



Trade Union
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syndicale consultative
auprès de l'OCDE*

Comments on the OECD report “The Public Sector Pay System in Israel” and its political use in Israel

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On 21 June 2021, the OECD published a report on “[The Public Sector Pay System in Israel](#)”. Therein, the OECD assesses labour relations in the Israeli public sector and delivers fairly radical recommendations for reform, particularly in Chapter 3 on “Improving Labour Relations in Israel’s Public Sector”. Unlike the Economic survey series (which covers all OECD countries every two year), the OECD does not have a systematic peer review process for public sector pay. This report was hence an ad hoc initiative.

Over the past year, the report has become a cornerstone of the [Israeli Government’s position](#) on all engagement and negotiation between the Government of Israel and Israel’s General Federation of Labour, Histadrut.

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Key findings

While the OECD report rejects the option “*to abolish [trade] unions*” in Israel, it is not shy about advocating a number of recommendations that would severely restrict collective bargaining rights in the public sector. Mixing social dialogue (in which conflicts arise and are expectable) with the more narrow employer objective of social peace (a world free of strikes), the report aims to transform trade unions into “collaborative social partners” in the design of employer led reforms.

The primary concern of the report is the alleged prevalence of strike actions in Israel, which is taken as a barometer for labour relations. Considering a flawed premise that “*recourse to strike action and number of working days lost indicates a system that does not work for most stakeholders*”, the report recommends restricting the right to strike for workers as a legitimate way to “improve relations”. To achieve that, the report proposes to broaden the concept of “essential services” (sectors where workers’ strikes are illegal) and to introduce mandatory arbitration and alternative dispute resolution mechanisms, in order to expressly subvert public

employee bargaining power. The report further calls to restrict the right of trade unions during the lifetime of an active agreement.

As further remedy, the report suggests to bring more “employer perspectives to the negotiations” and in collective bargaining processes, including by decentralising labour relations and collective bargaining. Misrepresenting the OECD evidence on collective bargaining, the report pretends that decentralisation of collective bargaining is somehow an OECD feature (“*In most OECD member countries a decentralized power of negotiation helps match the needs for change and the demands of the unions*” (P.56).

The report is also to be singled out for a micro-managed level of detail on how labour relations should function, almost on a day-to-day basis. The OECD has delivered robust expertise and knowledge on the broad comparative trends of labour market institutions, but it has not set standards or even established any principles on the day to day functioning of labour relations, leaving such timing and scope of negotiations to the ILO.

Finally, an important consideration refers to the methodology applied in the study. The authors do not explicitly define the nature and number of stakeholders consulted in the process. The analysis seems biased towards employers’ interests, without taking into consideration the positions of trade unions. Whether this is deliberate or rather the result of available data and sources, the number and nature of the consulted stakeholders should had been made clear for sake of transparency.

Also, it would have been useful if the OECD referred to its own Council Recommendation on Public Service Leadership and Capability, which calls for “*Engaging representatives of public employees in legitimate consultation procedures, negotiating through open and fair processes such as collective bargaining, and setting procedures for monitoring the implementation of agreements.*” Furthermore, “*ensuring that employees have opportunities to contribute to the improvement of public service delivery and are engaged as partners in public service management issues, in particular through: a. Enabling employee representation and entering into constructive social dialogue with them*”.¹

Following the publication of the OECD report, the government of Israel embarked on a sustained mission to curtail social dialogue rights and the freedom of trade union action in a direction that is clearly inspired and in line with the recommendations provided by the OECD. TUAC and Histadrut remain very concerned by the course of action.

Specific comments

Relying on perceptions, rather than evidence

The OECD claims to be evidence-based. Yet, this report is passing judgement on the role of Israeli trade unions and the quality of dialogue based on scarce evidence. The report draws its definitive conclusions on what seems as perceptions alone. As such, the report is filled with positions that do not appear grounded in data, nor qualitative evidence when stating: “*social dialogue in Israel’s public sector seems to be stuck, resorting too often to strike action*” (P.46), and “*In Israel, social partners seem to focus on the formal agreements. Unions seem to be active actors in formal collective bargaining processes whereas it would be efficient and inclusive to consider them as collaborative social partners*” (P.57).

