such as the Law on Public Health and Law on Police Duties and Authorities. This scattered nature of the legislation makes both identifying the principle and inspecting compliance difficult.

Legislative Arrangements Relevant to Seasonal Migrant Child Workers in Agriculture

Minimum Age in Employment

The *ILO Convention No. 138 Concerning Minimum Age for Admission to Employment* requires that minimum age set by States Parties should coincide with the age that compulsory education ends and, in any case, not below age 15. The Turkish Labour Code No. 4857 also prohibits the employment of children who have not completed age 15. However, this rule has two exceptions in regard to age:

- 1) Children who have not completed age 14 of fourteen may be employed in the artistic, cultural and advertising activities that will not hinder their physical, mental and moral development and that will not prevent their school attendance, on condition that a written contract is entered and permission is obtained for each activity separately.
- 2) Children who have completed age 14 and their primary education on light works that will not hinder their physical, mental and moral development, and for those who continue their education,

on, in jobs that will not prevent their school attendance. What can be considered as light works are provided by the relevant regulation.

The Regulation on Procedures and Principles Relating to the Employment of Child and Young Workers and its annexes which is based on the Labour Code No. 4857 introduces three categories in the context of works that children may be employed after age 14. According to this arrangement, works in which children can be employed in agriculture and animal husbandry vary with respect to ages of 14, 15 and 16.

ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, on the other hand, covers areas of work that are harmful to children in all circumstances. Turkey identified seasonal migrant agricultural works as the worst form of child labour. As the Convention constitutes a domestic law norm according to Constitutional Article 90, the minimum age for employment in seasonal migrant agricultural works in Turkey is 18.

However, studies show that 70 per cent of local and 73 per cent of migrant agricultural workers started this work before age 15.⁷ A survey conducted in Çukurova reports that children as young as 10 can be found in crop fields⁸:

“While 7 per cent of children in the age group 6-10 actually work in crop fields, it increases to 52 per cent of boys and 60 per cent of girls in the age group 11-14. In the age group 15-18, 91 per cent of children are out in fields working that is 9 out of each 10 adolescents are working.”

Working Time and Leaves

According to the *Directive 94/33/EC on the Protection of Young People at Work*, working time of children at age 15 can be 8 hours a day, 40 hours a week and, if not prohibited by domestic legislation, daily 2 hours and weekly 12 hours out of school time. When schools are closed it is daily 7 hours and weekly 35 hours for children who are not subject to compulsory

education. For each 24-hour period children are entitled to a rest period of 14 hours (it is 12 hours for adolescents).

The Directive prohibits work by children from 8 p.m. to 6 a.m. except for vocational training and cultural activities. For adolescents over age 15 it is forbidden to work from 10 p.m. to 6 a.m. The Directive also stipulates that when daily work exceeds 4.5 hours children are entitled to take a rest for 30 minutes. Children under age 14 must have 14 and adolescents must have 12 consecutive hours of rest for each 24 hours.

As to leaves, paragraph 7/Article 7 of the *European Social Charter* envisages “at least three weeks of leave in a year to working persons under age 18.”

According to the national legislation, the daily working time can be maximum 8 hours for children over age 12 and under age 16 according to the Law on Public Health.

According to the Labour Code, on the other hand, it is daily 7 hours and weekly 35 hours in case of children over 14 but under 15; and daily 8 hours and weekly 40 hours in case of children between age 16 and 18.

As per the *Regulation on Principles and Procedures Relating to the Employment of Child and Young Workers*, child workers are entitled to 14 consecutive hours of rest following a work day and at least 1 hour of rest break during the day. Weekly rest period is at least 48 hours for children. Children and adolescents under age 18 cannot be employed in any kind of night work.

In agricultural enterprises employing less than 50 workers, provisions of the Code of Obligations related to service contract are applied. The Code of Obligations does not provide for working period, but provides for the right to weekly rest. Both the Code of Obligations and the Labour Code adopt the principle that workers should be entitled to at least one day of fully paid leave in a week.

Domestic law provisions related to working time and the right to paid leave are, generally, in compliance with international conventions. However, it is so as it is stated in legislation, on paper. As a matter of fact, surveys conducted suggest that daily working hours in seasonal agricultural works are no shorter than 9-10 hours on average and in some cases it may even exceed 10 hours.⁹ Seasonal migrant agricultural workers and their children work at any time and any place where they find job without any entitlement to annual leave, weekly rest or holiday. The period of working is one of the reasons why seasonal migrant agricultural works constitute one of the worst forms of child labour.

Remuneration

According to the European Social Charter, all workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families. Fair remuneration in this context has to: (1) Provide workers and their families decent standards of life; (2) Pay more in cases of overtime work; (3) Pay equally to both men and women for work of equal value; (4) Provide employment security (prohibition of employment termination without notification); (5) Guarantee no deduction from wages (other than in cases prescribed by law as fixed by collective agreement).

The *UN Covenant on Economic, Social and Cultural Rights* also mentions similar criteria. States Parties to the *ILO Convention on Fixing Minimum Wage in Agriculture* also commit to introduce procedures that allow fixing of minimum wage rates in agricultural works and to maintain such procedures.

Regarding national arrangements on remuneration, a single minimum wage is set for all sectors and workers whether covered by the Labour Code or not under the Minimum Wage Regulation since 1 August 1989. According to the same regulation, it is possible to set different minimum wages for child and adult workers, but this was removed on 1 January 2014 and a single minimum wage regardless of age is in effect since then.

According to the *Code of Obligations*, on the other hand, the employer is obliged to pay his employee the amount specified in the contract or in collective agreement or, in case there is no relevant provision, an equivalent amount which cannot be less than the minimum wage. In cases of overtime work, the employer is also obliged to pay 50 per cent of the regular wage.

There is no uniform contract in agricultural production. Families engaged in seasonal migrant agricultural works are employed on the basis of oral or written contracts that may entail different wage rates for different crops. The most commonly known and used form is daily wage although one can frequently observe different modes such as lump-sum (*kabala*) payment and sharecropping on the basis of varying percentages.

In daily wage system wage is the payment made to a worker on his daily work. In other systems, however, work is undertaken by the family and since children work as a part of family their specific daily remuneration cannot be determined.

In practice, daily or other wage rates applicable in seasonal hoeing, weeding and harvesting works are determined by seasonal commissions established at province-district level, chambers of agriculture, union of exporters and in some regions by informal commissions formed by local headmen. The method used in determining daily wage is dividing minimum wage by 30. Still, there is neither clarity in this; it is observed that calculation is made on net minimum wage in some cases and gross wage in others.

TÜİK data too confirm that there is no clarity as to the calculation of daily wage. For the year 2017 the average daily wage of seasonal agricultural workers was 66 TL, and the monthly earning of permanent agricultural workers was 1,857.00TL. Given these figures, a seasonal agricultural worker has to work 28 days a month to earn as much as permanent agricultural workers in case there is no deduction from his daily wage.¹⁰

According to a survey which compared the cases of permanent (typical) and a-typical workers in private sector on the basis of gender and sectors, 63 per cent of males and 92 percent of females employed on daily wage basis earn less than half of minimum wage; and 32 per cent of males and 8 percent of females earn between half the minimum wage and minimum wage.¹¹

Social Security

According to the *European Social Charter*, all workers and their dependents have the right to social security. In this context, States are obliged to establish a social security system first, give effect to the *ILO Convention No. 102 on Social Security (Minimum Standards)*, to further develop this system and cooperate with other States Parties in this field by acting appropriate bilateral agreements. The Charter recognizes the right to medical and social assistance of those who cannot benefit from the social security system.

Turkey is a State Party to Convention No. 102 on Social Security (Minimum Standards). According to this convention which was ratified in 1971 social security system must cover sickness, pregnancy, maternity, unemployment, old-age, invalidity, family, work accident and death benefits and periodic payments.

This right is also enshrined in the *UN Covenant on Economic, Social and Cultural Rights* in a manner to cover the right to social security as well (Art.9). The covenant also envisages special protection in cases of maternity.

In national legislation, the *Law No. 2925 on Social Security of Agricultural Workers* aims to "... ensure the social security of persons employed temporarily in agricultural works on the basis of service contract with the provisions of the present law". It is a social security arrangement relating directly to seasonal agricultural workers. The law envisages the social security coverage of workers in agriculture upon their request but not those under age 18. The law introduces entitlement to retirement at age 50 for

women and at 55 for men given that their social security contributions are made for 180 days a year, not to be shorter than 15 days a month, and that 3,600 work days are fully completed. The Unemployment Insurance Law adopted in 1999¹² however, lifted these ages up to 58 for women and 60 for men. Then, the Law No. 5510 on Social Security and General Health Insurance repealed “*general provisions included in articles 1 to 5, provisions on sickness benefits included in articles 13 to 17, article 24 envisaging lump-sum payment of old-age insurance, article 33 on contributions and article 35 on the dependents of the insured person in the Law No. 2925 dated 17/10/1983 on Social Security of Agricultural Workers*” (Art.106/6) and consequently it became no longer easy for agricultural workers to be insured.¹³

The form of employment of seasonal migrant agricultural workers who are the poorest and most deprived segment of the country or of their hometown perpetuates poverty in a vicious circle. One of the relevant factors is their exclusion from social protection systems.

While about 1/5 of working people are in agriculture, only 3 per cent of insured are in this sector.¹⁴ These figures clearly indicate that existing legislative arrangements are insufficient in ensuring social security in agriculture. As far as children are concerned there is neither social security nor unemployment benefits.

Right to Organize

According to the *UN Covenant on Economic, Social and Cultural Rights*, everyone has the right to form trade unions and join the trade union of his choice for the promotion and protection of his economic and social interests

Under the Trade Union and Collective Bargaining Law No. 6356 which took effect in 2012 any person over age 15 and considered as worker under the relevant legislation, can be a union member. Since this law was designed so as to cover those workers

remaining out of the scope of the Labour Code (workers in enterprises employing less than 50 workers), persons in worker status under the Code of Obligations too can be union members and establish unions. In case a union is established in agriculture, this union must have members corresponding to at least 1 per cent of all workers in the sector to have the right to collective agreement.¹⁵ Due to the characteristics of this sector, however, there are significant obstacles against organization even if legislative framework is fit for.

Seasonal migrant agricultural workers find jobs mostly through agricultural middlemen. The calendar and the kind of works that the former will engage will do depend on middlemen’s connections or connections they seek. Their working period may be as short as one day in some cases or may take days while climate changes may also prevent them from finding jobs. Different types of remuneration, for example share-cropping or lump-sum payment may place workers in contractor or sub-contractor positions before land/orchard owners. Competition in finding job which has become harder with the recent addition of foreign migrants to agricultural labour market, low levels of education, and need to move fast to different locations for different crops are the factors impeding the organization of workers. Other obstacles include weak demand by agricultural supply firms for decent work and absence of any demand for the implementation of national and international legislation in supply chains.

Meanwhile it is positive that the Law No. 6356 on Trade Unions and Collective Bargaining brings no limitation to children’s membership to trade unions. But there is no mention of children’s union membership since unionization is very weak in this sector anyway. So it is not possible to speak about any factual positive impact of this legislation on child labour.

Overall Evaluation and Conclusion

Turkey followed the activities of the International Labour Organization from the early years on and became a State Party to many of its conventions. Some of these conventions are also transposed into domestic law. However, legislative arrangements pertaining to agriculture are far from safeguarding the rights of persons working in this sector. Yet, agriculture stands as a sector where the exploitation of child labour is the most common.

Especially within the last 40 years many international documents, action plans and projects have been drafted, developed and implemented to combat child labour including its worst form and to alleviate poverty as its root cause. Unfortunately, desired outcomes and improvements could not be obtained.

Combat against the exploitation of child labour requires sincere political will to eliminate its root causes. Suggestions in this context can be summarized in three headings:

Recommendations Related to Poverty, Unemployment and Demand for Cheap Labour

Besides the poverty in general, agricultural workers in particular and small farmers constitute the most impoverished section of the society and this cycle of poverty cannot be broken even in full-time work. Given this, the first thing to be questioned is the system that works on the basis of cheap labour and arrangements supplementing this system.

The poverty of those working in agriculture stems from the fact that profits accruing from agricultural products go to some other hands. While value created by a mechanism operating against small farmers and agricultural workers goes to the trader as profit, it is impossible to keep children out of working life as their parents have to work and subsist on an income below poverty line and in some cases close to starvation line.

Therefore, priority actions should be;

- Amending Article 55 of the Turkish Constitution so as to recognize the protection of the value of labour and income guarantee as a right.

And as corollary;

- Modifying Article 39 in the Labour Code. By using criteria set in the European Social Charter, a principle must be adopted to raise minimum wage up to a minimum decent living standard.

Recommendations Related to Education

Factors such as low school performance, unemployment as a common phenomenon even for relatively educated population and tolerance shown to non-attendance to school by children of seasonal agricultural workers¹⁶ weaken the ties of children with their schools. A survey found that school days missed by children of seasonal migrant agricultural workers vary from 6-51 to 67 days in a school year.¹⁷ According to another survey 50 per cent of children engaged in economic activities are out of school.¹⁸ 18 As to supportive activities initiated for children when their family elders are out in work, their availability is limited in terms of both time and space and not as inclusive as they should be.

The system of education must be capable of identifying factors that push children out of the system and making necessary interventions. The existing legislation on following children's school attendance¹⁹ is not effective in eliminating the problem of poor attendance. Mainly, it is not of that nature to allow for interventions to eliminate the causes of poor attendance.

Hence;

- There is need to amend article 52 and subsequent articles of the Law on Primary Education and Education so as to allow for the intervention of social services in order to investigate the causes of poor school attendance and to improve family skills needed to eliminate this problem.

Quality of education must be such that it strengthens the ties with school and learning of children in ge-

neral and particularly those facing attendance and performance problems and quality education must be accessible to all children. It is therefore a problem of policy and implementation before any legislation.

In this context;

- It is necessary to include a special section in the Fundamental Law on National Education for introducing mobile schools to which children of agricultural workers can attend, developing catch up education programmes for children who have missed school years and implementing alternative programmes to develop and improve learning skills of children.

Recommendations Related to Working Life and Workers' Rights

- The reservations to the Art. 2, 4, 5, 6, 7, 22 and 23 of the revised European Social Charter should be removed and the Collective Complaints Procedure dated 1995 that entitles the unions and civil society organizations the right to collective complaints should be ratified.
- Turkey must be a State Party, first of all, to the Convention No. 10 on Minimum Age in Agriculture dated 31 August 1923 and then to the Convention No. 101 on Paid Leave in Agriculture dated 4 July 1952, Convention No. 129 on Work Inspection in Agriculture dated 25 June 1969 and Convention No. 184 on Health and Safety in Agriculture dated 5 June 2001.
- Given that employment in seasonal migrant agricultural works is considered as one of the worst forms of child labour, necessary amendments must be made in both Article 71 of the Labour Code and in the Regulation on Procedures and Principles Relating to the Employment of Children and Young Workers to set the minimum age as 18 in this branch.
- An Agricultural Labour Code must be drafted to address, in an integrated manner, all relevant issues including the prevention of child labour and

the rights of their parents to wage, working periods, leaves, etc. Until the enactment of this law, the rights and benefits of agricultural workers such as working periods, leaves, additional payments and bonuses must be provided for by amending article 393 and other relevant articles in the Code of Obligations.

- The system of social protection in agriculture must be strengthened. Short-term contracts must be accepted as fixed-term contracts and the scope of family benefits must be expanded so as to provide a sufficient standard of living including children's education and other expenses.²⁰ To ensure this, the additional article 5 in in the Social Security and General Health Insurance Law No. 5510 and the Law No. 2925 on Social Security of Agricultural Workers must be amended. In doing this, there is need to develop a model that takes account of agricultural production processes and to safeguard it with necessary legislative arrangement to cover workers in social security. Also needed is the possibility paying wages by methods such as bank and payment vouchers and including social security contributions in wages.
- The condition of employing at least 50 workers existing in article 4 of the Labour Code must be removed to include agriculture in the inspection domain of labour inspectors. There must be arrangements allowing for regular and upon-complaint inspections.
- The condition of representing a specific percentage of workers in the same trade must be removed for facilitating the unionization of agricultural workers by introducing amendments to the Law No. 6356 on Trade Unions and Collective Bargaining.
- A study should be conducted on production modalities and the distribution of the profit along the production chain and it should be ensured that small farmers and agricultural workers are entitled to the value of their labour through enactment of an Agricultural Labour Code.

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- 11 Karadeniz, O. (2011). Türkiye’de Atipik Çalışan Kadınlar ve Yaygın Sosyal Güvencesizlik. *Çalışma ve Toplum Dergisi*, 2, sf.83
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INTRODUCTION

According to the report “Global Estimates and Trends 2000–2012” published in 2013 by the International Labour Organization under of the International Program on the Elimination of Child Labour (IPEC),¹ 168 million children in the age group 5-17, 11 percent of total child population, are working as child labourers throughout the world. 50 percent (85 million) of these children are in works that threaten their health, safety and development. Sector wise, agriculture stands as the one, which employs 59 per cent of working children.

The Turkish Statistical Institute (TÜİK) released the latest data about child labour in Turkey in 2012. According to 2012 Child Labour Survey data, there are 893,000 children in the age group 6-17 who are working. This corresponds to 5.9 per cent of all children in that age group and to 15.6 per cent of children in the age group 15-17. 52.6 per cent of children are wage earners while 46.2 per cent are unpaid family workers. Of all working children 44.7 per cent (399,000) are in agriculture.²

The US Department of Labour’s Bureau of International Affairs annually publishes sectors that countries employ children. According to the list published in 2015³ children in Turkey are commonly employed in citrus fruit, cotton, tobacco, cumin and hazelnut culture. Recent field surveys also reveal that child employment in agriculture is a common phenomenon.⁴ Especially among seasonal migrant agricultural

workers, the number of working children is quite high and it can even amount to 1/3 of labour force in some activities.

Seasonal migrant labour in agriculture is a form of wage labour in this sector, which requires families who seek employment to move from their original settlements to where agricultural production takes place in its various stages. Since families move with all their members, children also take part in this process as wage workers. Household income increases as families include more of their members in their work. Hence, child labour remains as an important item in family subsistence.

In particular, children in the age group 12-17 work in seasonal agriculture and move to other places with other family members. According to the survey conducted by the Support to Life Association (2014) with 168 seasonal migrant households, which provides data for 1,353 individuals, 35 per cent of children in the age group 5-11, 78 per cent in the age group 12-15, and 85 per cent of children in the age group 16-18 take part in agricultural works.⁵

Similarly, the Development Workshop survey conducted with seasonal migrant families travelling to Western Black Sea region for hazelnut harvesting (2014) indicates that 73 per cent of household members under age 18 (329 out of 451 children) takes part in hazelnut harvesting.⁶

Employment of children under age 15 is prohibited by the Labour Code No. 4857 presently in effect in Turkey. Children in the age interval 15-18 can be employed given that this employment does not interfere with their education and that their health and safety is fully secured. Since these conditions are not met, seasonal migrant labour in agriculture is defined as *'one of the worst forms of child labour'* and upon Turkey's accession in 2001 to the ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, the minimum age for admission to employment in this sector was set as 18.

However, as outlined above, child labour still persists in many sectors and agriculture is still the sector where child labour is observed most commonly. The major factors leading to this situation can be listed as follows:

- Existing legislation remains ineffective in preventing child labour.
- Authorities in charge of preventing child labour cannot fully perform their functions.
- Overcoming some cultural norms and traditional practices poses extra difficulties since risks faced by children working in agriculture is not properly analysed (by age groups and crops).

In this context, the *"Project for Reducing Legal and Institutional Gaps in Prevention of Child Labour in Seasonal Agriculture"* implemented by the Development Workshop with the financial support of the Embassy of Netherlands (September 2017 – August 2018) aims to identify legal and institutional gaps in efforts to prevent child labour in seasonal agriculture in Turkey as well as measures that must be adopted in the light of risks that child workers face.

In order to realize such a study, two localities and three crops in which children are most commonly employed as seasonal migrant workers were identified. Accordingly, the project was carried out in Ordu and Adana provinces focusing on the harvest of hazelnut, cotton and citrus fruit.

Three reports were prepared in line with the objectives of the project:

- Report on Legal Gap Analysis and Recommendations
- Report on Institutional Gap Analysis and Recommendations
- Report on Risks faced by Children Working in Citrus Fruit, Cotton and Hazelnut Harvesting

The objective of this report, which is one of the above three, is to assess the compatibility of national and international legislation related to the employment of children in agriculture and to identify legislative gaps that lead to the employment of children in forms that contradict with the relevant international standards. The report covers international conventions of which Turkey is a State Party, directly or indirectly related to agricultural activities as well as national legislations. To serve as an indicator, the report also presents a list of international conventions also related to this sector but to which Turkey has not yet acceded.

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- 5 *Mevsimlik Gezici Tarım İşçiliği Araştırma Raporu*. (2014). Hayata Destek Derneği.
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1

SCOPE OF THE LEGISLATION REVIEW ON MIGRANT SEASONAL AGRICULTURAL LABOUR



1.1

International Legal Texts

1.1.1

Binding Nature of International Legal Texts

The capacity of international legal texts in performing the function of protecting the rights of an individual as a citizen of a State depends on the nature of the text concerned and the commitment of the State to fulfil what these texts require.

International organizations comprising States as their members produce legal texts of differing nature. Texts that are in the form of convention are binding and in some cases they have their monitoring mechanisms as well. Thus, the binding nature of international conventions is undisputed. But for any convention to be binding for a state, it is necessary to have that State first accedes to and then ratifies it in line with its domestic law. According to Article 90 of the Turkish Constitution, *“The ratification of treaties concluded with international organizations shall be subject to adoption by the Grand National Assembly of Turkey by a law approving the ratification.”* And it has to be published in the Official Gazette. However, this rule of ratification by the Grand National Assembly (TBMM) is not necessary in the case of implementation agreements based on international conventions previously ratified as well as economic, commercial, technical or administrative agreements acted on the basis of authority already granted by law. So these agreements take effect without being published. But still there is an exception: of agreements that can take effect without ratification, those that are related to economic and commercial issues or rights of private persons have to be published. The existence of some agreements that do not need to be presented to the TBMM for ratification gives rise to some legal debates.¹

The 5th paragraph of the Constitutional Article 90 states that *“international agreements duly put*

into effect have the force of law.” No appeal to the Constitutional Court on the grounds that they are unconstitutional can be made with regard to these agreements. In the case of a conflict between national legislations and international agreements concerning fundamental rights and freedoms, the provisions of the latter prevail. This provision of the Constitution is found contradictory in terms of hierarchy of norms and leads to divergence of opinion among jurists particularly on the way to pursue in cases of contradiction between two texts.²

It is acknowledged that such documents as recommendations, comments or opinions published by international organizations like the Parliamentary Assembly and the Committee of Ministers of the Council of Europe, UN General Assembly or UN Committees have no binding nature.³ While they may be considered as non-binding in purely legal terms, they are still expected to have such nature given how they are constructed. Since these bodies consist of representatives of States, it is normally unexpected of a State to deny a document produced in a process to which it participated and that it found necessary and appropriate. Indeed, for example, the Committee of Ministers of the Council of Europe may ask information from its member states whether its recommendations are respected or not.⁵

1.1.2

International Labour Organization and Conventions on Labour Rights

One of the most basic and important functions of International Labour Organization (ILO) is to *“ensure the adoption of conventions and recommendations of the International Labour Conference that set international standards by the tripartite structure (workers, employers and government)”*.⁶

As other organizations, the International Labour Conference too makes use of various documents while

setting standards. In the perspective of the above-mentioned framework, ILO conventions that the Republic of Turkey ratified and put into effect under the Constitutional article 90 are binding. As to recommendations by the same organization, they are of guiding nature in policy development, legislation and enforcement.

