

## PRIVATE EMPLOYMENT AGENCIES : CASE OF TURKEY\*

Assist. Prof. Ali Kemal SAYIN\*\*

### ABSTRACT

International norms arranging the labor markets ensure job opportunities to job seekers and try to match suitable labor supply with demand. Meanwhile they seek to sustain the balance between undertaking needs and employee protection. In one hand there has been a considerable suspicion around private employment agencies operated for profit making purposes, on the other hand, it has been realized that public employment offices alone are unable to meet employers' recruiting needs with employees satisfy best fitted to employers' needs as a result of global competition. As a result, ILO norms reflect approaches aimed to deal with supplying employment services which reflect the trends in historical and social factors. In this paper, the way private employment agencies in Turkey operate has been examined.

**Key Words:** International Labor Organization, Turkey, Labor Markets, Turkish Labor Law, Private Employment Agencies.

### ÖZET

#### ÖZEL İSTİHDAM BÜROLARI : TÜRKİYE ÖRNEĞİ

Emek piyasasını düzenleyen uluslararası normlar, iş olanaklarının daha yaygın kitlelere ulaşmasını sağlamak ve niteliklere uygun arz ve talebi bir araya getirmeyi amaçlamaktadır. Bunun için de, işletmelerin

gereksinimleri ile işçilerin korunması arasında bir denge sağlamaya çalışmaktadır. Bir tarafta, faaliyetlerini kar gayesi güderek yapan özel istihdam bürolarına kuşkuyla bakılırken, diğer tarafta, küresel anlamda rekabetin artması sonucu resmi istihdam kurumlarının, işletmelerin ihtiyaç duydukları alanda en uygun ve vasıflı işçileri bulma ve seçme işlevini tek başlarına sürdürmelerinin güçleştiği görülmektedir. Bununla birlikte, istihdam hizmetlerinin sunumu ile ilgili tarihi ve sosyal koşullar, farklı yaklaşımların benimsenmesine neden olmuştur. Bu denge arayışı ve istihdam alanında olumsuzlukları giderme çabası, ILO normlarındaki tarihi süreçte de görülmektedir. Çalışmada, özel istihdam bürolarının Türkiye'deki oluşumu incelenmeye çalışılmıştır.

**Anahtar Kelimeler:** Uluslararası Çalışma Örgütü, Türkiye, Emek Piyasası, Türk İş Kanunu, Özel İstihdam Bürosu.

### INTRODUCTION

Pace-gained globalization and increased international competition have brought significant changes in the classical framework of labor law and in its basic concepts in recent years. Intermediary services for finding jobs and employees have been affected in the process of change (Tuncay, 2007, p. 66). Intermediary services started in industrialized countries as a public employment service in the late 19<sup>th</sup> century as a result of sensitivity about social and economic effects of unemployment. First initiations in this field were mainly of adjustments towards finding jobs for job seekers and adjustments for employers towards filling in vacant positions in their businesses. Public service nature of intermediary activities progressed normally within a system that integrated employment service and unemployment aids in several countries for a quarter of a century following the 2<sup>nd</sup> World War. However, severe economic situation of many countries in 1970s and together with the increase of unemployment, employment services started to be seen as a tool of official employment policies towards solving unemployment problems or harmonization policies of labor markets. In the same way, in the economic liberalization and globalization environment of 1990s employment services have also started to be questioned (Thuy, 2001, p. xv). As a result, International Labor Organization abandoned the monopoly understanding of the public and adopted a new approach

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\*\* Istanbul University, Faculty of Economics, Department of Labour Economics and Industrial Relations.

that led to operation of private employment agencies in labor markets. ILO's norms about employment agencies that regulate the labor market conveys a universal characteristic and were usually accepted following significant events or crisis that affected the World (Tuncay, 1995, pp. 7-8). Mentioned periods when norms were accepted are examined it can easily be seen that they reflect social, political and economic conditions of the time. Secondly, making job opportunities available to masses of people and matching relevant jobs with their qualifications were aimed at by regulating the functioning of labor market. Finally, it can be seen that it reflects a search for balance between the needs of businesses and protection of employees (Erdut, 1998, p. 156). When the order of acceptance is examined a process that goes from prohibition to liberalization is seen.

