

Law Bulletin

Employment | Turkey | January 2025

OBJECTION TO AUTHORIZATION OF A LABOR UNION

Increasing costs in recent years have imposed significant financial pressure on both employers and employees. This has led employers to limit the monetary rights they offer and encouraged employees to prefer collective bargaining negotiations through labor unions rather than individual negotiations. Therefore, the matter of how the labor union that will represent the employees in the aforementioned collective bargaining negotiations and execute the collective bargaining agreement is determined has gained importance.

A labor union must establish that it is authorized in a workplace or enterprise to negotiate a collective bargaining agreement for this workplace or enterprise. This is known as the "authorization". However, if the employer believes that the labor union does not meet the necessary conditions in this regard, it has the right to legally object and challenge this determination.

1. Labor Union Authorized to Negotiate a Collective Bargaining Agreement

A labor union can be deemed authorized to negotiate a collective bargaining agreement only if it meets the following conditions:

- **Sector Threshold:** At least one percent of the employees employed in the sector where the labor union is established must be members of the relevant labor union.
- **Workplace or Enterprise Threshold:** For a collective bargaining agreement at the workplace level, more than half of the employees who are employed in the workplace at the time of the application for authorization must be members of the relevant labor union. For a collective bargaining agreement at the enterprise level, at least forty percent of the employees who are employed in the enterprise at the time of the application for authorization must be members of the relevant labor union. If multiple labor unions have forty percent or more members in the same enterprise, the labor union with the highest number of members on the application date will be considered authorized.

The evaluation of whether these conditions are met is carried out through an authorization process.

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2. How to Determine Authorization?

The labor union applies to the Ministry of Labor and Social Security (the “**Ministry**”) to establish its authority to negotiate a collective bargaining agreement. That said, if there is a collective bargaining agreement currently in force, this application must be made within 120 days before its expiration.

The Ministry evaluates the application based on sector statistics that are valid on the application date together with the other criteria that are set out in the legislation. If it finds the labor union authorized, it issues a positive authorization and notifies the following parties within six business days:

- Labor unions established in the same sector
- The employer union or the non-unionized employer
- The relevant Provincial Directorate of Labor and Employment Agency

The positive authorization includes the following details:

- Name of the authorized labor union
- Workplaces or enterprises within the scope of the authority and the number of employees and members
- The level of the collective bargaining agreement
- The competent authority

The labor unions, the employer union, or the non-unionized employer notified of the positive authorization may file an objection within six business days of receiving the notification.

3. How to Object to Authorization?

The labor unions, the employer union, or the non-unionized employer notified of the positive authorization may object to the labor union’s authority by claiming that it does not meet the necessary conditions. This objection must be submitted to the relevant court under a pleading within six business days of receiving the notification. The pleading must also be registered with the competent authority before being submitted to the relevant court.

The term “competent authority” refers to (i) for workplace-level collective bargaining agreements, the Provincial Directorate of Labor and Employment Agency to which the workplace is affiliated; (ii) for enterprise-level collective bargaining agreements, the Provincial Directorate of Labor and Employment Agency to which the enterprise headquarters is affiliated; (iii) for group collective bargaining agreements involving workplaces under the jurisdiction of the same Provincial Directorate of Labor and Employment Agency, the Provincial Directorate of Labor and Employment Agency to which these workplaces are affiliated; (iv) for group collective bargaining agreements covering workplaces under the jurisdiction of more than one Provincial Directorate of Labor and Employment Agency, the Ministry.

The objection pleading must include concrete evidence. Otherwise, the objection will be dismissed without further evaluation.

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The court will make a final decision within six business days without a hearing for objections related to errors in the number of employees or members (*e.g., an error arising from discrepancies between the most recently published sectoral statistics and the number of employees or sectoral thresholds indicated in the Ministry's authorization letter*) or the timing of the application (*e.g., applications made more than 120 days before the expiration of an existing collective bargaining agreement*). For other objections, the court will hold a hearing before rendering its decision. If the court's decision is appealed, the Regional Court of Appeals will resolve the matter within one month. If further appealed to the Cassation Court, it will also issue a final decision within one month. However, due to the heavy workload of the courts, these timelines may not always be adhered to in practice.

4. Consequences of Objection to Authorization

An objection to the authorization halts all authorization-related processes until a final court decision is reached. This means collective bargaining negotiations cannot commence until the objection is resolved. Therefore, managing the objection process effectively is critical for employers.

5. Authority Certificate

If no objections are filed or objections are dismissed against the authorization, the Ministry will issue an authority certificate to the labor union. Collective bargaining negotiations can begin once the authority certificate is issued.

6. Conclusion

Processes related to collective employment law are complex and filled with technical details. Therefore, to ensure the protection of the rights of both employees and employers, properly managing the risks and acting in compliance with legal procedures are of great importance.

CONTACT



Selin Balkır Erçin

sbalkir@kolcuoglu.av.tr



Burcu Çınar

bcinar@kolcuoglu.av.tr