The ILO sets international labour standards in its International Labour Conference convening annually.⁷ The organization claims to cover almost all issues relating to work life with its conventions and recommendations since 1919. Indeed, ILO standards constitute the first reference point in issues related to employment. The scope of these issues covers a wide range including: some fundamental human rights (in particular rights to establish associations and to organize, collective bargaining, prohibition of child labour and forced labour, elimination of discrimination in employment), labour management, industrial relations, employment policies, working conditions, social security, health and safety at work, women’s employment, migrant workers, seamen, etc.⁸ Agriculture is one of these.

There are several inspection procedures regarding the implementation of ILO Conventions. The first is a general mechanism where annual reports submitted by States Parties are examined by the Committee of Experts and then countries are examined by the Committee on the Application of Standards. States Parties may also be requested to submit information concerning the implementation of conventions. Finally, the Committee on Freedom of Association examines complaints concerning violations of the right to organize.⁹

The present study addresses 38 ILO conventions that are directly or indirectly related to the employment of children (Table 1).

While examining the international legislative framework regarding agricultural employment, there is need to consider a series of recommendations and programmes as well. Table 2 below lists documents to be considered in this context.

Table 1. ILO Conventions on Agricultural Labour that Turkey is a State Party to

Date of Adoption by ILO	Date of Ratifying Act	Convention
29.10.1919	16.02.1950	Convention No. 2 on Unemployment
25.10.1921	11.02.1946	Convention No. 14 on Weekly Rest (Industry)
25.10.1921	24.10.1960	Convention No. 11 on the Right of Association (Agriculture)
29.10.1921	25.05.1959	Convention No. 15 on Minimum Age (Trimmers and Stokers)
30.05.1928	25.06.1973	Convention No. 26 on Minimum Wage-Fixing Machinery
06.06.1930	23.01.1998	Convention No. 29 on Forced Labour
08.06.1933	11.02.1946	Convention No. 34 on Fee-Charging Employment Agencies
04.06.1934	11.02.1946	Convention No. 42 on Workmen's Compensation (Occupational Diseases) (Revised)
04.06.1935	09.06.1937	Convention No. 45 on Underground Work (Women)
22.10.1936	25.05.1959	Convention No. 58 on Minimum Age (Sea) Convention (Revised)
03.06.1937	26.11.1992	Convention No. 59 on Minimum Age (Industry)
19.10.1946	24.05.1949	Convention No. 80 on Final Articles Revision
19.10.1946	26.11.1992	Convention No. 77 on Medical Examination of Young Persons (Industrial Occupations)
19.06.1947	13.12.1950	Convention No. 81 on Labour Inspection
17.06.1948	25.11.1992	Convention No. 87 on Freedom of Association and Protection of the Right to Organize
17.06.1948	30.11.1949	Convention No. 88 on Employment Services
18.06.1949	08.08.1951	Convention No. 98 on Right to Organize and Collective Bargaining
08.06.1949	24.10.1960	Convention No. 95 on Protection of Wages
06.06.1951	13.12.1966	Convention No. 100 on Equal Remuneration
06.06.1951	30.04.1969	Convention No. 99 on Minimum Wage Fixing Machinery (Agriculture)
28.06.1952	29.07.1971	Convention No. 102 on Social Security (Minimum Standards)
05.06.1957	14.12.1960	Convention No. 105 on Abolition of Forced Labour
04.06.1958	13.12.1966	Convention No. 111 on Discrimination (Employment and Occupation)
28.06.1962	19.07.1971	Convention No. 118 on Equality of Treatment (Social Security)



Date of Adoption by ILO	Date of Ratifying Act	Convention
05.06.1963	23.05.1967	Convention No. 119 on Guarding of Machinery
17.06.1964	09.11.1976	Convention No. 122 on Employment Policy
22.06.1965	08.05.1991	Convention No. 123 on Minimum Age (Underground Work)
28.06.1967	30.11.1972	Convention No. 127 on Maximum Weight
02.06.1971	25.11.1992	Convention No. 135 on Workers' Representatives
06.06.1973	23.01.1998	Convention No. 138 Concerning Minimum Age for Admission to Employment
04.06.1975	26.11.1992	Convention No. 142 on Human Resources Development
02.06.1976	26.11.1992	Convention No. 144 on Tripartite Consultation (International Labour Standards)
06.06.1979	15.07.2003	Convention No. 153 on Hours of Work and Rest Periods (Road Transport)
03.06.1981	07.01.2004	Convention No. 155 on Occupational Safety and Health and Working Environment
02.06.1982	09.06.1994	Convention No. 158 on Termination of Employment
17.06.1999	25.01.2001	Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour
15.06.2006	20.02.2009	Convention No. 187 on Promotional Framework for Occupational Safety and Health

Table 2. Recommendations and Programmes Related to Agricultural Labour

Date of Adoption	Recommendation / Declaration / Programme
24.06.1958	ILO Recommendation No. 110 Concerning Conditions of Employment of Plantation Workers
1992	Implementation of ILO's International Programme on the Elimination of Child Labour (IPEC)
1998	ILO Declaration on Fundamental Principles and Rights at Work
2017-2023	National Programme and Action Plan in Combating Child Labour

Other International Conventions and Principles

There are three more conventions related to the employment of children in seasonal agriculture including one by the Council of Europe and two by the UN General Assembly (Table 3).

The *European Social Charter* was opened to signature in Turin-Italy in 1961 and the charter took effect in 1965. Adopted by the members of the Council of Europe, the Charter was signed by Turkey on 18 October 1961 and ratified on 16 June 1989 with the Law No. 3581. Upon the submission of ratification documents to the Secretary General of the Council of Europe, the Charter took effect in Turkey as of 24 December 1989. The Charter is a document developed to support the European Human Rights Convention that regulates civil and political rights and to safeguard economic and social rights; as such, it sets important standards in this area.¹⁰ The revised European Social Charter took effect on 1 July 1999. Turkey signed the Revised European Social Charter on October 6th, 2004 and ratified it on 22 March 2007. Turkey ratified 91 articles of the Charter including article 7 related to the protection of children and youth without any reservation, but made her reservations to 7 articles. Of these articles, those relating to the work life are: Article 2/3 on annual paid leave of minimum four weeks; 4/1 on fair remuneration; 5 on the right to organise; and Article 6 on the right to collective bargaining. The monitoring body of the European Social Charter is the European Committee on Social Rights.

The *UN Covenant on Economic, Social and Cultural Rights* was adopted by the United Nations General Assembly on 16 December 1966 and it took effect on January 3rd, 1976. Turkey signed the Covenant on August 15th, 2000, ratified it on 4 June 2003 with the Law no. 4867 and the covenant became effective for Turkey on December 23rd, 2003. This covenant is integral with the United Nations Charter and Covenant on Civil and Political Rights. Turkey made four statements while acceding to this Convention:

- (1) Obligations imposed by the Convention will be fulfilled in line with obligations under the United Nations Charter,
- (2) Provisions of the Convention will be observed only vis-à-vis those states that Turkey has diplomatic relations with,
- (3) The Convention will be implemented within the territorial boundaries of the Turkish Republic,
- (4) Paragraphs (3) and (4) in Article 13 of the Convention will be implemented within the framework of Articles 3, 14 and 42 of the Constitution of the Republic of Turkey.

The Committee on Economic, Social and Cultural Rights is the monitoring body of the International Covenant on Economic, Social and Cultural Rights.

The *UN Convention on the Rights of the Child* was adopted by the UN General Assembly on 20 November 1989 and it took effect on 2 September 1990.

Table 3. Conventions on Employment of Children as Seasonal Migrant Agricultural Workers Adopted by the Council of Europe and UN General Assembly

Date of Ratification	Date of Adoption	Convention
18.10.1961	16.06.1989	European Social Charter (1961 – 1989)
16.12.1966	04.06.2003	UN Convention on the Rights of the Child (1989 – 1994)
20.11.1989	09.12.1994	UN Covenant on Economic, Social and Cultural Rights (1966-2003)
01.07.1999	27.09.2006	Revised European Social Charter (1999 – 2006)

Turkey signed the Convention on 14 September 1990, ratifying it 4 years after on December 9th, 1994 (with the Law No. 4058). The Convention was published in the Official Gazette No.22138 on 11 December 1994, but since ratification documents were entrusted to the UN General Secretary on 4 April 1995, it became effective in Turkey on 4 May 1995. Turkey adopted Articles 17, 29 and 30 of the Convention by making the reservation, *“Turkey reserves the right of construing these articles in line with the provisions and*

spirit of the Turkish Constitution and Lausanne Peace Treaty.” The Convention introduces arrangements to all domains that are related to children. Article 32, in particular, sets rules related to working and employment of children. The implementation of the Convention on the Rights of the Child is regularly monitored by the UN Committee on the Rights of the Child.

There are also other guiding documents including recommendations and directives related to the employment of children (Table 4).

Table 4. Directives and Recommendations Related to the Employment of Children in Seasonal Migrant Agricultural Works¹¹

Date of adoption	Recommendation / Declaration / Programme
1972	UN Stockholm Declaration
1987	UN World Commission on Environment and Development of Our Common Future Report (Brundtland Report)
14.01.1991	Council Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship
25.06.1991	Council Directive 91/383/EEC supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed- duration employment relationship or a temporary employment relationship
1992	Declaration of the UN Conference on Environment and Development (RIO Declaration) and Agenda 21 Action Plan
1993	World Conference on Human Rights, Vienna Declaration and Action Programme
22.06.1994	Council Directive 94/33/EC on the protection of young people at work
1997	Special Session of the UN General Assembly (Earth Summit +5)
2000	UN Millennium Development Goals
15.09.2000	European Commission Recommendation 2000/581/EC
04.11.2003	Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organization of working time
19.11.2008	Directive 2008/104/EC of the European Parliament and of the Council on temporary agency work
2012	Sustainable Development Conference Declaration (RIO+20)

1.2

National Law Arrangements

We see that first official arrangements in Turkey related to employment relations date back to *Mecelle* (Ottoman civil code) before the Republic and various statutes on implementation. The *Mecelle* which also had applicability to agriculture regards employment relations as a relation of hiring. While a person who lets his labour off by working in agriculture becomes an agricultural worker, the landholder who hires his labour becomes the “*employer*”. The *Mecelle* lays down provisions relating to working period, payment to be made and obligations of the employer, it contains no arrangement pertaining to enforcement. As to statutes that deal with enforcement in this period we can refer to Dilaverpaşa Statute concerning mining works in Ereğli and to İbrahimpaşa Statute concerning farming activities in Çukurova.

Steps to introduce a legislative framework to employment relations started from the early years of the Republic, but the process spread over a rather long period. Early steps in this regard include the following: *Law No. 394 on Weekly Rest (1924)*, *Code of Obligations No. 818 (1926)*, *Public Health Law No. 1593 (1930)*, *Law No. 2739 on National Holidays and General Vacation Days (1935)* and finally the *Labour Code No. 3008*

(1936). All these legislative arrangements took effect while Turkey was not a Party to any ILO Convention.

Both relevant activities and relations weakened during the Second World War. Following the start of active relations with ILO, first the *Law on Paid Leave to Workers on Weekends and General Holidays* took effect in 1951.

The right to work was legally safeguarded first with the Constitution of 1961. Arrangements related to working life under the heading “Provisions Related to Employment” laid the ground for the enactment of the *Trade Union Law* in 1963.

In this period there were two initiatives, in 1964 and in 1978, to draft a special labour code for agriculture, but they were not finalized and enacted. In the same period, special labour codes were prepared for seamen and journalists (Sea Work and Press Work) though their numbers are much smaller than agricultural workers and the *Labour Code No. 1475* took effect in 1971, leaving agricultural labour out of scope.

As a branch of economic activity, agriculture was first included in labour code in 2003 with the *Law No. 4857*. In spite of this, since an enterprise has to employ more than 50 workers for the labour code to be applicable, a large majority of agricultural enterprises remains out of the scope of this legislation.

İbrahim Paşa Statute

It was a statute related particularly to agricultural activities in Çukurova-Adana. Under this statute working periods were fixed as 5.5 days but wages were paid over 7 days. In other words, 1.5 days that are not worked are also paid for. Wage rate was determined by a commission comprising employers’ and workers’ representatives. This commission tried to settle disputes relating to wage or working conditions without going to court. After the abolition of this statute in the 1950s, 7 days’ pay for 5.5 days of work ceased to be the norm.

Source: Çukurova’da Tarımın Tarihi, Adana Ticaret Borsası (2013).

There is no available data showing the size of agricultural enterprises in terms of persons they employ. In terms of economic size, we observe, in 2016, categories such as 6,660-26,640 TL (36.3%) and 26,640 – 83,250 TL (27.5%). 25.9% of agricultural enterprises operate on 20-49 decares of land and 24.5% on 200-499 decares.¹² These figures clearly show the absence of any possibility for agricultural enterprises to permanently employ 51 workers on contractual basis and thus operate under the Labour Code.

As shown in Tables 5 and 6, legislation in this field is quite dispersed.

Various regulations related to employment, particularly to matters related to the implementation of the Labour Code and the Law on Turkish Employment Agency were issued. In addition to these regulations, there were two *Prime Ministerial Circulars on Seasonal Migrant Agricultural Workers* -first in 2010 and second in 2017- to guide implementation. Furthermore, the Ministry of National Education (MoNE) issued two circulars in 2011 and 2016, respectively, and the Ministry of Family and Social Policies (MoFSP) issued one in 2012 (Table 6).

Table 5. Laws Related to Agricultural Works Enacted after the Republic

Date of Taking Effect	Law No.	Title	Amendment or Repeal
21.01.1924	394	Law on Weekly Rest	After amended six times from 1924 to 1956, finally repealed by the Law No. 7033 dated 2017.
08.05.1926	818	Code of Obligations	Repealed by the Law No. 6098 dated 11.01.2011.
06.05.1930	1593	Law on Public Health*	Amended 20 times between the years 1932 and 2016.
14.07.1934	2559	Law on Duties and Authorities of Police*	22 amendments were made in the period 1935-2017.
01.06.1935	2739	Law on National and General Holidays	Repealed by the Law No. 2429 dated 17.03.1981.
21.10.1935	2834	Law on Agricultural Marketing Cooperatives and Unions	Repealed by the Law No. 4572 dated 01.06.2000.
15.06.1936	3008	Labour Code (industry and trade)	Repealed by the Law No. 1475 dated 25.08.1971.
28.06.1938	3512	Law on Associations	Amended by the Law No.4919 dated 10.06.1946 and lost its effect in working life upon taking effect of the Law No. 274 on Trade Unions. Then repealed by the Law No. 1630 on Associations dated 22.12.1972.
18.01.1940	3780	National Protection Law	Repealed in 1960.
15.06.1945	4753	Law on Provision of Land to Farmers	Repealed by the Law No. 1757 dated 25.06.1973.
16.07.1945	4792	Law on Workers' Insurance Institution	Repealed by the Law No. 5502 dated 16.05.2006.
07.07.1945	4772	Law on Occupational Accidents, Occupational Diseases and Maternity Benefits	Repealed by the Law No. 5502 dated 10.01.1950.

Date of Taking Effect	Law No.	Title	Amendment or Repeal
30.01.1946	4841	Law on the Organization and Duties of the Ministry of Labour	Repealed by the Law No. 3146 dated 01.09.1985.
26.02.1947	5018	Law on Workers' and Employers' Unions and Confederations	Amended by the Law No. 7286 dated 01.06.1959 and repealed by the Law No. 274 dated 15.07.1963.
10.01.1950	5502	Law on Sickness and Maternity Insurance	Repealed by the Law No. 506 dated 01.08.1964.
15.08.1951	5837	Law on Paid Leave for Workers on Weekends and General Holidays	Amended in 1956 by the Law No. 6734 and repealed by the Law No. 1475 dated 1.09.1971.
05.01.1961	222	Law on Primary Education and Education*	Some articles were amended by the Law No. 6287 dated 30.03.2012.
15.07.1963	274	Trade Union Law	Repealed by the Law No. 2821 on Trade Unions dated 5.5.1983.
15.07.1963	275	Law on Collective Bargaining, Strike and Lockout	Repealed by the Law No. 2822 dated 05.05.1983.
01.08.1964	506	Social Security Law*	Repealed by the Law No. 5510 dated 16.06.2006 with the exception of Articles 142 and 143, annex article 36 and provisional articles 20, 81 and 87.
24.04.1969	1163	Law on Cooperatives	Repealed by the Law No. 4572 dated 01.06.2000.
01.09.1971	1475	Labour Code	Amended 9 times in the period 1975 -2003, it was finally repealed by the Law No. 4857 dated 10.06.2003.
25.06.1973	1757	Land and Agricultural Reform Law	Constitutional Court annulled in 1976.
19.03.1981	2429	Law on National and General Holidays*	Amended 4 times between the years 1983 and 2016.
05.05.1983	2821	Trade Union Law	Repealed by the Law No. 6356 dated 18.10.2012.
05.05.1983	2822	Law on Collective Bargaining, Strike and Lockout	Repealed by the Law No. 6356 dated 18.10.2012.
20.10.1983	2925	Law on Social Security of Agricultural Workers*	Articles 9, 11, 12, 18, 19, 27, 28, 29 and 37 were repealed by the Law No. 4447 dated 25.08.1999 and then articles 1-5 and 13-17 by the Law No. 5510 dated 31.05.2006.

Date of Taking Effect	Law No.	Title	Amendment or Repeal
20.10.1983	2926	Law on Social Security of Self-Employed in Agriculture	Repealed by the Law No. 5510 dated 31.05.2006.
09.01.1985	3146	Law on the Organization and Duties of the Ministry of Labour and Social Security	Amended 19 times between the dates 04.05.1989 and 13.08.2016.
30.04.1985	3186	Law on the Adoption of the Decree Law (KHK) on the Establishment of Agricultural Marketing Cooperatives and Unions with Some Modifications	Repealed by the Law No. 4572 dated 01.06.2000.
19.06.1986	3308	Vocational Training Law (Apprenticeship)*	Amended 12 times between the dates 08.03.1989 and 01.07.2017.
25.08.1999	4447	Unemployment Insurance Law*	Amended 11 times between the dates 28.06.2014 and 27.03.2018.
01.06.2000	4572	Law on Agricultural Marketing Cooperatives and Unions*	Amended 6 times between the dates 07.08.2003 and 18.04.2013.
22.05.2003	4857	Labour Code*	The following articles were repealed by the Law No. 31 on Work Safety and Health dated 30.06.2012: Article 2 paragraph four, article 63 paragraph four, article 69 paragraphs four, five and six, articles 77- 80, 81, 83-89, 95, 105 and provisional article 2.
25.06.2003	4904	Law on Turkish Employment Agency*	Amended 13 times between the dates 05.07.2003 and 08.03.2017.
19.07.2005	5403	Law on Soil Protection and Land Use*	Amended 5 times between the dates 06.07.2007 and 05.07.2017.
20.05.2006	5502	Law on Social Security Institution*	Amended 8 times between the dates 26.01.2012 and 08.03.2017.
16.06.2006	5510	Law on Social Security and General Health Insurance*	Amended 52 times between the dates 01.01.2017 and 27.03.2018.
04.01.2011	6098	Code of Obligations*	Amended 4 times between the dates 01.07.2012 and 11.04.2013.
30.06.2012	6331	Work Safety and Health Law*	Amended 8 times between the dates 03.05.2013 and 05.12.2017.
18.10.2012	6356	Law on Trade Unions and Collective Bargaining *	Amended 12 times between the dates 19.01.2013 and 02.01.2018.

* Legislation presently in effect.

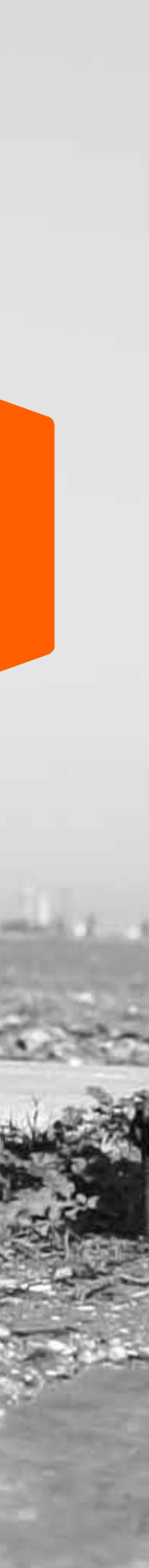
Table 6. Regulations and Circulars Related to Agricultural Labour Presently in Effect

Date	Regulation / Circular
18.05.1984	Regulation on the Enforcement of the Law No. 2925
14.03.2004	Regulation on Principles and Procedures Relating to the Employment of Child and Young Workers (Legal basis: Article 71 of the Law No. 4857)
06.04.2004	Regulation on Working Conditions of Persons in Occupations Related to agriculture and Forestry (Legal basis: Article 111 of the Law No. 4857)
06.04.2004	Regulation on Overtime and Longer Periods of Working under the Labour Code (Legal basis: Article 41 of the Law No. 4857)
06.04.2004	Regulation on Working Periods that cannot be Divided into Weekly Working Days (Legal basis: Article 76 of the Law No. 4857)
06.04.2004	Regulation on Working Periods under the Labour Code (Article 63 of the Law No 4857.)
03.09.2008	Regulation on Activities deemed to be Industrial, Commercial, Agricultural and Forestry Work(Legal basis: Article 111 of the Law No. 4857)
27.05.2010	Regulation on Labour Intermediaries in Agriculture (Article 3 of the Law No.4904)
28.07.2010	Notification on amendment of earlier notification on monetary fines to be applied on the basis of Article 20 of the Law No. 4904 on Turkish Employment Agency and Article 118 of the Labour Code No. 4857
20.08.2012	MoFSP 2012/20 – Circular on the Prevention of Child Labour
05.02.2015	Regulation on Public Health Centre and its Units
21.03.2016	MoNE Circular 2016/5 Circular on Seasonal Agricultural Child Workers
19.04.2017	Prime Ministerial Circular 2017/6 on Seasonal Migrant Agricultural Workers

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2

EVALUATION OF THE LEGISLATION ON AGRICULTURAL LABOUR IN TURKEY





2.1

Status of Turkey as a Party to Conventions

Starting from 1927 Turkey followed ILO activities as an observer and after joining the League of Nations in 1932, she also became an ILO member as required by the article 387 of the Versailles Peace Treaty.¹ The first ILO Convention that Turkey gave effect was related to employment: The *Convention No. 45 on Underground Work (Women)*. This convention which was adopted by ILO in 1935 took effect in Turkey in 1937 with the ratification law No. 3229. From that date up to 1946 Turkey did not become State Party to any convention. It is observed that, from 1932 to 1946, Turkey kept observing ILO activities without any dynamic cooperation with the organization.²

The first Labour Code in Turkey took effect in 1936, followed by the establishment of Ministry of Labour in 1945. The Trade Union Law taking effect in 1947 lifted the ban on class-based organization and made it possible for workers to organize. Following these developments, three ILO Conventions were acceded to in 1946: *The Convention No. 14 on Weekly Rest (Industry)*, *Convention No. 42 on Workmen's Compensation (Occupational Diseases)* and *Convention No. 34 on Fee-Charging Employment Agencies*. *The Convention No. 98 on the Right to Organize and Collective Bargaining* signed in 1949 was ratified in 1951.

So far Turkey has acceded to 59 conventions in total including 8 conventions that ILO considers as fundamental, 3 of 4 governance conventions and 48 of 177 technical conventions.

11 out of 38 conventions covered by this study were ratified by Turkey and thus became domestic law norm within the first five years following their international adoption (Table 7). One of these is the *Convention No. 182 on Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* and another one is the *Convention No. 187 on*

Promotional Framework for Occupational Safety and Health.

The *Convention No. 29 on Forced Labour* first adopted by ILO in 1930 was ratified by Turkey 68 years after its international adoption and the *Convention No. 59 on Minimum Age (Industry-Revised)* after 55

years. Nevertheless, the *Convention No. 105 on the Abolition of Forced Labour* which was adopted later than the Forced Labour Convention was ratified by Turkey and made a domestic law norm within three years following its adoption by ILO.