In this study, elimination of state monopoly over employment services by stipulating private employment agencies and their types and functions in the labor market have been discussed. Finally, existing regulations in Turkish Labor Law about employment agencies will be examined.

### 1. Legal Basis of Employment Agencies

Increasing the level of employment and labor market regulation to avoid employment started after the end of 1<sup>st</sup> World War. In the process that started with the foundation of ILO, a requirement for employment offices occurred in order to reach full employment. Therefore, employment offices have been subject to both national and international regulations and gained significant functions since then.

ILO member countries' approval of a policy that labor was not merchandise kept employment intermediation out of business area that contributed to a great extent about their choice regarding the regulation of labor markets. This situation led to the view that recruitment is a responsibility of the state and private businesses or individuals would not be allowed to have financial gain by performing this service and these businesses should be restricted not to reach the governments' database about vacant positions (ILO, 1994, p. 7).

In the same way, second norm of ILO (act nr 2 about unemployment) after a few months following the foundation of the Organization

supported establishment of public employment offices and private free employment offices under the authority of central administration. Although, the act did not provided a strict state monopoly for employment services it accepted employment services as a public service. With the same date "Unemployment Advisory Act with the number 1" clearly supports pre-cautions that prohibit establishment of employment agencies that work on a fee basis or that aimed at profit-making. Therefore member countries' governments were asked to establish employment offices under a centralized model.

In spite of being more complex, public monopoly policy was confirmed in the further norms of ILO. Paid Employment Agencies Act dated 1933 which was approved following the economic crisis in 1929 brought public monopoly in mediating employment services with the aim of preventing exploitation of the unemployed by private employment agencies. Wide-scaled unemployment as a result of economic crisis caused the need to expand and improve existing placing services. For this purpose, issues such as unemployment insurance and social benefit programs added to the agenda. In the same way, restructuring of services such as education, placing and unemployment insurance under one body and improvement of relations with the employee and employer organizations by this three-legged body through advisory committees were stressed in ILO's Employment Services Act with the number 88 which was approved in 1948 (IIBK, 1991, p. 2).

Paid Employment Offices Act with the number 96 dated 1949 gave a preference possibility to member countries so that they could relax government monopoly a bit. According to this act, each member country that approved the act were required to state their preference whether they chose 2<sup>nd</sup> part's rules that required elimination of paid employment agencies or 3<sup>rd</sup> part's that regulated the paid employment agencies including profit-based employment agencies. Should 2<sup>nd</sup> part be approved then strict monopoly implementation by government was accepted. However, if 3<sup>rd</sup> part is approved both government employment agencies and private employment agencies were allowed to function in the labor market. Yet, functioning of private and government employment agencies in the same labor market brought strict audit.

Finally, ILO Act with the number 181 and complementary decision 188 were approved on June 19, 1997 in ILO General Assembly as it was discussed as 4<sup>th</sup> agenda subject. By this Act private employment agencies were permitted to function besides government employment agencies in order to improve quality of services. The act re-structures private employment agencies by bringing a new standard suitable for changing circumstances and let them operate besides public employment agencies. In this scope, collaboration between public employment agencies and private employment agencies were required in order to reach a more qualified employment services level. Moreover, moving from the protection of individual and collective rights against exploitation of employees and job seekers it is stated that no fee will be asked for the services of private unemployment services.

As it is seen, permission to the services of private employment agencies forms the basis of Act 181. Furthermore, temporary employment agencies and agencies that provide training and counseling are also regarded as private employment agencies (Cam, 2008, p. 24).

## 2. Concept and Types

Private employment agencies are designed as “profit based” or non profit based establishments that provide intermediary services for free or for a certain fee in labor markets between job seekers and employee seekers and that provide services under a specific contract and under the protection of private law (TISK, p. 7). These agencies are defined as real or legal persons that provide one or more services listed in the act for labor markets independent from government bodies (Article 1). ILO defines these agencies as private legal organizations that create services under a contract and in order to have a financial gain by facilitation or acceleration employment process for individual or legal persons, career improvement or filling in vacant positions (ILO, 1994, p. 11). The definition stated above is a broader definition of the concept which covers a number of private organizations in different categories.