Selective reading of literature

The report is not based on previous literature on social dialogue in Israel. Among the very few papers quoted by the OECD, there is a 2007 study titled “The State of Organized Labor in Israel”: “In 2007, Cohen et al, observed that, “the prevailing political climate has led to the popular argument that Israeli trade unions have always been, and continue to be, extremely militant in their strategies and inconsiderate of economic constraints” (OECD, P. 45). Yet, this quote is extrapolated and misleading. The authors of the original paper argue in fact that contrary to such “popular argument [...], an alternative explanation points at the almost total elimination of any alternative methods of dispute resolution in the public sector”. Industrial relations in Israel might require an update, but there is no evidence to support that this is because of unions being “militant and inconsiderate”, as the OECD report seems to suggest.

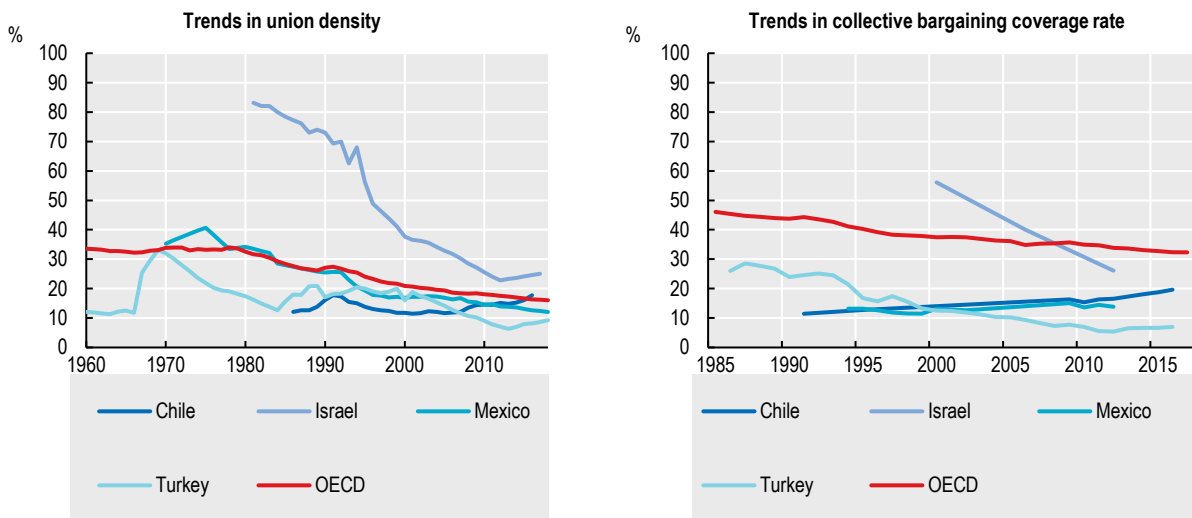
The report also includes definitive views on the performance of unionised teachers, but the OECD publication that is referenced (namely the OECD report “Negotiating Our Way Up: Collective Bargaining in a Changing World of Work”) does not contain any such findings or conclusionsⁱⁱ.

Trade union density

The report has further surprising and unfounded statements regarding trade unions. Combining both lack of evidence and questionable reasoning (along the line “if it’s not in the OECD average, it’s wrong”) the report states “The unionisation rate is rather high and increasing in recent years, which contrasts with the situation of other OECD member countries. Unions can be partially funded by public funds, even if they mainly rely on their own funds. Again, this situation differs from other OECD member countries where unions for more than two-thirds of OECD countries rely exclusively on their own funds.” (P.50).

Comparison of trade union density between countries needs to be treated carefully, because countries have radically different collective bargaining systems. What should matter the most is the trend in the long term. In the case of Israel, the long-term trend regarding trade union density and collective bargaining coverage has been a dramatic fall at a much faster rate than the OECD average (Figure 1). Collective bargaining coverage is in fact below that of many OECD countries.

Figure 1 – Trends in union density and collective bargaining coverage rate in Israel and OECD average



Source: OECD (2019), Negotiating Our Way Up, Chapter 2

The report goes on and raises concerns about a supposedly higher unionisation and activity rate than the OECD average in union membership. *“The recent resurgence of unionizing activity and the conflicting labour relations has become an urgent issue to tackle in order to restore more harmonious relations and insure inclusive growth in Israel”* (P.57).