Table 7. Status of Turkey as a Party to Conventions

Turkey-Ratification Date	Convention (time period between accession and ratification)	ILO/UN/EC Adoption Date
09.06.1937	C (Convention) 45 Underground Work (Women) (2 years)*	04.06.1935
11.02.1946	C14 Weekly Rest (Industry) (25 years)	25.10.1921
11.02.1946	C42 Workmen's Compensation (Occupational Diseases) (Revised) (12 years)	04.06.1934
11.02.1946	C34 Fee-Charging Employment Agencies (13 years)	08.06.1933
24.05.1949	C80 Revision of Final Articles (3 years)*	19.10.1946
30.11.1949	C88 Employment Service (1 year)*	17.06.1948
16.02.1950	C2 Unemployment (31 years)	29.10.1919
13.12.1950	C81 Work Inspection (3 years)*	19.06.1947
08.08.1951	C 98 Right to Organize and Collective Bargaining (2 years)*	18.06.1949
25.05.1959	C 15 Minimum Age (Trimmers and Stokers) (38 years)	29.10.1921
25.05.1959	C 58 Minimum Age (Sea) (Revised) (23 years)	22.10.1936
24.10.1960	C 11 Right of Association (Agriculture) (39 years)	25.10.1921
24.10.1960	C 95 Protection of Wages (11 years)	08.06.1949
14.12.1960	C 105 Abolition of Forced Labour (3 years)*	05.06.1957
13.12.1966	C100 Equal Remuneration (15 years)	06.06.1951
29.07.1971	C102 Social Security (Minimum Standards) (19 years)	28.06.1952
13.12.1966	C 111 Discrimination (Employment and Occupation) (8 years)	04.06.1958
23.05.1967	C 119 Guarding of Machinery (4 years)*	05.06.1963

30.04.1969	C 99 Minimum Wage Fixing Machinery (Agriculture) (18 years)	06.06.1951
19.07.1971	C 118 Equality of Treatment (Social Security) (9 years)	28.06.1962
29.07.1971	C 102 Social Security (Minimum Standards) (19 years)	28.06.1952
30.11.1972	C 127 Maximum Weight (5 years)*	28.06.1967
25.06.1973	C 26 Minimum Wage-Fixing Machinery (45 years)	30.05.1928
09.11.1976	C 122 Employment Policy (12 years)	17.06.1964
16.06.1989	European Social Charter (38 years)	18.10.1961
23.01.1998	C 29 Forced Labour (68 years)	06.06.1930
08.05.1991	C 123 Minimum Age (Underground Work) (26 years)	22.06.1965
25.11.1992	C 87 Freedom of Association and Protection of the Right to Organize (44 years)	17.06.1948
25.11.1992	C 135 Workers' Representatives (21 years)	02.06.1971
26.11.1992	C 59 Minimum Age (Industry) (Revised) (55 years)	03.06.1937
26.11.1992	C 77 Medical Examination of Young Persons (Industry) (46 years)	19.10.1946
26.11.1992	C 142 Human Resources Development (17 years)	04.06.1975
26.11.1992	C 144 Tripartite Consultation (International Labour Standards) (16 years)	02.06.1976
09.06.1994	C 158 Termination of Employment (12 years)	02.06.1982
09.12.1994	UN. Convention on the Rights of the Child (5 years)*	20.11.1989
23.01.1998	C 130 Minimum Age in Admission to Employment (15 years)	06.06.1973
15.07.2003	C 153 Hours of Work and Rest Periods (Road Transport) (24 years)	06.06.1979
07.01.2004	C 155 Occupational Safety and Health (23 years)	03.06.1981
25.01.2001	C 182 Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (2 years)*	17.06.1999
04.06.2003	UN Covenant on Economic, Social and Cultural Rights (37 years)	16.12.1966
20.02.2009	C187 Promotional Framework for Occupational Safety and Health (3 years)*	15.06.2006

* Indicates conventions that were ratified by the Republic of Turkey within the first 5 years following their international adoption and established as domestic law norm.

It is observed that Turkey remains in abstention when it comes to some ILO conventions related to employment in agriculture. Indeed, while ILO adopted four conventions in this field in the period from 1923 to 2001, Turkey became a party to none of these (Table 8).

2.2

Constitutional Provisions related to Agricultural Workers

2.2.1

Constitutional Arrangements Related to the Right to Work and Labour Rights: *Domain of Limited Freedoms*

After defining the freedom and right to work as “among natural rights of Turks” (Art.70), the 1924 Constitution prohibits forced labour and drudgery (Art.73) and adds that this freedom can be restricted only by law (Art.79).

The 1961 Constitution introduces some more detail related to freedom of work (Art.40); under the title “Freedom of Work and Contract” it states that every individual is entitled to work and to act on the contract in the field of his choice and that the establishment of private enterprises is free. The Constitution adds that these freedoms can be restricted only by law and for public interest. Having an occupation is considered both a right and a duty. While drudgery is prohibited,

the constitution states that “The forms and conditions of physical and intellectual work in the nature of civic duty in cases where the needs of the country so require shall be regulated by law in accordance with democratic principles.” (Art.42).

Another limitation specific to this period is related to private enterprises. The last paragraph in the Article 40 brings in an exception in favour of state intervention by stating: “The state shall adopt those measures necessary to ensure the functioning of private enterprises in an environment of security and stability consistent with interests of national economy and social objectives”

As different from the 1924 Constitution, the 1961 Constitution does not stipulate this freedom as an overarching principle but regulates many rights in working life placing each under the protection of the Constitution (Table 9).

As in 1961, the 1982 Constitution regulates the freedom of labour and contract by stating that “every body is free to work and to contract in any sector of preference” (Art. 48). Forced labour is prohibited (Art. 18). This Constitution too regards labour both as a right and a duty (Art.49). Although reminiscent of the 1961 Constitution in many respects, the 1982 Constitution keeps its significantly different approach to such issues as the right to fair remuneration. While the 1961 Constitution assigns the State the duty of ensuring fair remuneration that will “provide a decent standard of living” the 1982 Constitution states that “The Sta-

Table 8. ILO Conventions on Agricultural Labour that Turkey is Yet Not a State Party

Adopted by ILO on	Convention
31.08.1923	No. 10 on Minimum Age for Children Employed in Agriculture
04.07.1952	No. 101 on Holidays with Pay in Agriculture
25.06.1969	No. 129 on Labour Inspection in Agriculture
05.06.2001	No. 184 on Safety and Health in Agriculture

Table 9. Provisions of 1961 and 1982 Constitutions Pertaining to the Right and Freedom to Work and Regarding the Agricultural Sector

1961 Constitution	1982 Constitution
The State shall protect workers and support work by adopting social, economic and financial measures to provide a decent life to workers and to ensure steady progress in working life including measures against unemployment (Art.41)	The State shall take the necessary measures to raise the standard of living of workers, and to protect workers and the unemployed in order to improve the general conditions of labour, to promote labour, to create suitable economic conditions for prevention of unemployment and to secure labour peace (Art. 49).
No one shall be required to perform work unsuited to his/her age, sex, and capacity. Minors, women, and physically and mentally disabled persons shall enjoy special protection with regard to working conditions. (Art.43)	No one shall be required to perform work unsuited to his/her age, sex, and capacity. Minors, women, and physically and mentally disabled persons shall enjoy special protection with regard to working conditions. (Art.50)
All workers have the right to rest. Rights and conditions relating to paid weekends, holidays, and paid annual leave shall be regulated by law. (Art.44)	All workers have the right to rest and leisure. Rights and conditions relating to paid weekends and holidays, together with paid annual leave, shall be regulated by law. (Art.50)
The state shall take the necessary measures to ensure that workers earn a fair wage commensurate with the work they perform and a decent standard of life (Art.45)	Wages shall be paid in return for work. The state shall take the necessary measures to ensure that workers earn a fair wage commensurate with the work they perform and that they enjoy other social benefits. (As amended on October 3, 2001; Act No. 4709) In determining the minimum wage, the living conditions of the workers and the economic situation of the country shall also be taken into account (Art. 55).
Employees and employers have the right to form unions and higher organizations, without prior permission, to become a member of a union and to freely withdraw from membership (Art.46 – 1971)	Employees and employers have the right to form unions and higher organizations, without prior permission, and they also possess the right to become a member of a union and to freely withdraw from membership, in order to safeguard and develop their economic and social rights and the interests of their members in their labour relations. No one shall be forced to become a member of a union or to withdraw from membership. (Art.51 – 2001)
In their relations with employers, workers have the right to collective bargaining and strike to maintain or improve their economic and social status. (Art.47)	Workers and employers have the right to conclude collective labour agreements in order to regulate reciprocally their economic and social position and conditions of work. (Art.53) Workers have the right to strike during the collective bargaining process if a disagreement arises. The procedures and conditions governing the exercise of this right and the employer's recourse to a lockout, the scope of, and the exceptions to them shall be regulated by law. The right to strike and lockout shall not be exercised in a manner contrary to the rules of goodwill, to the detriment of society, and in a manner damaging national wealth. The trade union concerned shall be held responsible for any material damage to the workplace as a result of deliberate or faulty acts of workers or the trade union during a strike (Art.54)
Everyone has the right to social security (Art.48)	Everyone has the right to social security (Art.60)

te shall take the necessary measures to ensure that workers earn a fair wage commensurate with the work they perform and that they enjoy other social benefits". The Constitution envisages that living conditions of the workers and the economic situation of the country must be taken into account while determining the minimum wage (Table 9).

2.2.2

Constitutional Arrangements related to Agricultural Production: From the Value of Labour to the Value of Product

The 1961 and 1982 Constitutions introduced arrangements in the field of agriculture as well. The 1961 Constitution has a separate article on the "protection of agriculture and the farmer" which states:

"The State shall take necessary measures to provide the people with adequate nourishment, to assure an increase in agricultural production to the benefit of the society, to prevent erosion, to enhance the value of agricultural products and the labour of those engaged in agriculture."

The 1982 Constitution has its provisions guiding agricultural policy to be pursued. It envisages that the sector of agriculture must develop in balance with industry. Firstly, the State is assigned the task of "... planning and establishing necessary organization particularly to ensure the rapid, harmonious and balanced development of industry and agriculture throughout the country" (Art. 166). Then, in accordance with these principles of planning, it assigns the State the duties of "facilitating the acquisition by farmers and livestock breeders of machinery, equipment and other inputs in order to increase crop and livestock production" and "taking necessary measures for the utilization of crop and livestock products, and to enable producers to be paid the real value of their products." The 1961 Constitution covers agricultural workers as well while establishing that those engaged in crop farming and stock breeding should be accorded what they deserve in

return to their labour. In the 1982 Constitution stress is placed on "facilitating the provision of machinery, equipment and other inputs" and "producers being paid the real value of their products."

Comparing two constitutions in terms of their articles concerning agricultural production we observe two important differences; while the 1961 Constitution covers both farmers and workers under the term "those engaged in agriculture", the 1982 Constitution refers to "producers". Secondly, while the 1961 Constitution mentions the "value of labour" the 1982 Constitution refers to the "value of product." The latter may first appear as favouring farmers since it has no direct and explicit reference to agricultural workers while mentioning support to producers in acquiring machinery and equipment and getting the value of their product; but actually it does not since no method or mechanism is suggested for ensuring that farmers get the value of their product.

In this context, while the 1961 Constitution states that the "State shall adopt measures to ensure the development of cooperatives" (Art. 51) 1982 Constitution includes the following: "By considering the interests of national economy, the State shall adopt measures to ensure the development of cooperatives as a means of increasing production and protecting consumers."

The 1982 Constitution sets priorities for national economy and adopts support to agricultural producers as a principle in this line. The 1982 constitution gives hints about the agricultural policy of the time albeit not reflecting it fully.

The share of agriculture in gross national product (GNP) was 43.4 per cent in 1923 which first fell to 24.8 per cent in 1980³, and then to 6.2 per cent in 2016;⁴ indicating a serious erosion of importance of agricultural policies.

In fact the 1982 Constitution falls behind the 1961 Constitution in terms of its arrangements relating not only to agriculture but to workers' rights in general. The 1961 Constitution establishes that the needs of

working people must be considered in fixing wages by saying *“The state shall adopt necessary measures so that workers may earn decent wages commensurate with the work they perform and sufficient to enable them to maintain a decent standard of living”*. The 1982 Constitution, on the other hand, associates wage only with the work performed and economic conditions of the country under the title *“Provision of fair wage”* (Art.55) stating that *“The state shall take the necessary measures to ensure that workers earn a fair wage commensurate with the work they perform and that they enjoy other social benefits.”* Following an amendment made in 2001⁵ *“living conditions of workers”* was added to this paragraph and the latest text of the paragraph became *“In determining minimum wage living conditions of workers and economic situation of the country shall also be taken into account.”*⁶

2.3

Legal Provisions Related to Agricultural Labour

This part seeks to make an evaluation of the legislation pertaining to agricultural employment in the history of Turkish Republic. To find out reasons for having a relevant legislation or not, the history was examined in periods each lasting for twenty years, and changes in international and domestic legislation were addressed together with the political economy of each period.

2.3.1

The Period 1920-1940:

Unusual Awareness in Working Life

In the first half of this period, Turkey participates to the ILO as an observer. In the early years of the Republic it was envisaged to organize Economic Congresses assembling representatives of farmers, tradesmen, industrialists and workers to develop economic policies. However these congresses failed related expectations mainly for having *“worker and industrial delegates mostly from government officials and top members of*

*bureaucracy... and representatives of tradesmen and farmers from the ranks of commercial capital and big landowners.”*⁷

In the period, the Constitution provided for the right to work albeit there were no provisions on rights related to employment. The first arrangement related to employment relations is the *Law No. 394 on Weekly Rest* (1924) taking effect after the İzmir Economic Congress in 1923. The Law on Weekly Rest, however, covered settlements with population of 10,000 or more, thus leaving out rural areas where agricultural labour was mainly present. Following this law, the *Law No. 2739 on National Holidays and General Vacation Days* took effect in 1925.

The *Code of Obligations* No. 818 which took effect in 1926 is the first legislative act concerning all workers including those in agriculture. However, the code had no specific arrangements related to agricultural works. Yet, a significant part of population in this period was in that sector. It is stated that agriculture played its important role in the revival of economic life in the post-war period and the period 1923-1929 deserves to be called “golden years” in terms of increase in agricultural output.⁸ The population census of 1927 showed that 83.7 per cent of Turkey’s population, which was 13.5 million at that time, year lived in rural areas; 4,370,000 out of a working population of 5,350,000 were in agricultural sector; and that 1,751,329 farming households represented 9,145,000 people.⁹ The agricultural census carried out the same year showed that on average 25 decares of land is sown by each farming family. However, there were great differences between regions with respect to land proprietorship and 5 per cent of rural population held 65 per cent of total land under culture.¹⁰

The very large size of agricultural population and existence of significant problems in land ownership inevitably pushed agricultural policies to the forefront in the early years of the republic. Between 1920 and 1923, the aşar (tithe) tax was debated on 26 occasions in the parliament¹¹; in İzmir Economic Congress (1923) workers’

representatives supported farmers who asked for the abolishment of aşar and representatives of industry and trade sectors required a fairer system of taxation. In spite of these, the *Law on Abolishment of Aşar and Introduction of New Taxation* could take effect only on 1 March 1925. It is argued that the policy of supporting agriculture could remain in effect for only 10 years and economic policies shifted to industrialization starting from 1930.¹² In 1924 aşar tax accounted for 24 per cent of total budget revenues and it was collected by mültezim (private persons collecting tax on behalf of the state). Since the collection of aşar by mültezim meant the marketing of this produce by the same party as well, the abolishment of this in kind tax was actually an income transfer from the State to farmers, and marketing of agricultural produce by farmers contributed to the emergence of commercial profit.¹³ Though no such function as tax collection now, local traders who act as intermediaries in the process from harvesting of crops to plants, where they are processed, have their function similar to that of mültezim. These intermediaries have no place in production, they have their “commission” by acting in-between and this margin of profit by intermediaries add to the cost of products.

The *Public Health Law* No. 1593 taking effect in 1930 is the first law in Turkey concerning safety and health status of workers in industry and trade. In 1936, the first *Labour Code* (No. 3008) was adopted. However, these laws do not cover people working in agriculture neither and in industry they are limited to enterprises employing at least 10 workers. In spite of this, it is generally admitted that the mentioned legislation had important implications for working people:

*“For the first time with the Labour Code no. 3008 employer-employee relations in Turkey are arranged in an integrated manner with its individual and collective dimensions. While introducing arrangements protecting the employee in the realm of employment relations, the law brought in authoritarian provisions in collective relations in line with the dominant tendencies of the period and gave a determining weight to the state.”*¹⁴

The *Law on Public Health* and the *Law on Police Duties and Authority*, which took effect in this period and still in effect are two legislative pieces introducing arrangements concerning where women and children can work and at what age.

It is known that there were debates on the Labour Code in the Parliament in 1931. In response to a question raised, Mustafa Şeref, Minister of Economy explained the purpose of the bill as “*protecting vulnerable persons such as women and children, arranging working hours, and introducing provisions to safeguard the interest of workers who have suffered occupational accidents.*”¹⁵ The Minister added that the bill considered the “*struggle between owners of capital and business enjoying wealth and power on the one side and people seeking jobs on the other*” and went on to say that absence of any regulation in this field “*leads to women and child toilers employed for 16 hours a day since they are preferred to adult male workers as a much cheaper source of labour.*”¹⁶ In the same speech it was stated that the bill was drafted in Turkey and the ILO was consulted later. As can be inferred from these debates, the drafting of the act took 10 years and this was a point for criticism. The draft came to the parliament on 10 March 1932 but could not pass.

The period 1930-1939 is considered as an interval characterised by efforts to create a national industry and class of bourgeoisie within the framework of principles of protectionism and statism.¹⁷ While the class of bourgeoisie was created with State-led investments, the working class was in a rapid process of formation.

Some sources include information that while the Labour Code was being drafted in this period, there was also another work, in 1934, on Agricultural Labour Code, indicating that it was recognized as far back as that period that there must be a separate legislation for agriculture since modes of employment in that sector cannot be covered by the *Labour Code*.¹⁸

Until the adoption of *Labour Code* in 1936, employment relations were arranged for in the context of the

Code of Obligations in addition to the *Public Health Law* and *Law on Police Duties and Authorities*. With the Labour Code adopted in 1936 “*employment relations were regulated in a holistic manner with its individual and collective dimensions*”.¹⁹ Though collective labour rights are not arranged for, the Law is considered as a progressive move for its time:

*“Considering circumstances of the time it was drafted, arrangements including limitation of working periods, rules governing overtime work, arranging night shifts in favour of employees, minimum wage, protection of wages, work safety and health, measures for protecting women and child workers can be qualified as successful.”*²⁰

In this period, one out of 11 conventions adopted after 1936 when Turkey became a full ILO member was signed, ratified and given effect. The first ILO Convention that took effect in Turkey was the *Convention No. 45 on*

Underground Work (Women) limiting women’s employment in underground works.

The *Law on Associations* taking effect in 1938 is the first legislation providing for the right to organize. This law makes the establishment of associations subject to notification and allows for the establishment of associations on economic and professional basis. However, without any time to see and evaluate its impact, a new legislation that would prevent its implementation followed. The National Protection Law enacted in 1940:

*“It is a law enacted at the cost of disabling the Labour Code No. 3008 dated 1936 in the face of possible socioeconomic problems during the Second World War. Conferring extraordinary powers to Government, this legislation had some negative provisions for both capital and labour; in the course of time, however, it turned out as an instrument for capital accumulation by exercising control over working class.”*²¹

Table 10. Conventions and Laws Taking Effect in the Period 1920–1940

	1924	Law No. 394 on Weekly Rest
	1926	Code of Obligations No.818
	1930	Public Health Law No. 1593*
	1934	Law No. 2559 on Duties and Authorities of Police*
	1935	Law No. 2739 on National Holidays and General Vacation Days
		Law No. 2834 on Agricultural Marketing Cooperatives and Unions
	1936	Labour Code No. 3008 (Industry and Trade)
C45 Underground Work (Women) (1935)	1937	
	1938	Law on Associations No. 3512
	1940	National Protection Law No. 3780

* Legislation presently in effect.

Brahim Paşa Statute

It was a statute related particularly to agricultural activities in Çukurova-Adana. Under this statute working periods were fixed as 5.5 days but wages were paid over 7 days. In other words, 1.5 days that one not worked are also paid for. Wage rate was determined by a commission comprising employers' and workers' representatives. This commission tried to settle disputes relating to wage or working conditions without going to court. After the abolition of this statute in the 1950s, 7 days' pay for 5.5 days of work ceased to be the norm.



Source: Çukurova'da Tarımın Tarihi, Adana Ticaret Borsası (2013)

- 29 October - Convention No. 15 on Minimum Age (Trimmers and Stokers)
- 20 October - Convention No. 14 on Weekly Rest (Industry)
- 25 October - Convention No. 11 on the Right of Association (Agriculture)



4 June - Convention No. 42 on Workmen's Compensation (Occupational Disease)

Mecelle (Mecelle-i Ahkam-ı Adliyye)

Returned to as the first civil law of the Ottoman Empire

4 October - It was annulled by the Turkish Civil Code

30 May - Convention No. 26 on Minimum Wage-Fixing Machinery



18 July - 2559 Law on Duties and Authorities of Police



ILO Conventions on Agricultural Labour that Turkey is Yet Not a State Party

Adopted by ILO on	Convention
31.08.1923	No. 10 on Minimum Age in Agriculture
04.07.1952	No. 185 on Holidays with Pay in Agriculture
23.06.1969	No. 129 on Labour Inspection in Agriculture
05.06.2001	No. 186 on Safety and Health in Agriculture

8 June - Convention No. 34 on Fee-Charging Employment Agencies

6 June - Convention No. 29 on Forced Labour

22 October - Convention No. 58 on Minimum Age (Sea)

1869 1919 1921 1922 1923 1924 1925 1926 1927 1928 1929 1930 1931 1932 1933 1934 1935 1936 1937 1938 1939 1940



International Labour Organization's Establishment

One of the most basic and important functions of International Labour Organization (ILO) is to ensure the adoption of conventions, and recommendations of the International Labour Conference that set international standards by the impact of advocates (workers, employers and governments). As other organisations, the International Labour Conference has issued sets of text documents when setting standards. In the perspective of the above mentioned framework, ILO conventions that the Republic of Turkey ratified and put into effect under the Constitutional article 90 are listed. As to implementations by the state organisations, they are of guiding nature in policy development, legislation and enforcement.

4 May - 1593 Law on Public Health

15 June - 3008 Labour Code (Industry and Trade)

8 May - 818 Code of Obligations

21 October - 2834 Law on Agricultural Marketing Cooperatives



28 August - 3512 Law on Asylum

21 January - 394 Law on Weekly Rest

1 June - 2739 Law on National and General Holidays

29 October - Convention No. 2 on Unemployment

21 August - No. 10 on Minimum Age (Turkey didn't adapt)

3 June - Convention No. 59 on Minimum Age (Sea)

4 June - Convention No. 45 on Underground Work (Women)



- Turkish Grand National Assembly
- International Labor Organization
- Ministry of Labour and Social Security
- Ministry of Health
- Prime Ministry
- Ministry of National Education
- European Union
- United Nations
- Change in Legislation
- Annulment of Legislation

Explanations:
 - - - - - start of the law refers to the start date of the contract
 [] symbol refers to the date the legislation became official in Turkish Republic. These legislations are still active.
 [] symbol refers to the change in the legislator
 - - - - - *straight line refers to the period of time a law is active

2.3.2

The Period 1941-1960:

Years of War and Conflicting Interests

Taking effect on 18 January 1940, the National Protection Law No. 3780 prevented the implementation of the provisions of the Labour Code No. 3008 until 1960.

