

WORKERS AT ISTANBUL'S THIRD AIRPORT CONSTRUCTION SITE

(November 6th 2018)

What happened? Construction workers at Istanbul's third airport launched a demonstration on September 14th 2018, in order to protest against poor working conditions, overcrowded and bed-bug ridden accommodation, poor food, late-arriving shuttles, non-payment of remunerations and workplace injuries and deaths. After more and more workers joined the demonstration, executives of the contractor consortium requested that security forces be sent to the construction site to halt it. 401 workers were detained in night raids at their accommodations. Two trade unions, Dev Yapi-Is and Insaat-Is, called on September 15th 2018 for a solidarity demonstration to be held in Kadikoy. The demonstration was attacked by police forces, with 27 people detained.

Investigation: The Prosecutor's Office requested that 28 of the detained workers stand trial and be arrested for "violating the Law No. 2911", "resisting police forces", "damaging public properties", "violating the right to work", inciting hatred and animosity among the people", "resisting to prevent public officers from performing their tasks" and "deliberatively risking the public security". While the rest was released, those 28 people were kept under detention for allegedly taking leading roles in organization and inciting the protest.

Prosecution: 24 workers were arrested by the court for "resisting to prevent public officers from performing their tasks", "violating the right to work", "damaging public properties" and "violating the Law on Assemblies and Meetings". 4 workers were released on the condition of judicial control, with ban on travel abroad.

Protests that have continued in the construction site led to 4 workers being detained on September 25th 2018, 3 of whom were then arrested. 6 more workers were arrested on October 5th 2018. The number of the detained workers, including two trade union executives, raised to 35.

The Gaziosmanpasa 2nd Criminal Judgeship of Peace ordered that 6 arrestees, who were among the 24 workers detained on September 18th 2018, be released.

JUDGING THE JUDICIARY

“Having examined the investigation launched against the construction workers, our “Shadow Court” ruled the following:

SUMMARY OF THE JUDGMENT

November 6th 2018

1. It is illegitimate that construction workers were prevented firstly by security forces and then by the court from exercising their constitutionally- and Labor-Law-protected right to *“not to perform labor in the case of non-payment”*.
2. The prosecutor committed **misconduct** by issuing an indictment based on fabricated evidence.
3. Construction workers being detained by law enforcement officers cannot be accepted as legitimate because the order issued by the prosecutor was unlawful. The Article 137 of the Constitution states that those who enforce an unlawful order also are held responsible.
4. There was no substantial evidence in the indictment that convincingly indicated that some workers were armed during the demonstration. That is a crime of “defamation”. That crime has been committed not only by the prosecutor but also by the media outlets spreading fabricated information.

REASONED JUDGMENT

According both to the Article 55 of the Constitution and the Article 34 of the Labor Law, workers have the right to not to perform labor in the case of non-payment. It is also not unlawful to protest the working conditions and workplace injuries and deaths. What is unlawful and unconstitutional is to attack non-violent protest of that kind.

The charges such as “resisting to prevent public officers from performing their duties”, “violation of the right to work”, “damaging public properties” and “violation of assemblies and meetings” can be considered to be ill-founded claims fabricated to defame the rightful demands of construction workers. When the charges are examined, it is easily seen that they have been incorporated into the indictment as the outcomes of the investigations conducted by biased law enforcement officers and prosecutors.

The protest has been alleged to be an illegal strike due to its collective character. The relevant law, however, states that “even if workers’ individual decisions not to perform labor in the case of non-payment take the form of collective action, it cannot be considered to be a strike”. Collective character of the demonstration held by construction workers can therefore not be regarded as a strike, not to mention that going on strike itself is a “right”.

The demonstration held by construction workers can only be defined as exercising the right to collective action. That right is protected both by the Article 34 of the Constitution and by the Article 6 of the European Social Charter. How comprehensive the right to collective action was stated clearly in a ruling issued previously by the Court of Cassation. It is as follows: “ILO, ECHR and ESC define the right to collective action, including going on strike, as a human right. Strike or strike-like protests and slowing down work pace etc. are subsumed under the right”. Workers being detained due to exercising their right to collective action is therefore in contradiction both with the relevant international conventions and with the ruling issued by the Court of Cassation.

Charges made against the trade union executives who “led” or “organized” the demonstration violates the right to trade union activities, which is subsumed under “the right to freedom of thought and expression” and “the right to meeting and association”. Charges made against the detained workers and trade unionists are abuse of the predicate crimes involved in the Law on Criminal Procedures. The Article 33 of the Law on Assemblies and Meetings No 2911 stipulates that those who are armed when they attend an assembly or a meeting may be detained. It has however been publicly known that the workers’ demonstration was peaceful. In that case, detention has been used as means to punish beforehand.

That police forces attacked the non-violent demonstration held to show solidarity with construction workers also was violation of “the right to assemblies and meetings”. To exercise that right does not require a prior permission. The Article 17 of the Law on Assemblies and Meetings No. 2911 stipulates that “assemblies and meetings may be prohibited only if there is a clear and present risk of violent conduct”. Peaceful protestors being taken into custody shows that to what extent arbitrariness prevails in practice.