Because of the rapidly changing labor market setting it is not always possible to see a definite private employment agency typology. However, through “Private Employment Agencies Act 181”, a typology

has been formed according to operations of existing employment agencies in member countries.

### 2.1. Types of Private Employment Agencies

In the following pages three different types of Private Employment Agencies which are intermediaries, skilled employee providers, agencies that provide service directly will be considered (Sayın, 2002, pp. 135-152).

**2.1.1. Intermediaries:** This type of agencies takes the duty of getting together labor supply and demand without being a party to employment relations. Intermediaries can be listed as follows;

- Fee-Charging Employment Agencies
- Overseas Employment Agencies
- Agencies for the Recruitment and Placement of Foreigners
- Executive Search Agencies (Headhunters)
- Training and Placement Institutes

**2.1.2. Skilled Employee Providers:** This type of agencies sign a contract with the employer and puts employees, who the agency agrees before and keeps, under its organization into the employers use. It is hiring employees on a lending based work relation for a job of a different user and for a period limited to the duration that is stayed in user’s workplace. Employer who lends in this type gets a certain amount of fee from the borrowing employer for the services provided (Tuncay, 2007, p. 67). It is possible to list these types of agencies as follows;

- Temporary Work Agencies -TWA
- Staff Leasing Agencies
- Job Shops or Cooperatives
- Career Management Agencies
- Employment Enterprises or “Intermediary Associations”

### 2.1.3. Agencies That Provide Service Directly

They take the duty of getting together labor supply and demand directly. They also conduct education and counselling activities while performing this function or they do studies that put forward current status of businesses. Following types of agencies can be given in this category.

- Outplacement Agencies
- Job- Search Consultancies
- Personnel Management Consultancies
- Employment Advertising Agencies
- Computerized Job Database Agencies

### 3. Functions of Private Employment Agencies

Public employment services are seen as a requirement to establish equality in reaching labor markets. Besides, public employment services are thought to change functioning of labor markets into a more efficient level, improve the accuracy of labor market information, prevent negative effects of structural harmonization programs on the labor demand and finally be useful beneficiaries of unemployment insurance assistance in countries that they are implemented in relation to finding jobs as soon as possible for the unemployed (Thuy, p. 26). Furthermore, it is possible to outline benefits of private employment agencies on the labor markets as follows (Muntz, pp. 10-11);

- provides jobs for job seekers and contribute to reduction of long-term unemployment
- creates new employment which would not normally exist
- can be accepted as a step forward to permanent employment
- increases the flexibility of labor markets
- plays a key role by collaborating and establishing partnership with the public employment institutions
- assists people with a disability to enter labor markets and increases the level of diversity in labor

- contributes to economic growth and increase of tax revenue

In the same way while unemployment payments fall, tax and social security premiums paid to government by this employment offices increase. Moreover, it helps reduction of informal employment.

Furthermore, employment through private employment agencies contributes flexi-security employment system which is adopted particularly in European Union recently (Tuncay, 2007, p. 75). Flexi-security is a concept that balances profits of employees and employers. Besides vast number of job opportunities with additional income through part-time and temporary work-flexibility, job security and protection for the continuity of obtained rights are established. From the point of employer's adaptation to rapid labor change and a market position that will respond to changing demands will provide flexibility. Besides, increase of competition power in order to have sustainable growth and employment increase, access to qualified workforce will develop loyalty of employees (Muntz, 2007, p. 15).

### 4. Private Employment Agencies In Turkish Law

Although establishment of private employment agencies was prohibited in Turkey, it is a known fact that some agencies perform the functions of private employment agencies under "consultancy". There are 449 registered consultancy company in "Turkey's Human Resources and Recruitment Site Guide" as of 2005 (RecruitmenTurkey, 2005) and some of them has been turned into private employment agencies. Since these companies did not get private employment agency operation license formerly and perform employee selection they have turned into private employment agencies in recent years due to audits conducted by the government officials' placement.