“This legislation that reintroduced compulsory labour, altered working hours to the detriment of workers and left women and child labour unprotected from exploitative relations overrode earlier legislative arrangements some of which may be considered as pioneering in their time including the Labour Code no. 3008 and put the burden of destructive outcomes of the Second World War on the shoulders of workers, peasants, women and children.”²²

This law was repealed in 1960.

The policy of incentives to industrialization starting from 1930 led to shift of labour force from agriculture to industry. The agricultural crops tax applied in the period 1944-1946 was reminiscent of the aşar (tithe) tax abolished in 1925 and put a heavy burden on low income rural people.

The first five years of this period coinciding with the World War II was stagnant with respect to legislation relating to working life. Nevertheless, the *Law on Provision of Land to Farmers* adopted in 1945 is significant. The Law aimed to support landless peasants and farmers with tiny plots and to eliminate extreme unfairness in land distribution. It is stated that this legislative attempt was the result of land reform initiated in 1930, reflecting, on the one hand, the intention of distributing land under the control of feudal estate to landless peasants and creating a national bourgeoisie on the other.²³ Yet the initiative was under the influence of prevailing political and ideological milieu²⁴, and thus did not yield the expected outcome. Under the law, 22 million decares of land was dist-

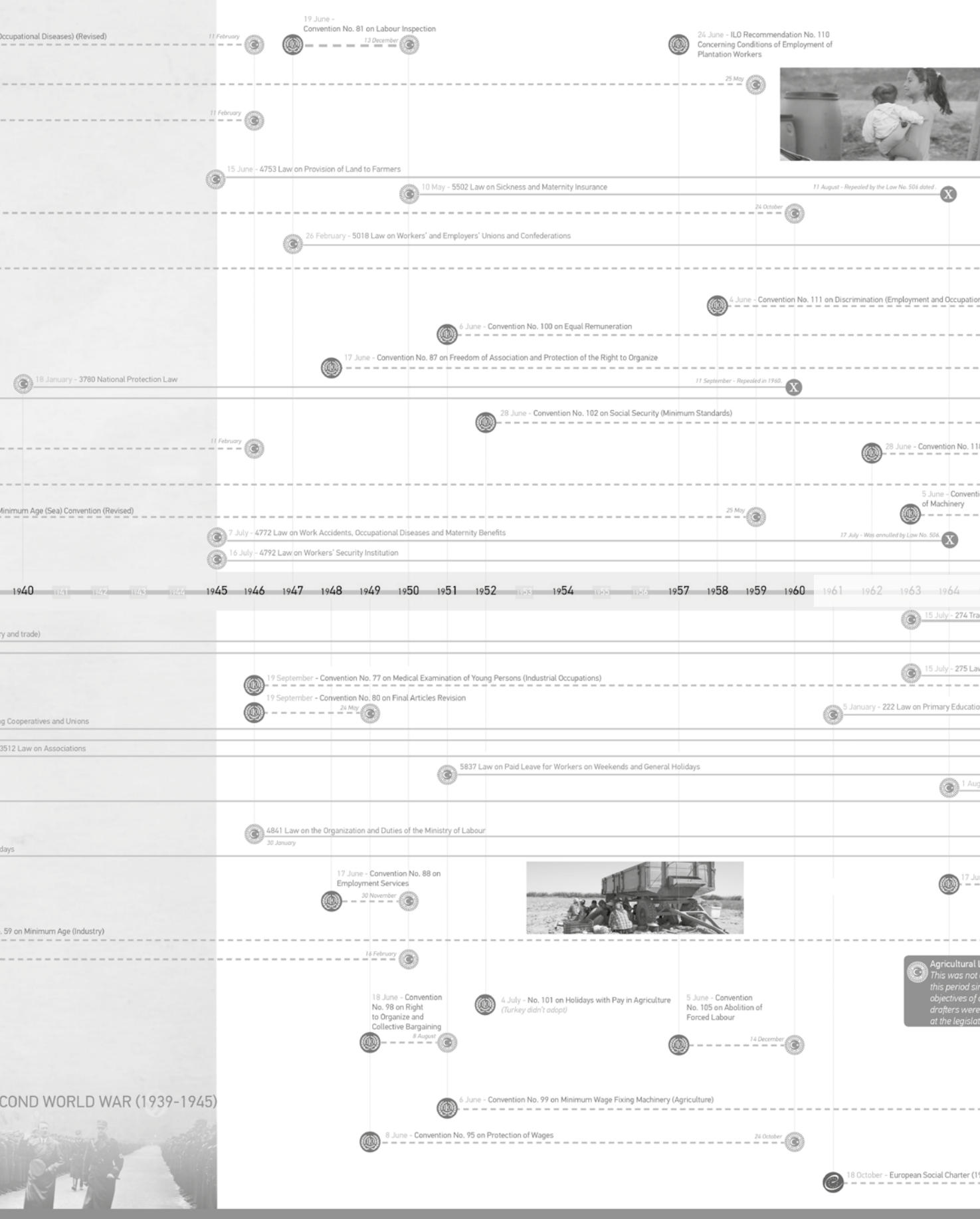
ributed; but the law underwent many changes until the year 1973 and it was eventually diverted from its original purpose. After land distribution started under this law and in the early 50s, it is stated that “37.9 per cent of rural families still held 81.4 per cent of land under culture.”²⁵ Debates relating to the objective, content and implementation of this law are important in understanding one of the problems associated with seasonal migrant agricultural labour, which is ‘landlessness’.

The *Law on the Establishment and Duties of the Ministry of Labour* took effect in 1946. It is also the year when the ILO Convention No. 14 on Weekly Rest (Industry) which was adopted in 1921 took effect in Turkey. Boratav (1997) observes that in 1947, during the single party regime, there was an important shift in economic policies where statist-protectionist industrialization was abandoned and the principle of statism was reduced to helping private enterprises.²⁶ This is an important observation in understanding the contradictory nature of the period that found its reflections in legislation and its enforcement.

It is stated that in the middle of this period (1946-1953) Turkish economy enjoyed a rather rapid growth accompanied by overall improvement in welfare, which had its positive effects on working people after the years of war marked by scantiness; however the income share of wage-salary earners was shrinking by years.²⁷ Boratav (1997) notes that agricultural production increased in this period as a result of some factors including support to agricultural enterprises through such schemes as loans, etc. and spread in the use of tractors, but state policies always favoured big landowners when they had conflicting interests with small farmers.²⁸ This observation also explains reasons behind the non-implementation of the land provision act and the non-enactment of the Agricultural Labour Code.

The *Law on Paid Leave for Workers on Weekends and General Holidays* was adopted in 1951. In the 14 years

The Period 1941 - 60 (Legislation Approved, Enacted and Repealed): Years of War and Conflicting Interests



that followed 1946, 13 more ILO conventions were ratified by Turkey. These were important conventions related to employment agencies, right to organize and collective bargaining, prohibition of forced labour and minimum age in some trades.

It is stated that after 1954 the share of agriculture in national income started to fall and there was a notable decline in cotton farming in particular.²⁹ In this period there was no legislative work other than the ratification of international conventions related to work life.

Table 11. Conventions and Laws Taking Effect in the Period 1941-1960

	1945	Law No. 4753 on Provision of Land to Farmers Law No. 4792 on Workers' Security Institution Law No. 4772 on Work Accidents, Occupational Diseases and Maternity Benefits
C14 Weekly Rest (Industry) (1921)	1946	Law No. 4841 on the Establishment and Duties of the Ministry of Labour
C34 Fee-Charging Employment Agencies (1933)		
C42 Workmen's Compensation (Occupational Diseases) (Revised-1934)	1947	Law No. 5018 on Workers' and Employers' Unions and Confederations
C80 Revision of Final Articles (1946)	1949	
C88 Employment Services (1948)		
C 2 Unemployment (1919)	1950	Law No. 5502 on Sickness and Maternity Insurance
C81 Work Inspection (1947)		
C98 Right to Organize and Collective Bargaining (1949)	1951	Law on Paid Leave for Workers on Weekends and General Holidays
C15 Minimum Age (Trimmers and Stokers) (1921)	1959	
C58 Minimum Age (Sea) (Revised-1936)		
C11 Right of Association (Agriculture) Convention (1921)	1960	
C95 Protection of Wages (1949)		
C105 Abolition of Forced Labour (1957)		

2.3.3

The Period 1961-1980:

What One Hand Gives is Taken Back by the Other

This is a period of a new Constitution for Turkey. The 1961 Constitution envisages the protection of agriculture and farmers for adequate nutrition of people and increase in agricultural output to the benefit of society as whole. It requires the “*adoption of necessary measures to value the labour of*” people engaged in agriculture as a part of this responsibility. The period is also accepted as a milestone in transition to planned economic policies.³⁰ In spite of these, the Agricultural Labour Law was not adopted in this period neither since relevant objectives of constitution drafters were blocked early at the legislation stage.

Under the title “Provisions Related to Employment”, the 1961 Constitution safeguarded many rights in working life including the right to work, prohibition of drudgery, right to rest, fair remuneration, right to organize, collective bargaining and strike and the right to social security. Constitutional guarantee for the right to work was provided for the first time in Turkey with the Constitution of 1961. This was followed by the taking effect of the *Law on Trade Unions* in 1963.

Besides the Trade Union Law, *the Law on Primary Education and Education* and the *Social Security Law* which had indirect relevance to working age and employment of children took effect during the early years of this period. It was followed by the ratification of the ILO Convention No. 100 on Equal Remuneration in 1966. In the period of 10 years from 1966 to 1976, 10 ILO Conventions were ratified. In 1967, The Labour Code No. 931 was adopted, but later annulled by the Constitutional Court. A new *Labour Code* adopted in 1971 took effect. It was followed by the *Law on Agricultural and Land Reform* taking effect in 1973.

In 1962, the UN General Assembly adopted the resolution 1831 (XVII) concerning “Economic Development and the Conservation of Nature.” Then, under the influence of activities related to the issues of environment and development, the UN Conference on Environment was held in Stockholm on 5-16 June 1972 with the participation of 113 States. The 8th Principle of the outcome document states that “*economic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life*” which has its significance for agricultural workers in the context of both environmental and human rights.²⁹

However, the influence of this approach was not visible in agricultural policies and practices. In analysing this period, Boratav (1997) states that populist policies were geared to leaving untouched the pricing advantages accruing to industrial and commercial capital from protectionist policies, that maintenance of status quo in agriculture was one of the concessions accorded to capital as a result of these policies, and that consequently no step was taken for land reform.³⁰

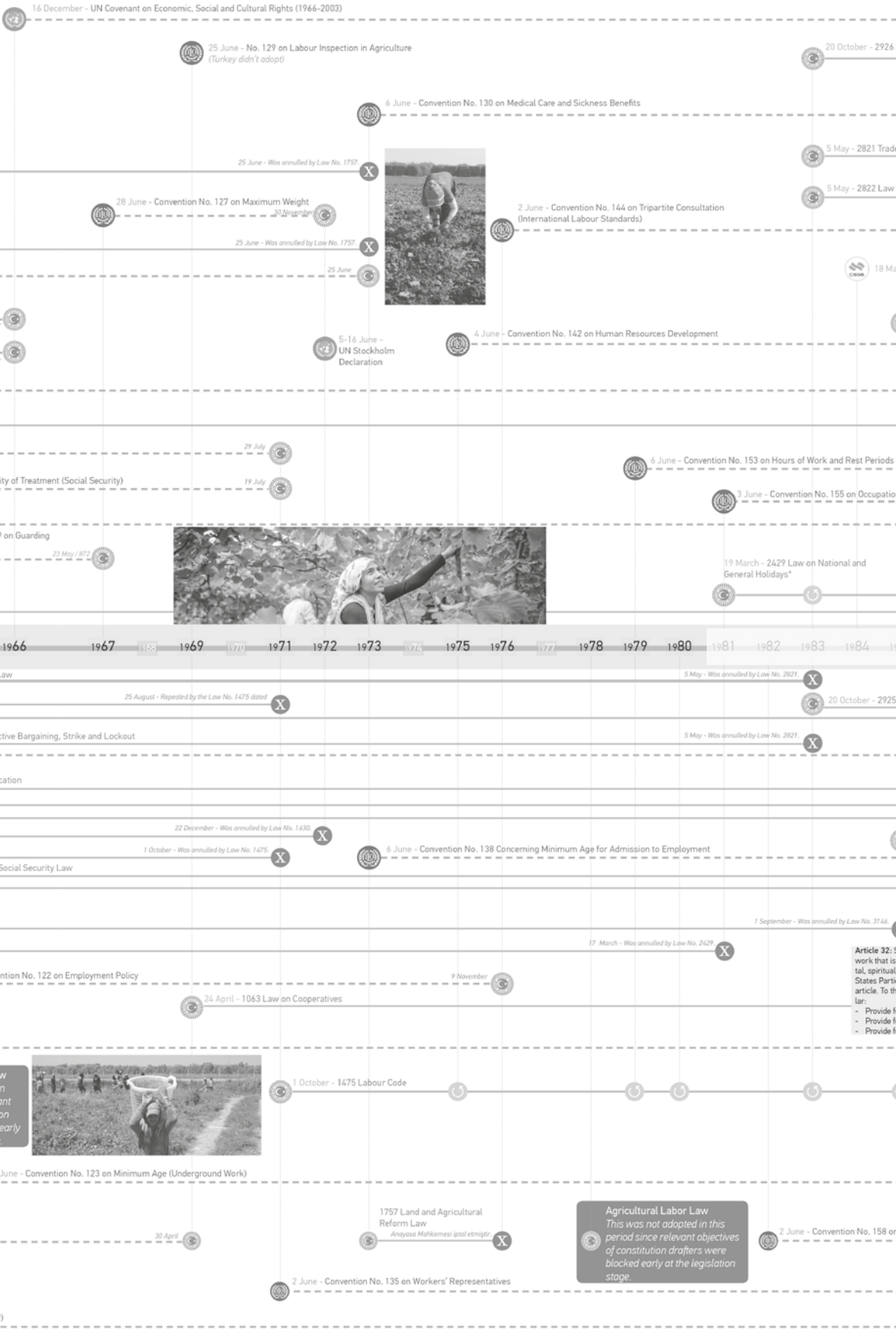
Table 12. Conventions and Laws Taking Effect in the Period 1961-1980

	1961	Law no. 222 on Primary Education and Education*
	1963	Trade Union Law No.274 Law no. 275 on Collective Bargaining, Strike and Lockout
	1964	Social Security Law No.506
C100 Equal Remuneration (1951)	1966	
C111 Discrimination (Employment and Occupations) (1958)		
C119 Guarding of Machinery (1963)	1967	
C99 Minimum Wage Fixing Machinery (Agriculture) (1951)	1969	Cooperatives Law No. 1163
C102 Social Security (Minimum Standards) (1952)	1971	
C102 Social Security (Minimum Standards) (1952)		Labour Code No.1475
C118 Equal Treatment (Social Security) (1962)		
C127 Maximum Weight (1967)	1972	
UN Stockholm Declaration		
C26 Minimum Wage Fixing Machinery (1928)	1973	Law on Land and Agricultural Reform
C122 Employment Policy (1964)	1976	

* Legislation presently in effect.



1 August - Repealed by the Law No. 506 dated.



Agricultural Labor Law
This was not adopted in this period since relevant objectives of constitution drafters were blocked early at the legislation stage.



Agricultural Labor Law
This was not adopted in this period since relevant objectives of constitution drafters were blocked early at the legislation stage.

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2.3.4

The Period 1981-2000: *Years of Hardship in Working Life*

This is a period of a new Constitution as the earlier one. Relative to the earlier period, there was a significant change in this period regarding both agricultural policies and agricultural workers. With the limitation and even lifting of support to agriculture, the period 1980-1990 is referred to as years of “radical shrinkage” where the number of supported crops dropped from 22 to 9.³¹ The decade 1990-2000 witnessed policies that were more favourable for farmers compared to the earlier decade; however, these policies were far from being stable, expansion and contraction followed one another.³²

Imprints of this approach can be seen in the Constitution as well. Differing from the earlier Constitution, the 1982 Constitution is not interested in the labour of the farmer; it adopts as a principle that farmer's product should be accorded its value, but makes no suggestion as to ways of realizing this. The 1982 Constitution regards farmer as any entrepreneur and assumes that farmer's only problem is to have his product accorded its real value. Yet, in agriculture, labour-value balance is affected by factors such as weather which are beyond the control of farmers and this varies with respect to crops. Furthermore, there is no mention of agricultural worker. Hence, the focus in this period is not on labour but on output/product and “national economy” in general.

If the farmer is to get the return to his labour by having his product valued in free market, there is need to introduce legislative and administrative arrangements to ensure that the farmer is accorded the real value of his product. Agricultural activities in Turkey in this period takes place mainly in small enterprises³³ and producers actually have no say in decision-making mechanisms fixing the prices of products.

In the years following the adoption of the Constitution, firstly the *Trade Union Law* and the *Law on Collective Bargaining, Strike and Lockout* were amended

and with the *Trade Union Law* adopted in 1983 agricultural workers were recognized as ‘worker’ in terms of their collective rights which differs from the Labour Code.³⁴ This recognition, however, did not mean much in practice.

Two legislative acts related to social security coverage were adopted in 1983: The *Law on Social Security of Agricultural Workers* covering those employed on the basis of service contract and the *Law on Social Security of Self-Employed in Agriculture* covering those without any service contract with any employer.

The *Law No. 3308 on Vocational Education* that is related to child labour was adopted in 1986. This law which was amended 12 times up to 2017 covers vocational and technical education and training schools and institutions (Art.2). Practices of vocational training in agriculture started in 1887 with the School of Agriculture, it continued with agricultural vocational high schools under the Ministry of Agriculture until 2006, and finally these schools whose number was already reduced were transferred to the Ministry of National Education in 2006.³⁴ Upon the Council of Ministers decision No. 2005/139 in 2005, the name of Directorates of Agricultural Vocational High Schools was changed as “*Directorate of Centre of Agricultural Extension and In-service Training*” before becoming “*Vocational High Schools of Agricultural Technologies*” after 2016. Presently these institutions deliver training in industrial fruit and vegetable culture, decorative plants and landscape, agricultural instruments and machinery and crop farming.³⁵

Theoretically, there is vocational training in the sector of agriculture. Yet, presently there is no link between this training and children engaged in seasonal migrant agricultural works and no record is available about the existence of this link in the past.

After 1980, during the rule of the military regime there was a halt in the process of acceding to international treaties and legislation making. When transition to democratic regime began, first the *European Social Charter* which was signed in 1961 was ratified and given effect. In the period of 10 years from 1989 to

1998, 12 ILO and one UN convention were adopted and ratified. Among these the following were directly related to child labour: *The UN Convention on the Rights of the Child*, *Convention No. 123 on Minimum Age (Underground Work)*, *Convention no. 59 on Minimum Age (Industry-Revised)*, *Convention No. 130 on Minimum Age in Admission to Employment* and *Convention No. 138 Concerning Minimum Age for Admission to Employment*.

In 1987, with its report "Our Common Future" (Brundtland Report) the World Commission on Environment and Development (WCED) promoted the concept "sustainable development" and posed four important problems to the world one of which is poverty.³⁶ Following this report, the UN Conference on Environment and Development held in Rio in 1992 drew attention to the importance of social and economic development with special focus on the environment. The second principle in the report points out to the need to grasp the importance of poverty alleviation in efforts to protect and preserve the environment.³⁷ The Agenda 21 Action Plan emerged after this conference. In the context of this plan the United Nations Commission on Sustainable Development was established in December 1992. It was followed in 1993 by the World Conference on Human Rights, Vienna Declaration and Action Programme on the occasion of the 45th anniversary of the Universal Declaration of Human Rights. On these occasions the importance of development respectful to human rights was stressed once more. The principle I.14. in the Declaration calls for setting poverty alleviation as a target stating that "The existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights"³⁸ All these happen when, at the same time, the International Monetary Fund (IMF) and World Bank asked Turkey to abandon agricultural support programmes.

In terms of its outcomes, this period is assessed with its influence on the next period. It is agreed in general that the 7th Development Plan (1996-2000) published in the last quarter of the period reflected commitments made to the IMF and World Bank, that the 1999

stand-by agreement with the IMF envisaged a radical and structural transformation in agriculture, and that seeds of change in agriculture in the 2000s were sown in this period.³⁹ The 7th Development Plan says "significant arrangements have been made to give a more rational character to agricultural support policies" and gives the reason for this change as follows:

*"Leaving aside ensuring stability in farmers' incomes with the ongoing support policies, support prices that are above world prices have led to excessive expansion of some crops, emergence of surplus product and high storage costs for the state as a result of excessive purchases."*⁴⁰

Hence, in this period, the state officializes its policy of reducing support to agriculture with a policy document and declares the abandonment of crop purchase support. Instead, it promises direct income support which will particularly target small farmers. However, it is not clear how this would take place.

As uncertainty with respect to support for the farmersemerged, the State Planning Organization made the following observation and forecast for those working in agriculture:

*"While rural-to-urban migration continues along with its associated problems, 45 per cent of total employment is still in agriculture where productivity is low. Unpaid family workers make up about 60 per cent of population working in the sector of agriculture and 80 per cent of these unpaid family workers are women. The share of the age group 12-14 in total agricultural labour force remains as 4.5 per cent even after some decline. This share fell to 1.9 per cent in urban areas."*⁴¹

Any decision to support agriculture is a decision that concerns almost a half of working population and this means that what they earn is to be determined under liberal policies. The most important commitment of this policy document concerning workers is that "Agricultural Labour Code will be enacted for wage earners in agriculture"⁴² But this commitment is not fulfilled.

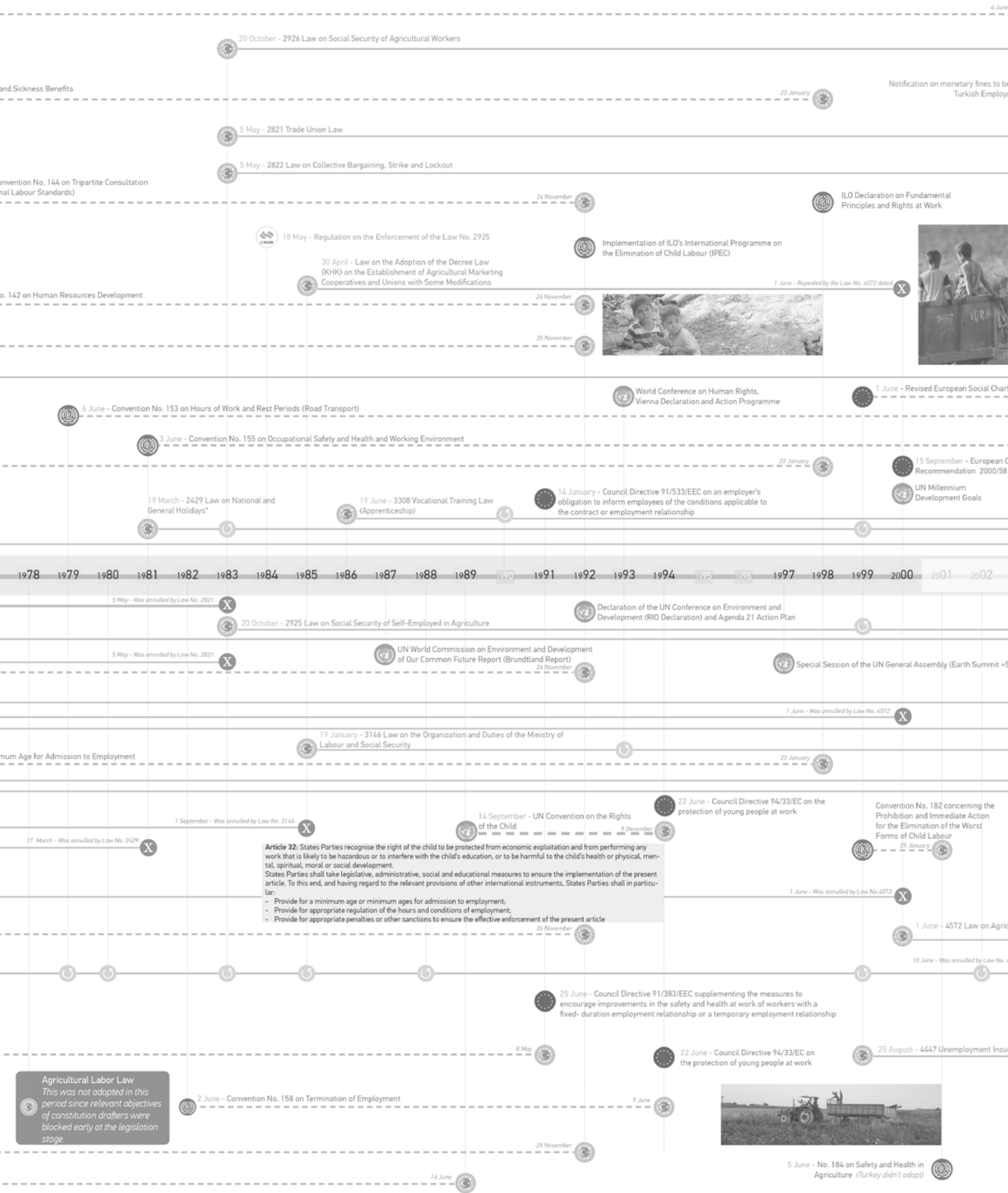
Boratav describes the 80'ies as the years when “radically negative changes took place in the economic status of working and peasant classes including their shrinking share in national income.”⁴³ Yet, in the same period, the United Nations, of which Turkey is a member, adopted the principle that no development can be realized without respect to human rights, set

poverty alleviation as a target, and urged member states to take measures to this end.

The adoption of the *Unemployment Insurance Law* in 1999, at the end of the period was a development to the interest of workers; yet, there is no possibility of actually implementing this law with respect to both self-employed and agricultural workers.

Table 13. Conventions and Laws Taking Effect in the Period 1981-2000

	1981	Law No. 2429 on National and General Holidays *
	1983	Trade Union Law no. 2821 Law No. 2822 on Collective Bargaining, Strike and Lockout Law No. 2925 on Social Security of Agricultural Workers Law No. 2926 on Social Security of Self-Employed in Agriculture
	1985	Law No. 3146 on the Organization and Duties of the Ministry of Labour and Social Security Law No. 3186 on the Adoption of the Decree Law (KHK) on the Establishment of Agricultural Marketing Cooperatives and Unions with Some Modifications
	1986	Law No. 3308 on Vocational Training (Apprenticeship)*
UN World Commission on Environment and Development Our Common Future Report (Brundtland Report)	1987	
European Social Charter (1961)	1989	
C123 Minimum Age (Underground Work) (1965)		
Council Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship	1991	Labor Law No. 1475
Council Directive 91/383/EEC supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed- duration employment relationship or a temporary employment relationship		



Agricultural Labor Law
 This was not adopted in this period since relevant objectives of constitution drafters were blocked early at the legislation stage.



5 June - No. 184 on Safety and Health in Agriculture (Turkey didn't adopt)

C87 Freedom of Association and Protection of the Right to Organize (1948)	1992	
C135 Workers' Representatives (1971)		
C59 Minimum Age (Industry) (Revised) (Revised-1937)		
C77 Medical Examination of Young Persons (Industry) (1946)		
C142 Human Resources Development (1975)		
C144 Tripartite Consultation (International Labour Standards) (1976)		
Declaration of the UN Conference on Environment and Development (RIO Declaration) and Agenda 21 Action Plan		
World Conference on Human Rights, Vienna Declaration and Action Programme	1993	
Council Directive 94/33/EC on the protection of young people at work	1994	
C158 Termination of Employment (1982)		
UN Convention on the Rights of the Child (1989)		
Special Session of the UN General Assembly (Earth Summit +5)	1997	
C130 Minimum Age for Admission to Employment (1973)	1998	
C29 Forced Labour (1930)		
C138 Minimum Age for Admission to Employment (1973)		
	1999	Unemployment Insurance Law*

* Legislation presently in effect.

2.3.5

The Period 2001-2018: *Agricultural Sector is Still Invisible in Working Life*

This period started with the submission of five letters of intention by governments to the IMF and World Bank stating the commitment to alter agricultural support policies and shift to the policy of direct income support. The submission of a letter of intention to the World Bank on 10 March 2000 and direct World Bank scrutiny over the Agricultural Reform Implementation Project is considered as an important characteristic of this period.⁴⁴ Then, the decision of the Council of Ministers to replace support policies and instruments adopted before 2000 with direct income support was given effect upon its publication in the Official Gazette.⁴⁵ With this decision, direct income support and farmer registry system are put to practice in eight districts of four pilot provinces: Polatlı (Ankara), Serik, Manavgat (Antalya), central district, Kahta (Adiyaman), Akçaaba and Sürmene (Trabzon).

Within the framework of Common Agricultural Policy (COP) pursued by the European Union, this period is characterised by the following: transition from production focused to product focused model in agricultural support schemes; integration of agricultural support to the Single Payment Scheme as of 2012; termination of policies like direct income and export support; transfer of funds to rural development initiatives; and increase in support schemes not related to production.⁴⁶

While engaging in a plannification of this nature, one would normally expect to foresee the impact of interventions to agricultural sector not only on national economy but also on employment and workers' rights and to implement legislative and administrative measures to protect people working in agriculture, as a disadvantaged group, from negative consequences. Hence it is crucial to take a look at the legislation of the time and check to what extent it meets this expectati-

on. Further, these plans should also take into account migration-triggered changes taking place in labour markets that gained momentum with migration from countries like Bulgaria, Romania, Ukraine, Georgia, Armenia and Azerbaijan in the 2000s⁴⁸ and large influx of people from Syria after 2011.

As a matter of fact, an assessment made in the seventh year of these policies observes that *“since the system of direct income support lying at the centre of World Bank/IMF led agricultural policies are implemented on the basis of proprietorship and land size, it has reached or provided benefit to poor peasants much less than what is claimed.”*⁴⁹ According to this assessment, 51 per cent of direct income support was distributed among 476,000 farmers in 2006 while 2,324,000 farmers, constituting 83 per cent of total, received the remaining 49 per cent, which meant a significant imbalance. Rates were altered over years and finally the system was suspended in 2007, leaving its place to farmer registration system. It now consists of fuel and fertiliser support extended again according to land size and crop-based support in hazelnut.⁵⁰

The importance of these policies with respect to employment and particularly to child labour is that they neglect the fact that farmers cannot foresee how much they would eventually gain as they have no control or negotiation power on cost items including inputs like fuel, fertilisers, agricultural chemicals, electricity, seed and machinery. Consequently, they exert excessive pressure on labour cost as the only domain where farmers believe to have a say in the production process when seeking to minimise production costs. Indeed, most agricultural inputs other than labour are dependent to global markets and their prices are determined at global level. This is also true for small farmers that live on subsistence economy and mainly based on family labour. It is therefore important for people employed in agriculture to have their legal safeguards.

As was the case in the earlier period, also in this one, agricultural policies of Turkey underwent changes under the supervision of the IMF and World Bank while the United Nations kept its efforts for sustainable development. The 2000s started with the adoption of the “Millennium Declaration” at the UN General Assembly held on 6-8 September 2000 with the participation of 189 countries. The Millennium Development Goals include:

(1) Taking 1990 as baseline, reducing by half the proportion of people living on less than a dollar a day and reducing by half the proportion of people who suffer from hunger until 2015.

(2) Ensuring that all boys and girls complete a full course of primary education until 2015.⁵¹

This was followed first by the Doha Development Round in 2001 and then in 2002, development was declared as a common responsibility of all with the Conference on Financing for Development (Monterrey Consensus) held in Mexico, urging the US and EU countries to support the financing of development. Similar remarks were repeated in the Johannesburg Documents of 2002. The 48th Paragraph of the outcome document of the 2005 World Summit states:

“These efforts will also promote the integration of the three components of sustainable development – economic development, social development and environmental protection – as interdependent and mutually reinforcing pillars. Poverty eradication, changing unsustainable patterns of production and consumption and protecting and managing the natural resource base of economic and social development are overarching objectives of and essential requirements for sustainable development.”⁵²

The outcome document of the 2012 UN Sustainable Development Conference (Rio+20) draws attention to the importance of the relationship between poverty eradication and sustainable development.

The programmes of the United Nations on poverty alleviation yielded any strong effect neither on international policies nor on domestic legislation in the 2000s as was the case in the period 1980-2000. Yet, recognition of the relationship between development and ending poverty as well as regarding its financing as a common responsibility, should have strengthened international cooperation in this area. However, it is unfortunate that relations of production and marketing among traders, farmers and workers seemed totally unaffected by this wind.

It is also the period when Turkey was engaged in EU accession negotiations. In line with the atmosphere of this process first the Labour Code No. 4857 took effect in 2003 and many regulations were issued.⁵³

As a branch of economic activity, agriculture was included in the Labour Code for the first time in 2003. However seasonal agricultural works or a large part of agricultural workers practically remain out of the scope of this law since it only covers those enterprises employing more than 50 workers. As can be seen in Tables 5 and 6, the legislation on this issue is quite dispersed. Still some articles in the Labour Code are applicable to agricultural enterprises (Table 14).

While agricultural enterprises employing 51 and more workers will be regulated by the Labour Code (No. 4857), others employing less than 50 will be subject to the Code of Obligations (No. 6098). The Labour Code also makes a distinction between temporary and continual work and envisages the application of the Code of Obligations in the former. But there is an exception to this rule. Those provisions of the Labour Code relating to such fundamental rights as working periods, minimum age in employment, prohibitions on child employment, paid weekly rest and other paid leaves are to be applicable to “temporary works” as well. Further, there is no distinction of temporary and continual works when it comes to inspections to be conducted on enterprises operating un-

der the Labour Code (Articles 91, 92, 93). Therefore, although seasonal agricultural works are considered as temporary, agricultural enterprises employing 51 or more workers are subject to labour inspection. The remaining falls in the jurisdiction of the Code of Obligations when breach of contract provisions occurs. In addition to this duality with respect to the main roof there are also arrangements in more than one

legislative text in matters such as prohibition of employment and minimum age. Moreover, some of these legislative acts are not essentially related to employment such as the Law on Public Health and Law on Police Duties and Authorities. This scattered nature of the legislation makes both identifying the principle and inspecting compliance difficult.

Table 14. Labour Code Provisions Applicable to Agricultural Workers

Article Title	Article No.	Condition of Applicability
Wage and its remuneration	Article 32	No condition
Protected portion of the wage	Article 35	
Wage account slip	Article 37	
Deduction of fine from wage	Article 38	
Work during maternity and nursing leave	Article 74 (Additional paragraph: 29/1/2016-6663/Art.22)	“to be employed on work contract”

Table 15. Conventions and Laws Taking Effect in 2001 and Afterwards

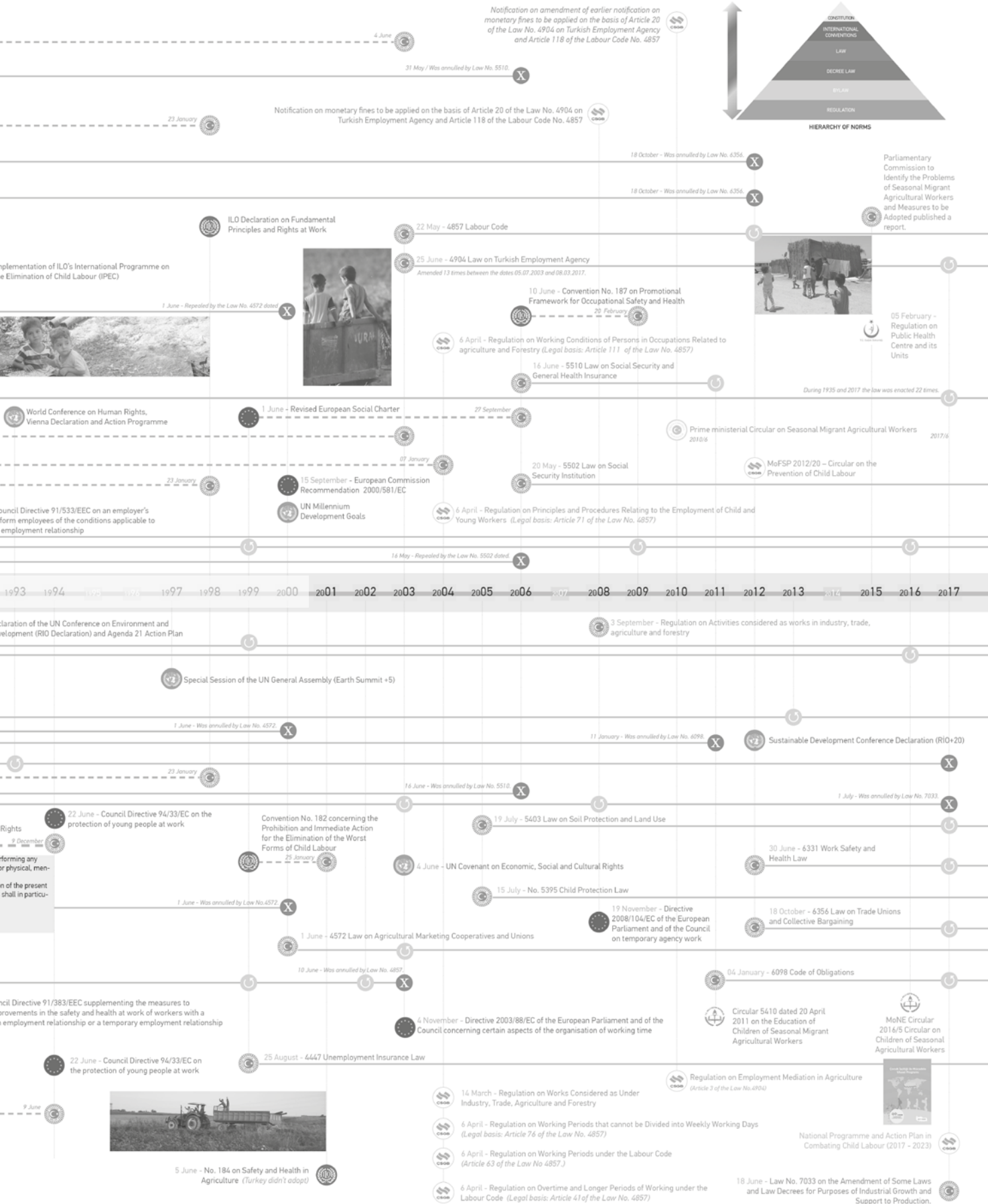
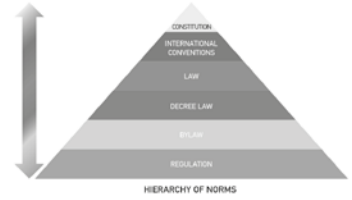
UN Millennium Development Goals	2000	Law No. 4572 on Agricultural Marketing Cooperatives and Unions
European Commission Recommendation 2000/581/EC		
C 182 Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)	2001	
UN Covenant on Economic, Social and Cultural Rights (1966)	2003	Labour Code No. 4857* Law no. 4904 on Turkish Employment Agency *
Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organization of working time		
C153 Hours of Work and Rest Periods (Road Transport) (1979)		

C155 Work Safety and Health (1981)	2004	
	2005	Law No. 5403 on Soil Protection and Land Use *
Revised European Social Charter	2006	Law No. 5502 on Social Security Institution * Law No. 5510 on Social Security and General Health Insurance *
Directive 2008/104/EC of the European Parliament and of the Council on temporary agency work	2008	
C187 Promotional Framework for Occupational Safety and Health (2006)	2009	
	2011	Code of Obligations No.6098 * Circular 5410 dated 20 April 2011 on the Education of Children of Seasonal Migrant Agricultural Workers (MoNE)
Sustainable Development Conference Declaration (RIO+20)	2012	Work Safety and Health Law No. 6331 * Law No. 6356 on Trade Unions and Collective Bargaining * Circular 2012/20 on the Prevention of Child Labour (Ministry of Family and Social Policies-MoFSP)

* Legislation presently in effect.

The Period 2001 - 2018 (Legislation Approved, Enacted and Repealed): Agricultural Sector is Still Invisible in Working Life

Notification on amendment of earlier notification on monetary fines to be applied on the basis of Article 20 of the Law No. 4904 on Turkish Employment Agency and Article 118 of the Labour Code No. 4857



Parliamentary Commission to Identify the Problems of Seasonal Migrant Agricultural Workers and Measures to be Adopted published a report.



05 February - Regulation on Public Health Centre and its Units

During 1935 and 2017 the law was enacted 22 times.



World Conference on Human Rights, Vienna Declaration and Action Programme

Council Directive 91/533/EEC on an employer's form employees of the conditions applicable to employment relationship

Declaration of the UN Conference on Environment and Development (RIO Declaration) and Agenda 21 Action Plan

Rights
forming any
or physical, men-
of the present
shall in particu-

Council Directive 91/383/EEC supplementing the measures to improvements in the safety and health at work of workers with a employment relationship or a temporary employment relationship



5 June - No. 184 on Safety and Health in Agriculture (Turkey didn't adopt)

Regulation on Employment Mediation in Agriculture (Article 3 of the Law No. 6098)

14 March - Regulation on Works Considered as Under Industry, Trade, Agriculture and Forestry

6 April - Regulation on Working Periods that cannot be Divided into Weekly Working Days (Legal basis: Article 76 of the Law No. 4857)

6 April - Regulation on Working Periods under the Labour Code (Article 63 of the Law No. 4857)

6 April - Regulation on Overtime and Longer Periods of Working under the Labour Code (Legal basis: Article 41 of the Law No. 4857)

18 June - Law No. 7033 on the Amendment of Some Laws and Law Decrees for Purposes of Industrial Growth and Support to Production.

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- 6 www.adalet.gov.tr/duyurular/2011/eylul/anayasalar/1982ilkson.pdf
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53 “Some of these regulations are on: Occupational Health and Safety, Safety and Health Indicators, Health and Safety in Construction Works, Protection of Persons Working in Explosive Environments, Health and Safety Measures in Works where Chemical Substances are Used, Health and Safety Measures in Works where Asbestos is Used, Health and Safety Measures in Buildings and their Annexes, Use of Personal Protective Equipment at Workplaces, Health and Safety Conditions in using Work Equipment, Health and Safety Conditions in Underground and Surface Mining Enterprises, Occupational Health and Safety Committees, Principles and Procedures Relating to the Employment of Children and Young Workers, Health and Safety in Temporary Employment or Employment for a Definite Period, Heavy and Hazardous Works, Personal Protective Equipment, Duties, Authorities, Responsibilities and Training of Work Safety Experts, Occupational Health and Safety Survives” Çiçek, Ö., Öçal, M. (2016). Dünyada ve Türkiye’de İş Sağlığı ve İş Güvenliğinin Tarihsel Gelişimi. *Emek ve Toplum Dergisi*, 5(11), p.127



3

LEGISLATIVE ARRANGEMENTS RELEVANT TO SEASONAL MIGRANT CHILD WORKERS IN AGRICULTURE



This part analyzes legislative arrangements related to seasonal migrant children working in agriculture under five headings within the framework of the international legislation and domestic laws that are in effect:

- (1) Minimum age in employment
- (2) Working time and leaves
- (3) Remuneration
- (4) Social security
- (5) Right to organize

Before starting the analysis on the basis of these headings it is important to give explanations to the following concepts first: Agricultural work, seasonal work, agricultural worker and seasonal agricultural worker.

There is no definition of **agricultural work** in the legislation, but what can be considered as agricultural work with respect to the implementation of the Labour Code is provided for by the Regulation on Works in Industry, Trade, Agriculture and Forestry.¹ Accordingly the following are considered as agricultural works:

- All types of work on soil, growing, sowing, planting, grafting, irrigating, fertilizing, harvesting, cleaning, processing and sifting; combating plant diseases and pests; operation of irrigation system by irrigation unions on the basis of cost sharing; land protection; conservation of pastures, meadows, land and water sources involving all types of plants with or without fruit; tea, cotton, tobacco and fibre plants; citrus fruit; rice and pulses; trees, shrubs, vine stock, seed, seedling and sapling; vegetables and field crops; fodder crops and decorative plants.
- Breeding, production, rehabilitation and genetic improvement of all kinds of draft and milk-meat animals; related works of care, shepherding, domestication and shearing; collection and storage of products obtained and combat against animal diseases and parasites.

In classifying a work as **seasonal**, the criterion is that work takes place only in some parts of the year. But it does not mean that all activities must stop in the rest of the year. Works that require large scale employment in a specific period of the year and cease in the rest of the year with only small number of workers employed are also considered as seasonal.²

However, the Supreme Court resolves that, when seasonal works are concerned, in case an agricultural worker acts a contract every year with the same employer, it must be considered as the existence of a single contract of indefinite period between the parties and that the period not worked must be considered as a time when the contract is in suspension.³ This opinion of the Court is important with respect to the termination of work contract. A worker who has worked at the same workplace regularly every year is entitled to severance and notice pay in case his contract is terminated unfairly.

It is also stated that any seasonal work can last for 6 months the longest and cannot be considered as seasonal if it is longer. It goes on that work contracts should be categorised as with definite or indefinite period depending on how long the work is performed.⁴ It is acknowledged that repetitive work at the same enterprise should be subject to work contract of indefinite period where contract is not terminated but suspended upon the completion of a specific work.

Definitions of neither **agricultural worker** nor **seasonal agricultural worker** exist in the legislation. In the relevant literature agricultural worker is defined as a “real person working in agricultural activities on the basis of a contract and as subject to an employer.”⁵ It is required that contract is acted by “middleman, worker and employer”⁶ and it is in written form “in case its duration is longer than one year.”⁷ Together with the term “migrant” the term “seasonal” is used to denote workers coming in from different provinces while workers who are inhabitants of the same province are referred to as “temporary-daily”.⁸ The Labour Code defines works that last shorter than 30 days as “transitory” and longer period works as “continual” (Art.10).

In addition to all these, there is also multiplicity of legislative acts that agricultural workers are to be subject to. Depending on their periods of employment and employment environments, agricultural workers may fall in the domain of the Labour Code or Code of Obligations.

The Code of Obligations addresses employment relations in the context of service contract and does not provide for any specific protection to labour status since working conditions are to be specified by service contracts. Further, the settlement of disputes arising from these contracts rests with courts as cases of legal dispute. Yet the enforcement of the Labour Code is subject to various inspection procedures including those by the Ministry of Labour and Social Security.

The Labour Code No. 4857 specifies that its provisions are not applicable to agricultural enterprises employing less than 50 workers (Art.4/1.b). Many provisions of the Code are not applicable also in works that take 30 days the longest (Art.10). Yet, provisions in articles 34 to 38 of the Code relating to wages are applicable to agricultural workers regardless of enterprise size and duration of work (Art. 113).

Consequently, for agricultural workers to benefit from all provisions of the Labour Code:

- Their workplaces must be engaged in one of the activities specified in the Regulation on Works in Industry, Trade, Agriculture and Forestry,
- There must be at least 51 workers employed in the enterprise, and
- Employment must last for at least 30 days.