#### 4.1. Legal Status of Private Employment Agencies

Intermediary services for employment in Turkey were conducted by official employment agencies until private employment agencies were given permission in June 2004. Today, existing legal regulations regarding private employment agencies are stated in Labor Law 4857's article 90 dated June 10, 2003, Turkish Labor Placement Office Law with the number 4904 dated July 5, 2003, Private Employment Agencies

Directives with the Number 25378 dated February 19, 2004 and Declaration about Private Employment Offices with the number 25541 dated August 2, 2004.

In the 90<sup>th</sup> article of Labor Law with the title “intermediation to employment” it is stated as “placement of job seekers to suitable positions and the duty to find suitable employers for various work performed by work institution and by permitted private employment agencies”. It is quite a general description. Turkish Labor Placement Office requires strict precautions for the establishment and operation of private employment agencies. Those who provide the necessary conditions are granted a three year operation period and will be granted again during the following terms (article 17). In the declaration about the private employment agencies (article 1) it is stated that private employment agencies can conduct services such as intermediation to employment and services for labor markets, employment and human resources. In this scope, private employment agencies that are regulated to a limited level in Turkish Law can conduct following activities (Tuncay, 2007, p. 74);

- Intermediation activity to find job and employee domestically and abroad
- Activities to increase the ability of employment and its efficiency
- consultancy activity in businesses human resource fields
- activities to find jobs and employees for public establishments and institutions
- access to internet to provide services

As it seen functions of private employment agencies are quite restricted. Especially there is a legal gap about the status of temporary employees’ job descriptions, their rights and obligations. Court decisions have not filled this gap yet.

In Turkish Labor Placement Office Law article 19, parallel to ILO’s regulation 181, the rule of not receiving a fee except for the fee received from employer from the employees on no condition for the services given. As an exception to this rule in the Private Employment Agencies

Directive (article 15), a fee can be asked from job seekers in some profession categories such as professional athletes, coaches, trainers, fashion model, and general managers or for positions at this level.

#### 4.2. Efficiency of Private Employment Offices

The number of private employment agencies has increased fast since their operations were permitted in June, 2004. The number of private employment agency in 2004 was 24. It reached to 102 in 2005 and 204 in 2006. Increase in the number of agencies continued in 2007 and except for the companies which lost their license or expired their permitted working period the number reached to 230 (ISKUR 1, 2008). Compared to this it is seen that affects of employment offices that try to introduce themselves and in the process of adapting to the sector on the employment are limited. Only 1.177 (% 1) application out of 116.612 application resulted in placement to a job in 2004. In 2005 10.306 (% 1.27) out of 807.830 application were placed by private employment agencies (ISKUR 2, 2008). Turkish Employment Office, which gives public employment service, placed 48.902 employees in private sector and if it is considered significance of private employment agencies can be understood better (Sanal, 2006, p. 132). Applications and increase in the number of employees placed to jobs are also significant.

Although they have a short history, private employment agencies had a fast advancement and organized under an association in order to form standards for a healthy growth and announce their efforts to public and public institutions. Entity started under the name of “Private Employment Agencies Association” in 2004 has 23 members (OIBD, 2008). It is believed that this organization will continue its activities in the coming years.

## CONCLUSION

Parallel to the developing labor markets, conducting employment activities by state gets difficult day by day. It is seen that private employment agencies facilitate public's burden by contributing to the efforts of employment increase and therefore prevention of unemployment. Following the need in this field there has been some legal adjustments in Turkey about the private employment agencies' activities. However, efficiency of private employment agencies activities are lowered since they are only given permission to perform intermediary services between employees and employers. In fact, since employee lending relationship which is a world-wide common activity of private employment agencies that is performed as a gainful activity is not stressed, in practice these kind of activities are sometimes regarded as fictitious as it matched to sub-contracting (Tuncay, 2007, p. 75). Although, Act with the number 96 specifies intermediation, Act with the number 181 specifies giving consultancy and education services as well as employee lending business as an occupational activity. Although Turkey has not signed Act 181 yet, it has adjusted its legislation in harmonization to the Act. Should mentioned limitations are eliminated, efficiency of private employment agencies in labor market will increase to a great extent.

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