Yet, there is almost no agricultural enterprise satisfying all these. Data related to average size of agricultural enterprises in the country as found by various studies confirm this. According to a study:

“Hazelnut culture takes place not in large but in small enterprises. The distribution of hazelnut culture areas according to Ordu Province Farmer Registration System (FRS) for the period 2007-2008 shows that 47 per cent of enterprises have

plots smaller than 20 decares and 92 per cent have plots smaller than 50 decares. The average size of plots in Ordu province is 24 decares.”⁹

The following observation by Öz and Bulut (2013) succinctly summarises the outcome of having no specific legislation:

“As can be seen, agricultural workers left out of the coverage of Labour Code cannot enjoy such rights as acting contract, wage fixing, termination of contract, weekly and annual leave, sickness leave, sanctions in work safety and health, etc. Working hours are extended beyond normal working hours in violation of the Labour Code. Since family is a working unit, children and adolescents are employed again in violation of prohibitions introduced by legislation. Even worse, even in enterprises employing more than 50 workers, seasonal workers still remain as informal since they are employed temporarily in different works. (MSG Board of Editors, 2010, 4).”¹⁰

3.1

Legislative Arrangements Related to Minimum Age in Employment

3.1.1

International Arrangements Related to Minimum Age in Employment

When children are concerned, the first source to look for identifying legislative framework is the **UN Convention on the Rights of the Child**. According to this convention all persons under age 18 are to be considered as child (Art.1) and children “are to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.” (Art. 32/1). While adopting relevant legal, administrative, social and education related measures

for the implementation of this article, States Parties shall (Art.32/2);

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article (Art 32/c).



UN Convention on the Rights of the Child

Article 32: States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.

States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- Provide for a minimum age or minimum ages for admission to employment;
- Provide for appropriate regulation of the hours and conditions of employment;
- Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.



While the Convention defines all persons under age 18 as child, it does not stipulate this age as a condition for participating to working life. Though it accepts setting an age under 18 for admission to employment, it leaves it to States Parties to determine that age with due account of developmental needs of children.

Taking a look at other international arrangements related to age in employment, the ILO Convention No. 10 Concerning Minimum Age in Agriculture that Turkey is not a State Party to prohibit the employment of children under age 14 in agriculture (Art.1). However, the **ILO Convention No. 138 Concerning Minimum Age for Admission to Employment** “has generalized and updated all minimum age conventions that separately set minimum ages in sea, agriculture, trimming and stoking, non-industrial works, industry, fishing, works involving radiation, and underground mines.” Consequently, the minimum age for employment in agriculture is made subject to the provisions of the Convention No. 138.

This Convention calls States Parties to pursue “a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.” (Art. 1) This Convention too requires that minimum age set by States Parties should coincide with the age that compulsory education ends and, in any case, not below age 15. However, the Convention also allows for some exceptions:

- 1) Notwithstanding the provisions of paragraph 3 of this Article, a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.
- 2) National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is not likely to be harmful to their health or development; and not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

- 3) National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling on work which meets the requirements set forth in sub-paragraphs (a) and (b) of paragraph 1 of this Article.

In paragraph 1 of Article 7 providing for the right of children and adolescents, the **European Social Charter** asks States “to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education”; and in 2nd paragraph, “to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy.”

However, it is not specified what these occupations are. Thus, for the provision to be implemented, there is need to list these occupations or to identify risks on the basis of trades. Persons under age 18 to be employed in occupations identified by domestic legislation must be given medical examination in recruitment and medical examinations should be repeated in regular intervals (Art.7/9). It is reported that the European Committee on Social Rights considers intervals of 3 years for these examinations too long and examinations should focus on specific situations of children and especially on risks they are exposed to.¹¹

This kind of listing is necessary not only for heavy and hazardous works but light ones as well. It is stated that the Committee commented in the case of Netherlands that the work of children at age 15 in distributing daily papers for two hours starting from 6 a.m. is not in compliance with the European Social Charter.¹²

The **Directive 94/33/EC on the Protection of Young People at Work**¹³ requires States Parties to ensure that “the minimum working or employment age is not lower than the minimum age at which compulsory full-time schooling - as imposed by na-

tional law - ends or 15 years in any event.” (Art. 1/1/b). Exceptional cases in which the Directive may not be implemented include the following¹⁴:

- Works that are for short periods of time, within family or in family enterprises that are not hazardous for young persons.
- Works which, by their nature and specific circumstances of their performance, do not have any harmful effects on the development, health and safety of children and do not interfere with their school attendance, vocational training or participation to other training programmes approved by authorities.
- Cultural, artistic, sportive or advertisement activities to be separately specified for each (There is need to get permission from a specified authority in these cases).
- For those over at least age 14, works in which labouring goes together with education and training or at-the-site learning programmes.

Article 7 in the same Directive identifies works that children and young people cannot be employed. While identifying these works the main criterion is to

“protect children from any specific risks to their safety, health and development which are a consequence of their lack of experience, of absence of awareness of existing or potential risks or of the fact that young people have not yet fully matured.” Besides the prohibition of these works to children, any work that children maybe potentially employed should also be assessed by referring to this criterion. The Directive prohibits the employment of children in:

- work which is objectively beyond their physical or psychological capacity;
- work involving harmful exposure to agents which are toxic and carcinogenic;
- work that may cause heritable genetic damage, or harm to the unborn child or which in any other way chronically affect human health;
- work involving harmful exposure to radiation;
- work involving the risk of accidents which it may be assumed cannot be recognized or avoided by young persons owing to their insufficient attention to safety or lack of experience or training;
- work in which there is a risk to health from extreme cold or heat, or from noise or vibration.

Table 16. Provisions in International Conventions Related to Age in Employment

Date of Adoption	Date of Ratification	International Conventions	Minimum Age in Employment	Minimum Age in Employment in Agriculture
31.08.1923	Turkey is not State Party	ILO Convention No. 10, Minimum Age for Children Employed in Agriculture		14
18.10.1961	16.06.1989	European Social Charter	15	Not specified
06.06.1973	23.01.1998	ILO Convention No. 138 Concerning Minimum Age for Admission to Employment	Age at which compulsory education ends - 15 in any case	
14.09.1990	09.12.1994	UN Convention on the Rights of the Child	Not specified	Not specified
	22.06.1994	Council Directive 94/33/EC on the protection of young people at work	15	No specific arrangement
17.06. 1999	25.01.2001	ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour	18 in hazardous industrial works	18 in seasonal migrant agricultural works

The **ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour** covers areas of work that are harmful to children in all circumstances. Besides many such areas, work “*which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children*” is also considered as covered by this convention (Art.3). Under this Convention, Turkey recognized child labour in seasonal migrant agricultural works as the worst form of child labour.

3.1.2

National Arrangements Related to Minimum Age in Employment

In international law, the objective of setting minimum age for employment is to protect children: “(...) *from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.*”¹⁵ Hence, any evaluation regarding national legislation must seek compliance in this regard.

The first general provision in the republican period related to age in employment can be found in the **Law on Public Health** that took effect in 1930. Under this legislation:

“It is prohibited to employ any children under age twelve as worker or apprentice in factories

and manufacturing shops or in mining works.” (Art.173).

Though this provision remains behind our present day standards it still indicates a level of sensitivity concerning the employment of children at that time.

The Primary Education and Education Law No. 222 dated 1961 arranges for two situations in its Article 59:

- Those who are at primary schooling ages but not attending any compulsory education institution cannot be employed at any public or private enterprise either for wage or otherwise.
- Those who document their enrolment to primary education institutions can be employed at such enterprises only out of school hours and in full compliance with legislative provisions arranging the conditions of employment of children.

Compulsory education “*covers children in the age group 6-13. This period starts at the end of September that the child completes age 5 and ends at the end of the school year that the child completes age 13 and steps into age 14.*” (Art.3). After an amendment made in 2012¹⁶, in the **Fundamental Law on National Education**¹⁷ it is stated that “*Primary education institutions consist of 4-year compulsory primary schools and 4-year general and religious secondary schools that offer options between compulsory and different programmes.*” (Art.25). Further, secondary education was also made compulsory thus making education compulsory from age 6 to age 18.

Table 17. National Legislative Arrangements Related to Minimum Age in Employment

Date of Taking Effect	Law	Minimum Age in Employment	Minimum Age in Employment in Agriculture
06.05.1930	Public Health Law No. 1593	12	No specific arrangement
15.06.1936	Labour Code No.3008 (Repealed by the Law No. 1475)	12	No specific arrangement
01.09.1971	Labour Code No.1475 (Repealed by the Law No. 4857)	12 + report	No specific arrangement
22.05.2003	Labour Code No. 4857	14 - 15 - 18	

In general, arrangements in the labour code of Turkey are in compliance with provisions set by international conventions. As can be seen in Table 17, it is required that minimum age in employment should coincide with the end of compulsory schooling age and not less than 15 though with some exceptions.

Under the Labour Code No. 4857, employment of children who have not completed age 15 is prohibited. However, this rule has two exceptions in regard to age (Art. 71):

- 1) Children who have not completed age 14 of fourteen may be employed in the artistic, cultural and advertising activities that will not hinder their physical, mental and moral development and that will not prevent their school attendance, on condition that a written contract is entered and permission is obtained for each activity separately.
- 2) Children who have completed age 14 and their primary education on light works that will not

hinder their physical, mental and moral development, and for those who continue their education, in jobs that will not prevent their school attendance. What can be considered as light works are provided by the relevant regulation.

The **Regulation on Procedures and Principles Relating to the Employment of Child and Young Workers** and its annexes which is based on the Labour Code No. 4857 introduces three categories in the context of works that children may be employed after age 14. According to this arrangement, works in which children can be employed in agriculture and animal husbandry vary with respect to ages of 14, 15 and 16 (Table 18).

Accordingly, children;

- 1) *Can be employed only in those works that are explicitly stated as so.*

Table 18. National Legislative Arrangements on Minimum Age in Employment in Agriculture and Animal Husbandry

Type of Work	Age				
	14	15	16	17	18
Picking fruits, vegetables and flowers except in circumstances that pose the risk of falls and injuries	X	X	X	X	X
Ancillary works in poultry farming and in sericulture	X	X	X	X	X
Flower marketing and decoration works	X	X	X	X	X
Drying and processing fruits and vegetables		X	X	X	X
Processing tea		X	X	X	X
Preparation of various types of dried fruits		X	X	X	X
Flower culture except medication and fertilizing		X	X	X	X
Spinning and weaving works given that workplaces have climatization and aspiration facilities and separated from rubbles as well as willowing, combing and starching operations on cotton, flax, silk and other materials.		X	X	X	X
Pre-production work in sugar plants		X	X	X	X
Bagging, barrelling, piling and other similar works that do not require lifting of weights heavier than 10 kilograms without machinery		X	X	X	X
Combing out and shredding feather and hair from birds and animals and other similar works			X	X	X
Works in cereals stores, flour and paddy plants			X	X	X

As can be seen in Table 18, this arrangement includes nothing at all regarding seasonal migrant agricultural workers. Still, children cannot be employed in works other than those listed in this table. This is the first important limitation.

2) *Children can be employed in works that are explicitly stated as so only if necessary conditions are satisfied.*

Going over addendum to the regulation, we see that there are agricultural works in which persons over age 14 can be employed (Table 18). However, this does not mean that children over age 14 can be employed in, for example, picking flower where there is no risk of falling. While the regulation considers some works as light, it still brings some rules to employing children in these light works. Hence, this arrangement does not mean that children at age 14 can be employed in all types of flower picking work even if there is no risk of falling and getting injured. The following conditions have to be met for employing children at relevant age in works given in Table 18:

- a. Safety, health, physical, mental, moral and psychosocial development needs, personal capacity and competence of children must all be considered in their placement to jobs and throughout the period of employment.
- b. When school children are concerned, their work should not interfere with the following:
 - School attendance and performance,
 - Preparations related to choosing an occupation,
 - Participation to vocation training courses authorised by the Ministry of National Education.
- c. Further, the list should exclude the following works that can be done only by those over age 18:
 - Completion and cleaning works,¹⁸
 - Production and wholesale marketing of alcohol, tobacco products and other substances that may cause addiction,

- Wholesale or retailing of inflammable, explosive, hazardous and harmful materials; producing, processing and storing of such materials and all others works involving exposure to,
 - Work environments where there is high noise and/or vibration,
 - Work in extremely hot or cold environments,
 - Working with substances hazardous to human health and may lead to occupational diseases; exposure to radioactive substances and harmful rays
 - Works that require extreme attention and continuous standing on foot,
 - Piece rate payment and payment on premium system
 - No possibility of returning home or to family after workday with the exception of education-training related works.
 - Works that are found by workplace health staff as beyond physical and psychological capacity of children,
 - Works that may entail lack of appropriate attention for safety due to insufficient experience and training,
 - Money carrying and collection works,
 - Works that are performed at night as stated in paragraph 1 of Article 59 in the Labour Code No. 4857.
- d. Finally, employers have to ensure the protection of children from risks that may jeopardise their development, health and safety due to their unawareness or state of not being fully developed.

Employment without being subject to these limitations can be possible only in the context of vocational training. The Regulation on Procedures and Principles Relating to the Employment of Child and Young Workers envisages limitations that we gathered under two headings above:

- Conditions relating to ages and fields of work specified in the regulation,
- Conditions of work and measures that employer has to take.

Young workers above age 16 who have completed vocational and technical education schools and institutions under the **Vocational Training Law No. 3308** can be employed in works commensurate with their occupations and fields of expertise without being subject to limitations specified in annexes to the Regulation on the condition that their safety, health and morals are fully safeguarded.

Under the original Vocational Training Law, conditions for being employed as apprentice consisted of being a primary school graduate at least and over age 13 without having stepped into age 19. Upon an amendment introduced in 2016, the condition related to age was removed and educational background was changed as secondary school meaning that apprentices must have completed age 14.

Though the provisions of this law find it sufficient to have completed age 14 to be employed in the context of apprenticeship, this rule has no applicability in the sector of agriculture.

3.1.3

Evaluation of Legislative Arrangements Related to Minimum Age in Employment

The *ILO Convention No. 138 Concerning Minimum Age for Admission to Employment* stipulates that minimum age in employment shall not be less than the age of completion of compulsory schooling and, in any case, not be less than 15 years. While acceding to the *ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, Turkey identified seasonal migrant agricultural works as the worst form of child labour and envisaged minimum age as 18. The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than

Table 19. Comparison of Legislative Arrangements on Minimum Age in Employment

Date of Adoption	Date of Ratification/ Taking effect	International Convention	Minimum Age in Employment	Minimum Age in Employment in Agriculture
31.08.1923	Turkey is not State Party	ILO Convention No. 10 Concerning Minimum Age for Children Employed in Agriculture		14
	06.05.1930	Public Health Law No. 1593	12	No specific arrangement
18.10.1961	16.06.1989	European Social Charter	15	Not specified
06.06.1973	23.01.1998	ILO Convention No. 138 Concerning Minimum Age for Admission to Employment	Age at which compulsory education ends – 15 in any case	
14.09.1990	09.12.1994	UN Convention on the Rights of the Child	Not specified	Not specified
	22.06.1994	Council Directive 94/33/EC on the protection of young people at work	15	No specific arrangement
17.06. 1999	25.01.2001	ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour		Seasonal migrant agricultural works ¹⁸
	22.05.2003	Labour Code No. 4857	14 - 15 - 18	

the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.

In national legislation, compulsory education consists of primary and secondary education, it starts at age 6 and is completed in 12 years. Hence, the age at which compulsory education ends is 18. At this point, however, there is disharmony between the Fundamental Law on Education and the Labour Code which leads to ambiguity. According to the former, compulsory primary education ends when the child is 14 years old while the latter prohibits the employment of children yet not completed age 14.

Secondary education which is a part of compulsory education period covers ages 14 to 18 (Art.25) and the law says secondary education may be in general, vocational and technical education institutions. The gap that leads to a problem is right at this point. While the Labour Code identifies criteria related to age, the condition it stipulates in the context of educational status is “*school enrolment and attendance*” (Art.71). When the condition “not interfering with school attendance and performance” is combined with the possibility of having secondary education in non-formal education institutions the condition itself gets weaker with respect to its preventive character.

After formal education ceased to be compulsory in secondary education, it became easier to engage in child labour. As for children in compulsory formal education, they may be in crop fields even when schools are open, indicating that the compulsory nature of education cannot provide sufficient protection by itself.

As can be inferred from above, the legislation relating to children’s ages in employment is not easily comprehensible. The Law on Police Duties and Authorities debates the issue of minimum age in practice as a result of such factors as arrangements for some branches of work, ambiguity about areas where the Labour Code is applicable and specification of different ages in various conventions.

There is no specific arrangement relating to agriculture and in particular to seasonal migrant agricultural labour. Neither the Regulation on Procedures and Principles relating to the Employment of Child and Young Workers that indicates works that children can be employed can fully bring clarity to the issue. The regulation, in its appendices, does mention some agricultural works while referring to children, but introduces no specific arrangement related to migrant workers. Since this arrangement does not explicitly refer to the status of being migrant, it can lead to the conclusion that children cannot be employed in seasonal migrant works; but it is also possible to reach the conclusion “since the regulation makes no arrangement related to the form of employment and suffices with listing branches of work, then children can be employed, in specified branches, in case their age allows for.” The absence of any guarantee on minimum age in practical terms is criticised by the European Committee on Social Rights in its report on Turkey.¹⁹ The existing legislative arrangement is not capable of protecting children from economic exploitation in terms of age.

Studies show that 70 per cent of local and 73 per cent of migrant agricultural workers started this work before age 15. Taking working children, it is observed that the rate of employment in agriculture gets higher as age gets smaller.²⁰ 16 per cent of local workers and 20 per cent of migrant workers started this work while they were in the age interval 16-25. The common nature and importance of employing children in this sector becomes clearer given that the percentage of those starting to work in this sector after age 25 is only 5 per cent or lower.²¹

“According to survey data, interviews with workers and observations, children spend a part of their childhood by working since their families have no place to leave their children when they go out to fields or orchards to work. Children of families engaged in migrant seasonal agricultural works as a means of subsistence say that they can attend school only for few

months in their original settlements and since they move together with their families, they have to drop school or attend distance learning. Data suggest that children cannot live their childhood and have to work at ages of playing due to economic difficulties that their families face.”²²

A survey conducted in Çukurova reports that children as young as 10 can be found in crop fields²³:

“While 7 per cent of children in the age group 6-10 actually work in crop fields, it increases to 52 per cent of boys and 60 per cent of girls in the age group 11-14. In the age group 15-18, 91 per cent of children are out in fields working that is 9 out of each 10 adolescents are working.”

The present survey²⁴ conducted in Çukurova where many other crops besides cotton and citrus fruit are grown, found that 63 per cent of families return home and 37 per cent does not. This suggests that there is a significant population for whom life in tents has gained a continuous character; in other words, there is a type of settlement that embodies stationary and transitory elements together. In the settlement area where the present survey was conducted it was found that one in every three persons is under age 10; 17 per cent of the community is in the age interval 11-15 and 17 per cent in the interval 16-20, meaning that 63 per cent of persons in this settlement are under age 20. Another survey that covered a wider geographical area found that children constitute 52 per cent of total people.²⁵ Children who accompany their families in migrant works are de facto engaged in agricultural works even when not employed by any employer. It is reported that for the school year 2016-2017, the number of children of seasonal migrant families enrolled to e-School is 22, 414; that there are around 400,000 children engaged in seasonal migrant works; and that these children constitute about a half of all working children.²⁶ Children start working, on average, at age 9.4, which is 9.2 in boys and 9.6 in girls.²⁷

The Ordu Governorate Provincial Coordination Committee set the minimum age for employment in hazelnut harvesting as 16 for the year 2017.²⁸ There is need to discuss to what extent this decision is in compliance with the legislation. The regulation requires, for children to be employed in fruit and vegetable picking, that there are no such risks as falling and getting injured and no carrying of load heavier than 10 kilogrammes. No child can be employed if these risks exist.

There is no crop-specific risk assessment for children. In practice, those working on this issue and decision makers in relevant provinces refer to their childhood experiences as workers and assert that some risks are absent in hazelnut farming since there is no use of machinery and any medication (exposure to chemicals) at the stage of harvesting. However, the real case seems to be different. In hazelnut, for example, it is reported that young workers often operate threshers separating hazelnut from its husk at age 16-20,²⁹ which pose various risks in safety or citrus fruit harvesting may start in an orchard where chemicals were used just a day before. The absence of crop-based risk assessment makes it difficult to implement the provisions of the Labour Code that associated bans with risks.³⁰

When all these conditions are met and child's employment comes to the fore, there is still need to *“take due account of child's safety, health, physical, mental, moral and psychosocial development, personal competence and talents in job placement and throughout the period of employment.”* The condition of taking account of child's safety, health and development during his employment covers child's living environment as well since he is in a specific location to work. Under the Code of Obligations, the employer is obliged to take measures to protect and respect the personality of his worker and to prevent any psychological and sexual harassment (Art.417). In fact not only children but also adults should not be employed without meeting these conditions.

In practice, however, children stay in specified areas or tent camps near work places together with their families and in some cases without the presence of other family members. This kind of settlement means hazards and risks not only in terms of hygiene but others as well like abuse and accidents. When not working in fields, children are observed as fetching water, dish washing and cleaning.³¹

It is for these reasons that seasonal migrant agricultural works are considered as one of the worst forms of child labour and engagement of children under age 18 in such works is prohibited. Given this, it is not possible to assert any legal basis for fixing minimum age as 16, for example, in hazelnut harvesting. The fact that the administration does not feel any need to find a legal basis derives from the complicated nature of legislation as we have stated at the beginning of this part and also from the absence of any crop-based risk assessment.

Given these, the following can be said about minimum age in employment in agriculture:

- 1) Under the ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour that Turkey is a State Party, the minimum age for employment in seasonal migrant agricultural works is 18. According to Constitutional Article 90 the Convention constitutes a domestic law norm and its provisions are directly applicable without any need for additional legislation.
- 2) Further, the minimum age must be 18 in case works performed involve:
 - Extremely hot or cold working environments,
 - Working with substances hazardous to human health and may lead to occupational diseases; exposure to radioactive substances and harmful rays,
 - Extreme attention and standing continuously on foot for a long time,

- Piece rate payment and payment on premium system,
 - No possibility of returning home or to family after workday with the exception of education-training related works.
- 3) With respect to others not listed here, there is need to know the features of the work and workplace and check these against criteria listed in Table 18 to determine minimum age.
 - 4) Since employment must never interfere with the education of the child, it is not possible to employ children at compulsory schooling ages during school year.

3.2

Legislative Arrangements on Working Time and Leaves

3.2.1

International Arrangements on Working Time and Leaves

According to the **Directive 94/33/EC on the Protection of Young People at Work**, working time of children at age 15 can be 8 hours a day, 40 hours a week and, if not prohibited by domestic legislation, daily 2 hours and weekly 12 hours out of school time. When schools are closed it is daily 7 hours and weekly 35 hours for children who are not subject to compulsory education. For each 24-hour period children are entitled to a rest period of 14 hours (it is 12 hours for adolescents).

The Directive prohibits work by children from 8 p.m. to 6 a.m. except for vocational training and cultural activities. For adolescents over age 15 it is forbidden to work from 10 p.m. to 6 a.m. The Directive also stipulates that when daily work exceeds 4.5 hours children are entitled to take a rest for 30 minutes (Art.10). Children under age 14 must have 14 and ad-

olescents must have 12 consecutive hours of rest for each 24 hours (Art.12).

As to leaves, paragraph 7/Article 7 of the **European Social Charter** envisages “at least three weeks of leave in a year to working persons under age 18.” **The Directive 94/33/EC on the Protection of Young People at Work** expects that this leave is in the period when schools are closed (Art.4/2).

3.2.2

National Arrangements on Working Time and Leaves

Daily Working Hours: As can be seen in Table 20 related to working periods and leaves, daily working time can be maximum 8 hours for children over age 12 and under age 16 according to the **Law on Public Health**.

According to the **Labour Code** daily and weekly working hours of children under age 14 who will be engaged in artistic, cultural and advertising activities cannot exceed 5 and 30 hours, respectively. For other age groups, it is daily 7 hours and weekly 35 hours in case of children over 14 but under 15; and daily 8 hours and weekly 40 hours in case of children between age 16 and 18.³² As for adult workers, their daily working hours is 7.5 and weekly working hours is 45 hours (Art.71).

In agricultural enterprises employing less than 50 workers, provisions of the **Code of Obligations** related to service contract are applied (393 and others). Since the Code of Obligations does not provide for working period and suffices with stating “periods specified by legislation”, it is necessary here to apply the provisions of the Law on Public Health and Labour Code and to conclude that the daily working time is 8 hours. Though the Code of Obligations introduces some conditions for work exceeding this time period it still regards it as an ‘obligation deriving from service contract.’ Conditions for overtime work are as follows:

“Overtime work is the work performed by the worker upon his consent that exceeds normal working periods specified by law. The obligation to perform overtime work arises only in cases where it is compulsory to do some work out of normal working period. It is an obligation for the worker to perform this task given that s/he is capable of doing it, his/her avoidance runs counter to the rules of honesty and s/he is remunerated accordingly for his overtime work.” (Art.398).

According to the **Regulation on Principles and Procedures Relating to the Employment of Child and Young Workers**, child workers are entitled to 14 consecutive hours of rest following a work day (12 hours for adolescents) and at least 1 hour of rest break during the day (at least 30 minutes after 4 hours of work in adults) (Art.6). Weekly rest period is at least 48 hours for children (24 hours for adults) (Art.8). Children and adolescents under age 18 cannot be employed in any kind of night work (Art.5).

Weekly Rest: The Law No. 394 on Weekly Rest provided for 1 day of rest in a week in settlements with population over 10,000 (Art.1). According to the Law No. 5837 on Paid Weekend and General Holidays for Workers the employer is obliged to pay half the daily wage on vacation days without demanding any work in return. None of these rules are applicable to agricultural workers (Law on Weekly Rest Art.3). The consequent labour codes (i.e. Labour Code No. 3008) also maintained the principle of paid weekly rest.

The Law on Paid Weekend and General Holidays was repealed in 1971³³ and the Law on Weekly Rest in 2017.³⁴ It is argued that there will be a lacuna related to weekends off in the absence of these legislative acts.³⁵

The **Code of Obligations** No. 6098 taking effect in 2012 also provides for the right to weekly rest. In fact, this is provided for all workers employed with contract regardless of the type of enterprise. Hence, the repeal of the Law no. 394 will not lead to any negative con-

sequence. According to the Code of Obligations *“The employer is obliged to give one day holiday on Sundays as a rule and if conditions do not allow this a full day vacation to the worker.”* (Art.421). This provision of the Code of Obligations safeguards weekly rest for agricultural workers. Nevertheless, it is not practically possible to enjoy this right when agricultural workers are employed on the basis of such remuneration systems as daily or lump-sum pay.

The **Labour Code** No. 4857 provides for weekend rest as follows (Art.46):

“The employees working in establishments covered by this Act shall be allowed to take a rest for a minimum of twenty-four hours (weekly rest day) without interruption within a seven-day time period, provided they have worked on the days preceding the weekly rest day as indicated in Article 63. For the unworked rest day, the employer shall pay the employee’s daily wage, without any work obligation in return.”

There is no difference between the Code of Obligations and the Labour Code with respect to weekly rest. Both legislative texts adopt the principle that workers should be entitled to at least one day of fully paid leave in a week. Given that seasonal migrant agricultural workers are employed under the Code of Obligations, their weekly rest is also safeguarded. In practice, however, the right to rest is not enjoyed since no payment is made for a day not worked even in cases where the worker has worked at the same enterprise for a period exceeding a week. Since any violation of this right requires appeal to a court it is clear that this right cannot be sought individually.

National Holidays and General Vacation Days: The **Labour Code** No. 4857 adopts the principle of paid leave on national holidays and general vacation days. In case of work on these days an additional payment amounting to daily wage has to be paid (Articles 44 and 47). Thus, agricultural workers with permanent work contracts and covered by the Labour Code No.

4857 are entitled to daily wage while on leave on these days receive an extra daily wage in case they work.

The provisions of the Law No. 2429 on **National and General Holidays and the Code of Obligations** No. 6098 are to be applied in agricultural enterprises that are not subject to Labour Code. The Law No. 2429 reckoned these days as days off but did not provide for paid leave. The Code of Obligations states that *“The employer may give special bonuses to workers because of certain days such as feasts, new year and birthdays. However, workers’ right of requesting premium arises in cases of existence of a contract or working term or unilateral commitment of the employer about this issue.”* (Art. 405). Thus, as agricultural enterprises are not subject to Labour Code and no specific regulation is enacted, there is no legal obligation for employers to pay workers in national and general holidays. Though workers employed in agricultural enterprises have the right to ask for days off on national and general holidays on the basis of the Law No. 2429, the possibility of actually exercising this right is almost null because of both non-payment and nature and conditions of work they perform.

According to the **Regulation on Principles and Procedures Relating to the Employment of Child and Young Workers** child workers cannot be employed on general holidays and national celebration days (Art.9). In agricultural production children are not paid on such off days.

Annual Leave: Under the **Labour Code** No. 4857, workers younger than 18 and older than 50 have the right of annual paid leave of at least 20 working days regardless of their seniority status. The period of annual leave for adults is either 14, 20 or 26 days depending on their service periods in their enterprises. In cases where the Labour Code is not applied, *“The employer is obliged to allow for minimum two weeks of paid leave in the case of those who have been employed for at least one year and a minimum three weeks of paid leave in the case of those un-*

der age eighteen and over fifty.” (Art.422). Neither is there any possibility of applying this provision to seasonal agricultural works. The right to annual paid leave envisaged by the Labour Code “is not applicable to seasonal or campaign works that last shorter than one year due to their nature.” (Art.53).

3.2.3

Evaluation of Legislative Arrangements on Working Time and Leaves

Domestic law provisions related to working time and the right to paid leave are, generally, in compliance with international conventions. However, it is so as it is stated in legislation, on paper. As a matter of fact, surveys conducted suggest that daily working hours in seasonal agricultural works are no shorter than 9-10 hours on average and in some cases it may even exceed 10 hours.³⁶

“75.8 per cent of children work at least 12 hours a day. This percentage is little higher in girls (76.9 per cent). Assessments lead to the conclusion that children work, on average, 11.7 hours a day. These working hours are mostly the result of fathers’ and/or mothers’ preference out of the will of the child himself/herself since the aim is to earn as much as possible as a family. An overwhelming majority of children (99.3 per cent) work on every day of the week and 0.7 per cent work 5 days a week. Further 100 per cent of males and 98.7 per cent of females work full week.”³⁷

The annual working period of a family in agricultural works varies. It was found in a field survey covering seasonal migrant agricultural workers that while annual working period in Adana-Mersin provinces is 106.42 days on average, it drops to 34.51 days in hazelnut harvesting in Ordu province. Still, these fig-

Table 20. Legislative Arrangements on Working Time and Leaves

International and National Arrangements	Working period (days/hours)	Period of rest	Period of paid leave
Council Directive 94/33/EC on the protection of young people at work			
Age -15	2/12		
Age +15	8/40		
European Social Charter			At least three weeks
Law on Public Health			
Ages 12 – 16	Maximum 8		
Labour Code			
Age - 14	5/30		
Ages 14 – 15	7/35		
Ages 16 – 18	8/40		
Regulation on Procedures and Principles Relating to the Employment of Child and Young Workers		14 hours daily 1 hour in every 4 hours 48 hours weekly No work on holidays	At least 3 weeks regardless of period of time worked

ures may not be giving a fully correct idea about how long these people work in a year since a family may have worked for another crop before hazelnut harvesting and move to another in some other province after hazelnut. In short, seasonal migrant agricultural workers and their children work at any time and any place where they find job without any entitlement to annual leave, weekly rest or holiday.

The period of working is one of the reasons why seasonal migrant agricultural works constitute one of the worst forms of child labour. Besides the absence of any opportunity for paid rest, it is also out of question that any worker could have worked at an enterprise long enough to enjoy such rights. About 95 per cent of agricultural workers are employed in enterprises employing less than 50 workers and thus they are subject to the Code of Obligations which has negative implications for both working and non-working children of migrant agricultural workers. Adults covered by the Code of Obligations are not entitled to weekly or annual rest, the right not to work on national holidays and general vacations and neither can they claim any extra pay or bonus for working on these days too.

3.3

Legislative Arrangements on Remuneration

3.3.1

International Arrangements on Remuneration

Part I of the **European Social Charter** includes the following provisions:

“4. All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.

5. All workers and employers have the right to freedom of association in national or international organizations for the protection of their economic and social interests.



European Social Charter

Article 4 - The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

1. To recognize the right of workers to remuneration such as will give them and their families a decent standard of living;
2. To recognize the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. To recognize the right of men and women workers to equal pay for work of equal value;
4. To recognize the right of all workers to a reasonable period of notice for termination of employment;
5. To permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage fixing machinery, or by other means appropriate to national conditions.



6. All workers and employers have the right to bargain collectively.”

Under Article 4 fair remuneration has to:

- 1) Provide workers and their families decent standards of life,
- 2) Pay more in cases of overtime work,
- 3) Pay equally to both men and women for work of equal value,
- 4) Provide employment security (prohibition of employment termination without notification),

- 5) Guarantee no deduction from wages (other than in cases prescribed by law as fixed by collective agreement).

The **UN Covenant on Economic, Social and Cultural Rights** also mentions the right to fair remuneration of workers (Art.7). This Covenant envisages the following for each employee together with minimum income:

- a) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
- b) A decent living for themselves and their families in accordance with the provisions of the present Covenant.

States Parties to the **ILO Convention on Fixing Minimum Wage in Agriculture** commit to introduce procedures that allow fixing of minimum wage rates in agricultural works and to maintain such procedures.

3.3.2

National Arrangements on Remuneration

The **Labour Code** No. 4857 fixes the minimum wage to be paid (Art.39). The important arrangement introduced by this law with respect to wage is that legally fixed minimum wage is applicable to all working people whether covered by the law or not.

Under the **Minimum Wage Regulation** a single minimum wage is set for all sectors and workers whether covered by the Labour Code or not since 1 August 1989. According to the same regulation, it is possible to set different minimum wages for child and adult workers, but this was removed on 1 January 2014 and a single minimum wage regardless of age is in effect since then.

Since provisions of articles 34 to 38 of the Labour Code relating to wage are to be applicable to enter-

prises not covered by this legislation (Art. 113), wage has to be paid in a month the latest, and there can be no other wage cut except for reasons specified by the collective agreement or work contract which cannot exceed two daily wages in a month. Further, these cuts from wages have to be deposited to a bank account specified by the Ministry of Labour and Social Security to be used in workers' training and social services.³⁹

Further, the **Regulation on Employment Conditions in Agriculture and Forestry Works** is drafted on the basis of Article 111 of the Labour Code No. 4857 and it provides for some issues including working conditions, service contract, wages and work organization.

According to the **Code of Obligations**, the employer is obliged to pay his employee the amount specified in the contract or in collective agreement or, in case there is no relevant provision, an equivalent amount which cannot be less than the minimum wage (Art.401). In cases of overtime work, the employer is also obliged to pay 50 per cent of the regular wage (Art.402)

3.3.3

Evaluation of Legislative Arrangements on Remuneration

There is no uniform contract in agricultural production. Families engaged in seasonal migrant agricultural works are employed on the basis of oral or written contracts that may entail different wage rates for different crops. The most commonly known and used form is daily wage although one can frequently observe different modes such as lump-sum (kabala) payment and sharecropping on the basis of varying percentages.

In daily wage system wage is the payment made to a worker on his daily work. In other systems, however, work is undertaken by the family and since children work as a part of family their specific daily remuneration cannot be determined.

It must also be noted that employment relation is not always established between the plot/orchard owner and the worker on contractual basis. In hoeing and weeding works in cotton farming, for example, there may be daily wage or lump-sum payment (kabala) on per decare basis. In many crops, particularly in hazelnut and cotton, there may be various types of remuneration like sharecropping, tenancy or claiming 30 per cent of cotton or 50-60 per cent of crusted hazelnut in return for labour only. In general, these are types of remuneration preferred by farmers who are unable to produce on their own plots or want to avoid risks in calculating production costs. Remuneration on the basis of the amount of produce harvested is also preferred for purposes of higher yield. Share-cropping is defined as follows: *“It is a type of enterprising that envisages the sharing in-kind of produce after harvesting and in predetermined proportions”*⁴⁰ In tenancy, on the other hand, *“the tenant makes a lump-sum payment irrespective of the amount of produce to the owner of the land who does not contribute to production costs.”*⁴¹ In these types of production, children work as unpaid family workers; without any income of their own, their working conditions may get heavier as means of control get weaker. Similarly, in lump-sum arrangements too, families tend to increase their seasonal income as much as possible by including children at very young ages in the process of production.

Though rare, mixed structures mentioned by Boratav⁴² are also observed in hazelnut culture. Particularly in small enterprises and on mountainous areas plot owners as well as children and young people work in harvesting as local labour. Therefore there are also some seasonal workers who are not landless peasants but still not able to sustain their families only with the income of their own small plots.

Along with employer-employee relations, this complicated situation also prevents clarification of the issue of “sharing of agricultural profit.”⁴³ Difficulties

that small producers face become a source of higher profits accruing to big farmers, traders and their intermediaries. There is no national legislation arranging for these relations and consequently protecting the value of labour. The “*value of labour*” protected in principle in the 1961 Constitution is missing in the 1982 Constitution. Then, there is need to refer to international conventions to defend the value of labour.

According to the European Social Charter and the UN Covenant on Economic, Social and Cultural Rights, an income that will provide a decent life for the worker and his family must be guaranteed while setting the minimum wage. Unless this is ensured, non-employment of children of seasonal migrant workers does not mean that their rights are protected. All policies that do not duly consider family income and try to solve the problem by prohibitions can only promise a childhood apart from parental care and interest, leaving aside the satisfaction of basic needs including nutrition and education in the first place.

In cases where service contract is acted, wages and working conditions are to be determined by service contracts acted by workers, employers and middlemen; wage rate determined this way has to be kept above minimum wage and it has to be paid directly to the worker. But these provisions are rarely implemented since no inspection is possible. When children are concerned, implementation of these provisions have no guarantee at all. According to a survey, 90.1 per cent of child workers give what they earn to their parents.⁴⁵

In practice, daily or other wage rates applicable in seasonal hoeing, weeding and harvesting works are determined by seasonal commissions established at province-district level, chambers of agriculture, union of exporters and in some regions by informal commissions formed by local headmen. The method used in determining daily wage is dividing minimum wage by 30. Still, there is neither clarity in this; it is observed that calculation is made on net minimum wage in some cases and gross wage in others.

In Afşin district of Kahramanmaraş, for example, the Afşin Chamber of Agriculture fixed daily wage rate in agricultural works as 50 TL including the share of çavuş in April 2018.⁴⁶ In this case the total wage of a person working 30 days a month is 1,500 TL. Given that minimum wage for a single worker is net 1,613.12 TL in 2018 and its total cost to the employer is 2,384 TL⁴⁷, this rate appears to be even lower than the minimum wage. Moreover, there is no extra payment if there is daily overtime work or work at weekends. In seasonal agricultural works, there are different types of remuneration other than daily wage. For example, there is no standard related to per unit remuneration in cotton, onion or carrot picking or for lump-sum paid hoeing and weeding in sugar beet and vegetables, it is up to negotiations between farmers and middlemen or workers.

TÜİK data too confirm that there is no clarity as to the calculation of daily wage. For the year 2017 the average daily wage of seasonal agricultural workers was 66 TL, and the monthly earning of permanent agricultural workers was 1,857.00TL. Given these figures, a seasonal agricultural worker has to work 28 days a month to earn as much as permanent agricultural workers in case there is no deduction from his daily wage.⁴⁸

According to a survey which compared the cases of permanent (typical) and a-typical workers in private sector on the basis of gender and sectors, 63.1 per cent of males employed on daily wage basis earn less than half of minimum wage, 31.5 per cent earn between half the minimum wage and minimum wage, and 5.4 per cent between minimum wage and two times the minimum wage. There was no worker earning over two times the minimum wage. For females with daily wages, the same survey finds out that 91.9 per cent earn less than half of minimum wage and 8.1 per cent earn between half the minimum wage and minimum wage. There was no female worker earning over these two categories. Of those who are self-employed in agri-

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KAHRAMANMARAŞ (AA) - Daily wage of agricultural workers in Afşin was fixed as 50 TL including the share of çavuş.

The appointed president of Afşin Chamber of Agriculture, Mehmet Sarıbiyikoğlu made a statement today in his Office that as a result of their evaluation, the daily wage of an agricultural worker was determined as 50 TL for the year 2018 including the share of çavuş.

According to this arrangement the worker will get 48 TL while the remaining 2 TL will go to çavuş. Sarıbiyikoğlu said:

“In case seasonal worker works longer than 8 hours, 6.25 TL is to be paid for each extra working hour; a çavuş will supervise the worker and he will also be paid by the employer. I want to stress that it is forbidden to employ children under age 16. For boarded workers, the cost of arrival will be covered by the employer and the worker will cover his costs of return. Workers who commute daily will have their agreements with their employers; the worker has to work for at least 8 hours a day. No worker should be transported on truck bed. Wage rates are fixed as follows: Ploughing on irrigated land 25 TL per decare and 21 TL on dry land; cultivating 13 TL, vine stocking 11 TL, harrowing 11 TL, agricultural medication 7 TL per decare, orchard medication in a store of 1 ton is 70 TL and medication of 400 litres is 40 TL.”

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Source: www.milliyet.com.tr/afsin-de-mevsimlik-tarim-isci-yevmiyeleri--yerelhaber-2737977/ (Accessed on 5 May 2018)

culture, 55.1 per cent of males and 91.4 per cent of females earn less than minimum wage.⁴⁹

TÜİK data too show that there are wage gaps between male and female workers. In 2017 the average daily pay of female agricultural workers was 60 TL and that of males was 73 TL, and these rate varied by provinces. The highest daily wage for women was found as 79 TL in Ordu and the highest for men as 104 TL in Ardahan. The lowest wages for women and men are in Hatay as 36 TL for women and 46 TL for men.⁵⁰ It must not be forgotten, however, that these figures by TÜİK do not take into account differences with respect to crops and remuneration types, just giving averages. As such it is not possible to reach clear conclusions regarding a specific crop and region.⁵¹ Considering that minimum wage was 1,404 TL in 2017, these figures clearly show that workers are employed at rates much lower than minimum wage and agricultural workers are far away from fair remuneration which is supposed to be constitutionally guaranteed.

There is no possibility of weekly rest for seasonal agricultural workers in case daily wage is fixed this way. Yet, the arrangement introduced in Turkey in 1830 after Ibrahim Pasha of Egypt brought workers to Çukurova from Sudan, known as the first related to seasonal agricultural works, had established 7-day's wage for 5.5 days of weekly work.⁵² Since workers in factories are paid for 30 days while working on 26 days in a month, it is one of the gaps of the remuneration system that there is no weekly rest for seasonal agricultural workers.

Even daily wages fixed by commissions established in provinces under governorates are not fully paid. What is actually paid generally is 10 per cent lower than what is fixed and, further, middlemen have their share of 10 per cent in this already reduced amount.⁵³ There are also some cases in which farmers make deductions for what they provided as food, etc. Shortly, workers have to work full month for what is below the minimum wage. Yet, accord-

ing to the Code of Obligations No. 6098 “If the worker works in household organization together with the employer, then the employer is obliged to provide adequate food and a proper shelter.” (Art. 418). Some seasonal migrant agricultural workers stay near crop fields or orchards they are working in. So their employer is supposed to provide these services without asking the cost of or making deduction from wages. However, in case the employer does not fulfil this obligation the worker has to either terminate his service contract or apply to a court to claim his rights both of which are at odds with this form of employment.

Furthermore, even the full payment of minimum wage does not mean equal pay in comparison to industrial employment since agricultural workers work without security. They are not entitled to accident and retirement benefits, job security and severance pay⁵⁴ The conditions such as the employment of minimum 50 workers (Art. 4) and having worked for the same employer on contract of indefinite period for at least 6 months (Art. 18) are not satisfied in seasonal agriculture.

However, there are some provisions of the Labour Code that can also be applied in agricultural works:

- Art. 32 – Wage and its remuneration
- Art. 35 – Protected portion of the wage
- Art. 37 – Wage account slip
- Art. 38 – Deduction of fine from wage

Formally, the Labour Code is applicable to agricultural workers as well in relation to wage issues, but this does not mean much when it comes to practice. Because no contract is made and practices in this sector cannot be inspected due to institutional insufficiencies.⁵⁵ For example, although deductions from wages are allowed only if settled by contracts and there is no formal arrangement (work contract of collective agreement) providing for wage deductions, there may be such deductions from wages of

agricultural workers by employers or agricultural middlemen. Neither is there any pay for days not worked for various reasons (i.e. adverse weather conditions).⁵⁶

The most important issue in the sector of agriculture in general and in seasonal migrant works is poverty which is both the cause and effect. Wage policy is therefore an issue which requires closer look.

According to a study made in the period 2003-2006, 20 per cent of household heads are employed in agriculture and livestock breeding and 51 per cent of these people are in the lowest 20 per cent income quintile. 12 per cent of households in this sector are in the highest 20 per cent income quintile.⁵⁷ In another study⁵⁸ it is reported that 60 per cent of seasonal agricultural workers earn below national poverty line. Indeed, there is another study⁵⁸ reporting that 15 per cent of local and 54 per cent of migrant agricultural workers earn less than 500 TL a month.

3.4

Legislative Arrangements on Social Security

3.4.1

International Arrangements on Social Security

Article 12 in the **European Social Charter** provides for the right to social security. According to this article *“All workers and their dependents have the right to social security.”* In this context, States are obliged to establish a social security system first, give effect to the ILO Convention No. 102 on Social Security (Minimum Standards), to further develop this system and cooperate with other States Parties in this field by acting appropriate bilateral agreements. The Charter recognizes the right to medical and social assistance of those who cannot benefit from the social security system (Art.13).



European Social Charter

Article 12 - The right to social security

With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

1. to establish or maintain a system of social security;
2. to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;
3. to endeavour to raise progressively the system of social security to a higher level;
4. to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:
 - a. equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;
 - b. the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.



Turkey is a State Party to **Convention No. 102 on Social Security** (Minimum Standards). According to this convention which was ratified in 1971 social security system must cover sickness, pregnancy, maternity, unemployment, old-age, invalidity, family, work accident and death benefits and periodic payments (Table 21). It is required that foreigners must be entitled to same rights as Turkish citizens (Art.68). The Convention states that social security is a right that must be accorded not only to workers but all, particularly those with children.

This right is also enshrined in the **UN Covenant on Economic, Social and Cultural Rights** in a manner to cover the right to social security as well (Art.9). The covenant also envisages special protection in cases of maternity:

“Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.” (Art. 10)

Table 21. Scope of Social Security according to the Convention No.102 on Social Security (Minimum Standards)

Benefits	Coverage
Medical care and sickness benefits (Art. 7-18)	<p>a. In case of a morbid condition:</p> <ul style="list-style-type: none"> - General practitioner care, including domiciliary visiting; - Specialist care at hospitals for in-patients and out-patients, and such specialist care as may be available outside hospitals; - The essential pharmaceutical supplies as prescribed by medical or other qualified practitioners. <p>b. In case of pregnancy and confinement:</p> <ul style="list-style-type: none"> - pre-natal, confinement and post-natal care and - hospitalization where necessary. <p>c. Sickness benefits</p>
Unemployment benefits	It denotes benefits that a person protected who is capable of and available for work is unable obtain suitable employment is entitled to. It amounts to, for a period of 12 months, payment that corresponds to total wage of 13 to 26 weeks.
Old-age benefits	It denotes benefits that a person is entitled to after reaching a specific age as set by legislation and has contributed to the fund for a specific period of time
Benefits regarding work accidents and occupational diseases	<p>a. The medical care shall comprise:</p> <ul style="list-style-type: none"> - General practitioner and specialist in-patient care and out-patient care, including domiciliary visiting; - Dental care; - Nursing care at home or in hospital or other medical institutions; - Dental, pharmaceutical and other medical or surgical supplies, including prosthetic appliances, kept in repair; - Care furnished by members of such other professions as may at any time be legally recognized as allied to the medical profession, under the supervision of a medical or dental practitioner. <p>b. The medical care in work accidents shall include at least:</p> <ul style="list-style-type: none"> - General practitioner care, including domiciliary visiting; - Specialist care at hospitals for in-patients and out-patients, and such specialist care as may be available outside hospitals; - Essential pharmaceutical supplies as prescribed by a medical or other qualified practitioner; - Hospitalization where necessary.
Family benefit	<p>Family benefit includes the following to ensure the maintenance of dependents including children in particular:</p> <ul style="list-style-type: none"> - Periodic payments and/or - Provision to or in respect of children, of food, clothing, housing, holidays or domestic help.

In sum, all are entitled to social security as specified in Table 21. While some of these depend on the form and duration of employment (i.e. old age, invalidity), others have no such precondition (i.e. family, maternity, health benefits).

3.4.2

National Arrangements on Social Security

The ways that agricultural workers benefit from the social security system on the basis of their status vary:

- Those who are employed on the basis of permanent service contract under one or more employers.
- Those who are employed on the basis of temporary contracts under the Law No. 2925 on Social Security of Agricultural Workers.
- Those who work independently under the Law no. 2926 on Self-Employed in Agriculture.

The Law No. 2925 on **Social Security of Agricultural Workers** aims to “... ensure the social security of persons employed temporarily in agricultural works on the basis of service contract with the provisions of the present law” (Art.1). It is a social security arrangement relating directly to seasonal agricultural workers. The law envisages the social security coverage of workers in agriculture upon their request (Art.2) but not those under age 18 (Art.4). The law introduces entitlement to retirement at age 50 for women and at 55 for men given that their social security contributions are made for 180 days a year, not to be shorter than 15 days a month, and that 3,600 work days are fully completed. The Unemployment Insurance Law adopted in 1999⁵⁹, however, lifts these ages up to 58 for women and 60 for men. Then, the Law No. 5510 on Social Security and General Health Insurance repealed “general provisions included in articles 1 to 5, provisions on sickness benefits included in articles 13 to 17, article 24 envisaging lump-sum

payment of old-age insurance, article 33 on contributions and article 35 on the dependents of the insured person in the Law No. 2925 dated 17/10/1983 on Social Security of Agricultural Workers” (Art.106/6) and consequently it became no longer easy for agricultural workers to be insured.⁶⁰

Presently, the articles of the Law No. 2925 which are still in effect are limited to articles 7-12 providing for work accidents and occupational diseases, articles 18-23 providing for invalidity and old-age benefits and article 25 and on providing for death benefits to survivors. The Social Security and General Health Insurance Law No. 5510 will replace the provisions that were repealed.

The Law No. 2926 on **Social Security of Self-Employed in Agriculture** was prepared to provide social security benefits such as invalidity, old-age and death to independently self-employed people working in agriculture (Art.1). According to this law, males have to be over age 22 and females have to be household head besides being over age 22 to be entitled to social security benefits. The Law No. 2926 too was repealed by the Law No. 5510 dated 31 May 2006.

According to the Law No. 5510 on **Social Security and General Health Insurance**, those who are temporarily employed in agriculture and forestry will either opt for voluntary insurance or request social security coverage under “additional article 5” introduced to the Law No. 5510 by the Law No. 6111.⁶¹ It is provided that those over age 18 who are temporarily employed in agriculture or forestry on the basis of service contract will be considered as within social security coverage starting from the time of their application. For these persons (4.1.a.), only work accident and occupational disease insurances are applicable with respect to short-term insurance items and invalidity, old-age, death and general health insurance provisions are applicable with respect to long-term benefits. For persons subject to the provisions of this article to be entitled to work

accident and occupational disease benefits, they have to be registered at least 10 days before the accident concerned and to have their insurance status still in effect; and to be entitled to temporary or permanent incapacity benefits due to work accident or occupational disease, to old-age and death benefits they have to leave no debt related to social security contributions. In case of any work accident or occupational disease, the situation should be reported immediately to the security department by themselves or by their employers, and within 3 work days to the relevant institution. Under article 50 of the law headed “voluntary insurance and its conditions”, a person has to be over age 18 to be qualified for voluntary insurance. In case insured, an agricultural worker has to make his contribution amounting to 34.5 per cent of thirty times his daily earning. Of this total (34.5 per cent) 20 per cent is for incapacity, old-age and death, 12.5 per cent is for general health insurance and 2 per cent for work accident and occupational disease.⁶²

Given this, agricultural workers including those who work seasonally are entitled to “voluntary insurance” upon their choice. However, this form of social security does not emanate from employer-employee relations since it binds not the employer but employee himself who is supposed to make his contributions. The voluntary nature of social security in this branch renders the situation even more precarious.

The **Unemployment Insurance Law** No. 4447 envisages support for a period of time through unemployment benefits to workers who lost their jobs in return for their earlier contributions. Agricultural workers who are insured by employers on the basis of 4/a status under the Law No. 5510 on Social Security and General Health Insurance are entitled to unemployment benefits since their contributions have been made. On the other hand, seasonal agricultural workers employed temporarily in agriculture and forestry that is covered by addendum 5 in the Law No. 5510

or by voluntary schemes is not entitled to unemployment benefits since contributions for unemployment insurance is not made.

The **Code of Obligations** No. 6098 imposes upon the employer the obligation “*to protect worker’s personality and to behave respectfully during service relationship and to ensure an organization in the work-site based on honesty principles, to take necessary measures for workers not to come to psychological and sexual abuse and those who have suffered such abuses not to suffer any further damage.*” (Art. 417). The employer has to take all necessary measures to ensure work safety and health at his enterprise and to maintain all necessary equipment and instruments while workers are obliged to comply with all measures adopted for safety and health. The employer has to cover damages in case of any death, injury or violation of personal rights resulting from his failure in fulfilling his obligations. Further,

“In case the worker is incapable to work as a result of such events as illness or work accident without his fault, the employer has to provide for his care and treatment for a period of two weeks in case the worker has been employed for one year and not covered by social security benefits” (Art. 418).

3.4.3

Evaluation of Legislative Arrangements Related to Social Security

The form of employment of seasonal migrant agricultural workers who are the poorest and most deprived segment of the country or of their hometown perpetuates poverty in a vicious circle. One of the relevant factors is their exclusion from social protection systems. When asked in a survey whether there are family elders who were also seasonal agricultural workers, 64 per cent of local and 66 per cent of migrant workers said “yes.”⁶³ This shows that seasonal agricultural work reduces other employment options. The same survey found that local seasonal ag-

gricultural workers mostly have other jobs since they are not away from their original settlements, hence they are covered by some social security scheme, and that those who say they work only in seasonal agriculture have their crop fields or orchards as family holdings. The survey makes the following observation on seasonal migrant agricultural works on the basis of its sample:

*“Since workers engaged in chickpea culture cannot gain additional skills as seasonal migrant workers, the number of those in other works remains low relative to local seasonal agricultural workers. Indeed, those who are engaged in other works as well state that they earn some money after returning to their original settlements by working in constructions, masonry, electrical works, etc. if they can find such jobs.”*⁶⁴

Another comparative study conducted in Çukurova in 2002 on socio-demographic characteristics of local and migrant agricultural workers exposes why seasonal migrant works constitute one of the worst forms of child labour and how it leads to a state of poverty transferred from one generation to another. As stated in this survey:

“It is observed that education opportunities of children of local seasonal agricultural worker families are better than children of seasonal migrant agricultural workers. The main reason is the fact that children of seasonal migrant workers have to stop their school attendance if their families’ seasonal work elsewhere coincides with school year. Some of these children do not return to their schools after the working season. A large majority of seasonal workers who permanently reside in the region and other seasonally coming in are originally from South-eastern Anatolia provinces including Adıyaman, Mardin and Diyarbakır. A large part of local seasonal workers (47.38 per cent settled in the region 10-15 years ago. As to migrant families, they stay in the re-

*gion mostly for 6 months (40 per cent). The majority of these families do seasonal agricultural works for subsistence and they have no other source of income.”*⁶⁵

Seasonal and temporary nature of agricultural works prevents the establishment of employment within the scope of social security as an employer obligation. While the share of insured workers in general increases by years, there is a decline on the part of insured among those covered by compulsory insurance, working in agriculture on contract and self-employed. The share of agricultural workers is also small in the total number of insured relative to other sectors. Yet, in 2016, while the total employment figure was 27,651,000, population working in agriculture was given as 5,577,000.⁶⁶ Hence while about 1/5 of working people are in agriculture, only 3 per cent of insured are in this sector (Table 22). These figures clearly indicate that existing legislative arrangements are insufficient in ensuring social security in agriculture.

Table 22. Share of Persons with Social Security Coverage in Agriculture in Total Number of Insured People (2016)⁶⁷

Social Security Coverage	Number of persons	Percent age
I- Insured	21,131,838	100.0
Agriculture (4-1/a)- Working on service contract	36,125	0.1
Agriculture (4-1/b)- Self-employed	717,876	3.3

A study explains the status of agricultural workers in the social security system as follows:

*“Despite heavy nature of their work, seasonal agricultural workers are deprived of any support in case of any work accident, occupational illness or death since they are not covered by any social security scheme.”*⁶⁸ To have health insurance, relevant contri-

butions have to be made either by their employers or themselves; yet, due to their low wages they face difficulties in meeting their most basic needs let aside paying security contributions. Bringing of social security institutions together under the same roof led to no significant change in the situation of agricultural workers. They have no possibility of making security contributions given that a worker employed for 3-4 months a year has to pay his total wage of 44 days as security contribution.^{69,70}

Table 23 below gives in comparative terms benefits provided by social security systems that those working in agriculture are entitled to. As can be seen in the table existing arrangements are scattered and none of them provide the full range of social security benefits.

Presently agriculture accounts for almost one-fifth of total employment and it is stated that about a half are self-employed.⁷¹ Hence the table is relevant to a rather large mass of working population.

In comparative terms, social security coverage of self-employed in agriculture related arrangements vary among European countries (Table 24). The most comprehensive social security model concerning self-employed can be found in Finland. Since agriculture is considered as a branch where exposure to and risk of occupational diseases and work accidents is high, the provision of full protection is important for both farmers and workers.

It is known that a large majority of seasonal migrant agricultural workers in Turkey remain out of any social security scheme for having indefinite duration of employment and voluntary nature of social security coverage. There are significant differences between farmers and workers with respect to factors that influence their motivation for social security coverage. Income security which is the most important function of social security is absent in agriculture for both employers and employees.

Since employment in agriculture is on the basis of contracts with indefinite duration, agricultural workers remain out of the coverage of the legislation that envisages social security coverage of workers by their employers on 4/a status. Consequently, there is no possibility of benefiting from unemployment insurance.

In 2015 a parliamentary commission was established in the TBMM to "Identify the Problems of Seasonal Migrant Agricultural Workers and Measures to be Adopted." According to the survey on the Identification of the Needs of Seasonal Agricultural Workers and Their Families (2011) to which this Commission referred, average years spent as seasonal agricultural worker is 12.6 years and half of families covered by the survey report that they have been in this status for 10 years or longer. The average period of work in a year 4.8 months, but this period doubled with the spread of greenhouse farming.⁷³

It is reported that in 2014 the total labour force in Turkey is 29,181,000 of which 26,130,000 are employed and agricultural employment in this total is 5,404,000. The number of people employed temporarily in agriculture and forestry with social security under the Law No.5510 is 243,195 and the number of people covered by voluntary insurance is 129,135.⁷⁴ These figures include employers as well. It is not possible to reach a definitive conclusion since there is no information specific to agricultural sector. Nevertheless, limited quantitative information that could be collected is sufficient to conclude that a significant part of those employed in agriculture is not covered by any social security scheme.

As far as children are concerned there is neither social security nor unemployment benefits. Yet, regardless of the employment status of their parents, children must be provided social protection including periodic payment, and support in terms of food, clothing, housing and leisure-recreation.

Table 23. Social Security Status of Self-Employed Persons and Workers in Agriculture (work for indefinite period and voluntary insurance)

Legislation	Work Accident	Illness - Maternity (Medical Aid)	Illness - Maternity (Cash Assistance)	Invalidity - Old age - Death	Family allowances	Long term care	Unemployment
Law No. 2925 on Social Security of Agricultural Workers (workers employed on the basis of indefinite contract period)	Partly yes	Yes	Yes	Partly yes	No	Yes	No
Law No. 5510 on Social Security and General Health Insurance (workers with employment contract)	Yes	Yes	Yes	Yes	Partly yes	Partly yes	No
Law No. 4447 on Unemployment Insurance	---	---	---	---	---		Yes

Table 24. Summary of Social Security Status of Self-Employed in Agriculture in Some EU Countries

Countries	Work Accident	Illness – Maternity (Medical Aid)	Illness – Maternity (Cash Assistance)	Invalidity - Old age - Death	Family allow-ances	Long term care	Unem-ploy-ment
Belgium	No	Yes	Yes	Yes	Yes	Yes	No
Germany	Yes	Yes	No	Yes	Yes	Yes	No
Greece	Yes	Yes	No	Yes	Partly yes	Partly yes	No
Spain	Yes	Yes	No	Yes	Yes	Yes	No
Finland	Yes	Yes	Yes	Yes	Yes	Yes	Yes

3.5

Legislative Arrangements on the Right to Organize

3.5.1

International Arrangements on the Right to Organize

The **UN Covenant on Economic, Social and Cultural Rights** has its specific provisions on the right to organize. The Covenant requires States Parties to ensure:

“The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests.” (Art.8)”

The **European Social Charter** entitles trade union rights to foreigners working in a country. Accordingly, States Parties are:

“to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters: a) remuneration and other employment and working conditions; b) membership of trade unions and enjoyment of the benefits of collective bargaining” (Article 19).

According to **ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize**,

“Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization (Art.2) The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof (Art.3). Workers’ and employ-

ers’ organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers (Art.5)”.

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According to **ILO Convention No. 98 on the Right to Organize and Collective Bargaining**,

“Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. Such protection shall apply more particularly in respect of acts calculated to (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.” (Art.1)

Under the **ILO Convention No. 11 Concerning the Rights of Association and Combination of Agricultural Workers**:

“Each Member of the International Labour Organization which ratifies this Convention undertakes

to secure to all those engaged in agriculture the same rights of association and combination as to industrial workers, and to repeal any statutory or other provisions restricting such rights in the case of those engaged in agriculture.” (Art. 1).

3.5.2

National Arrangements on the Right to Organize

Under the **Trade Union and Collective Bargaining Law** No. 6356 which took effect in 2012 any person over age 15 and considered as worker under the relevant legislation, can be a union member. The condition of written permission by legal representative was lifted in 2012. Since this law was designed so as to cover those workers remaining out of the scope of the Labour Code (workers in enterprises employing less than 50 workers), persons in worker status under the Code of Obligations too can be union members and establish unions (Art.6). Hence, agricultural workers and seasonal migrant agricultural workers who are out of the scope of the Labour Code can also unionise and establish unions. In case a union is established in agriculture, this union must have members corresponding to at least 1 per cent of all workers in the sector to have the right to collective agreement (Art.41).⁷⁵ Due to the characteristics of this sector, however, there are significant obstacles against organization even if legislative framework is fit for.

Seasonal migrant agricultural workers find jobs mostly through agricultural middlemen. The calendar and the kind of works that the former will engage will do depend on middlemen’s connections or connections they seek. Their working period may be as short as one day in some cases or may take days while climate changes may also prevent them from finding jobs. Different types of remuneration, for example share-cropping or lump-sum payment may place workers in contractor or sub-contractor positions before land/orchard owners. Competition

in finding job which has become harder with the recent addition of foreign migrants to agricultural labour market, low levels of education, and need to move fast to different locations for different crops are the factors impeding the organization of workers. Other obstacles include weak demand by agricultural supply firms for decent work and absence of any demand for the implementation of national and international legislation in supply chains.

3.5.3

Evaluation of Legislative Arrangements on the Right to Organize

The Law No. 6356 on Trade Unions and Collective Bargaining envisages the establishment of unions on trade-branch basis. It is not possible to establish unions on workplace basis. Given this, agricultural workers (including seasonal workers) have the right to join only a union already existing in this branch. And for this union to exercise the right to collective bargaining, it must have at least 1 per cent of workers in the trade-branch as its members. Since formal employment is not common and workers are dispersed, neither determining the number of total workers nor organising workers seem possible.⁷⁶

There is need to introduce “workplace” level unionization for the promotion of the right to organize not only for agricultural workers but all employees in general. This will enable workers as union members to engage in collective agreement at workplace level and the means to improve workplace conditions.

Meanwhile it is positive that the Law No. 6356 on Trade Unions and Collective Bargaining brings no limitation to children’s membership to trade unions. But there is no mention of children’s union membership since unionization is very weak in this sector anyway. So it is not possible to speak about any factual positive impact of this legislation on child labour.

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4

OVERALL EVALUATION AND CONCLUSION



Turkey followed the activities of the International Labour Organization from the early years on and became a State Party to many of its conventions. Some of these conventions are also transposed into domestic law. However, legislative arrangements pertaining to agriculture are far from safeguarding the rights of persons working in this sector.

Yet, agriculture stands as a sector where the exploitation of child labour is the most common. Gülçubuk (2012) describes this situation as follows:

“Throughout the world, agriculture is the sector where child workers are the most numerous. ... Agriculture is one of the most hazardous sectors for children. The burden on the girl child is particularly heavy. Working girls are often the invisible part of agricultural labour force and particularly disadvantaged since, besides working out in fields they are also occupied with household chores. Children’s entry into working life including in agriculture in the first place is an important social and political problem in Turkey and this problem is multi-dimensional. Poverty, low levels of education, demand for cheap labour, migration, lack of commitment, child abuse, invisibility of labour and unawareness further aggravate the dimensions of the problem of unemployment.”¹¹

Especially within the last 40 years many international documents, action plans and projects have been drafted, developed and implemented to combat child labour including its worst form and to alleviate poverty as its root cause. Unfortunately, desired outcomes and improvements could not be obtained.

Combat against the exploitation of child labour requires sincere political will to eliminate its root causes. Hence recommendations made in this part of the report are arranged with respect to these root causes which are:

- (1) Poverty, unemployment and demand for cheap labour
- (2) Problems related to education

(3) Problems related to working life and workers' rights

While the main purpose of this report is to identify gaps in legislation and forward relevant suggestions, it further includes other recommendations in various problem areas in order to make clear the basis of suggestions related to legislation since this specific problem is also the cause of some problems in other areas as well.

4.1

Recommendations Related to Poverty, Unemployment and Demand for Cheap Labour

Besides the poverty in general, agricultural workers in particular and small farmers constitute the most impoverished section of the society and this cycle of poverty cannot be broken even in full-time work. Given this, the first thing to be questioned is the system that works on the basis of cheap labour and arrangements supplementing this system.

The poverty of those working in agriculture stems from the fact that profits accruing from agricultural products go to some other hands. Boratav (2004) defines commercial profit as the *"margin between prices paid to producers and prices paid by consumers excluding costs of transportation and storage."*² In addition to this, *"the profit of the trader emerges from the presence of two different prices: one paid to the producer by the trader and the second is the price paid by the consumer to the trader for a single commodity. When the producer appears before the trader as a consumer what he has sold and what he is going to buy are unequal in value and hence the exchange is unequal."* This is the point where the real tension exists. While value created by a mechanism operating against small farmers and agricultural workers goes to the trader as profit, it is impossible to keep children out of working life as their parents have to work and subsist on an income below poverty line and in some cases close to starvation line.

Therefore, priority actions should be;

- Amending **Article 55 of the Turkish Constitution** so as to recognize the protection of the value of labour and income guarantee as a right.

And as corollary;

- Modifying **Article 39 in the Labour Code**. By using criteria set in the European Social Charter, a principle must be adopted to raise minimum wage up to a minimum decent living standard.

4.2

Recommendations Related to Education

Factors such as low school performance, unemployment as a common phenomenon even for relatively educated population and tolerance shown to non-attendance to school by children of seasonal agricultural workers³ weaken the ties of children with their schools. A survey found that school days missed by children of seasonal migrant agricultural workers vary from 6-51 to 67 days in a school year.⁴ According to another survey 50.2 per cent of children engaged in economic activities are out of school.⁵ As to supportive activities initiated for children when their family elders are out in work, their availability is limited in terms of both time and space and not as inclusive as they should be.

The system of education must be capable of identifying factors that push children out of the system and making necessary interventions. The existing legislation on following children's school attendance⁶ is not effective in eliminating the problem of poor attendance. Mainly, it is not of that nature to allow for interventions to eliminate the causes of poor attendance. Hence;

- There is need to amend article 52 and subsequent articles of the **Law on Primary Education and Education** so as to allow for the intervention of social services in order to investigate the causes of poor school attendance and to improve family skills needed to eliminate this problem.

Quality of education must be such that it strengthens the ties with school and learning of children in general and particularly those facing attendance and performance problems and quality education must be accessible to all children. It is therefore a problem of policy and implementation before any legislation.

In this context;

- It is necessary to include a special section in the **Fundamental Law on National Education** for introducing mobile schools to which children of agricultural workers can attend, developing catch up education programmes for children who have missed school years and implementing alternative programmes to develop and improve learning skills of children.

4.3

Recommendations Related to Working Life and Workers' Rights

- The reservations to the Art. 2, 4, 5, 6, 7, 22 and 23 of the revised European Social Charter should be removed and the Collective Complaints Procedure dated 1995 that entitles the unions and civil society organizations the right to collective complaints should be ratified.
- Turkey must be a State Party, first of all, to the Convention No. 10 on Minimum Age in Agriculture dated 31 August 1923 and then to the Convention No. 101 on Paid Leave in Agriculture dated 4 July 1952, Convention No. 129 on Work Inspection in Agriculture dated 25 June 1969 and Convention No. 184 on Health and Safety in Agriculture dated 5 June 2001.
- Given that employment in seasonal migrant agricultural works is considered as one of the worst forms of child labour, necessary amendments must be made in both Article 71 of the Labour Code and in the Regulation on Procedures and Principles Relating to the Employment of Child and Young Workers to set the minimum age as 18 in this branch.
- An **Agricultural Labour Code** must be drafted to address, in an integrated manner, all relevant issues including the prevention of child labour and the rights of their parents to wage, working periods, leaves, etc. Until the enactment of this law, the rights and benefits of agricultural workers such as working periods, leaves, additional payments and bonuses must be provided for by amending **article 393 and other relevant articles in the Code of Obligations.**
- The system of social protection in agriculture must be strengthened. Short-term contracts must be accepted as fixed-term contracts and the scope of family benefits must be expanded so as to provide a sufficient standard of living including children's education and other expenses. To ensure this, the **additional article 5 in in the Social Security and General Health Insurance Law No. 5510** and the **Law No. 2925 on Social Security of Agricultural Workers** must be amended. In doing this, there is need to develop a model that takes account of agricultural production processes and to safeguard it with necessary legislative arrangement to cover workers in social security. Also needed is the possibility paying wages by methods such as bank and payment vouchers and including social security contributions in wages.
- The condition of employing at least 50 workers existing in **article 4 of the Labour Code** must be removed to include agriculture in the inspection domain of labour inspectors. There must be arrangements allowing for regular and upon-complaint inspections.
- The condition of representing a specific percentage of workers in the same trade must be removed for facilitating the unionization of agricultural workers by introducing amendments to the **Law No. 6356 on Trade Unions and Collective Bargaining.**
- A study should be conducted on production modalities and the distribution of the profit along the production chain and it should be ensured that small farmers and agricultural workers are entitled to the value of their labour through enactment of an Agricultural Labour Code.

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