Trade union growth is a sign of productive and positive industrial relations. However, the report presents it as a problem that needs to be tackled. Israel should not be encouraged to pursue the lowest common denominator in OECD unionisation rates or funding. Furthermore, on the aspect of trade union source funds, it is worth noting that trade unions funded by government sources are typically found in lower income member states and non-members adopting OECD policy recommendations, i.e. Latin America. Such trade unions cannot suddenly shift to self-sufficient financial sourcing (dues) and continue to represent their members effectively.

Centralisation versus de-centralisation of collective bargaining

One of the key findings of the OECD Employment Outlook editions since 2018 is the importance of having coordinated collective bargaining systems that combine both sector-wide and firm-level bargaining. Looking at the *“pros and cons”* of centralisation and de-centralisation systems, the report however makes a firm call for de-centralisation in the public sector. While *“the economics literature demonstrates the relative efficiency of centralized bargaining”* (P.50), the report is quick to praise decentralisation model, claiming that *“centralization of bargaining is not optimal if it weakens the managers’ incentives and autonomy”* (P50-51) and *“In most OECD member countries a decentralized power of negotiation helps match the needs for change and the demands of the unions”* (P.56). Following detailed report on how Greece and Portugal amongst other dismantled the sector wide system in the aftermath of the 2008 crisis, and the decentralised system in the British and Swedish public sector, the report calls for a mixed system, *“Centralized bargaining could be limited to base wage increase and pay system. [...] The issues of negotiations need also to be clarified, major issues could be centralized but precise working conditions are better fixed at the decentralized level”* (P.56).

Limiting the right to strike

The report includes further statements that sound profoundly judgemental. For example: *“Strikes are costly in terms of days of work and it would be more efficient to come to a resolution quickly. After the conflict resolution, one can wonder why a solution that has been rejected at the beginning of the negotiations is eventually accepted by both parties”* (P. 59). Such an assertion is, first of all, difficult to assess when lacking specific reference to concrete examples, but in any case a strike is not necessarily useful only when it changes the outcome of the negotiations. Strikes and the threat of strikes can serve as a deterrent to prevent unilateral reforms from the side of the government.

Looking at working days lost due to strikes, the report notes that *“International comparison on labour disputes and in particular on strikes at the country level is very difficult”* (P. 57). This does not however prevent the report from forming a comparative judgement: *“In Israel, the number of disputes and strikes, and their cost in terms of lost working days are very high, compared to other OECD member countries* (P.57). *“In the last twenty years, and contrary to the trend in other OECD member countries, one can observe a large numbers of strikers and working days lost as a result of strikes in Israel. This surge can be explained by the strategy to use general strikes in the public sector as a negotiation tool”* (P. 59). In fact, looking at the figure provided in the document, it appears evident that while the number of days lost in Israel is certainly higher than in other

OECD countries, it has fallen considerably since 2008, more than halving compared to the 1990s and early 2000s.

One should be very cautious of interpreting the number of strike actions nationwide, particularly for the purpose of measuring the quality of labour relations, as confirmed by “Negotiating our way up” (OECD 2019): *“Data should be interpreted however with caution as the number of strikes is likely to be affected by how they are regulated at national level and may thus not reflect the actual level of strife in the workplace. Furthermore, existing statistics are plagued by considerable differences in definitions and measurement which severely limit the comparability of the data”*.

Figure 13 of the report features Israel amongst the OECD countries with a high level of strike actions alongside a very diverse group of countries. Other countries with high number include Costa Rica, Chile, Denmark, Norway, Spain, and Canada. Having countries like Denmark and Norway – well known systems, highly regarded for their labour markets and quality social dialogue – in the top of a list of strike actions, suggests that one should be cautious in interpreting such data as synonymous with militant trade unions or a high level of strife in the workplace.

From there, the report claims that *“Disputes are a symptom that labour relations have partially failed”* and that they *“are a costly way of reaching an agreement (P.57)*. Disputes happen in all contractual relationship and do not necessarily indicate problems in the overall structure nor do they prescribe systemic success/failure. How to ensure a well-functioning process allowing dispute resolution before such disputes becomes a full-scale labour conflicts is the real issue. In contrast, harmonious relations involves a commitment from both parties. Trade unions should not be expected to acquiesce to the draconian and lopsided approaches described in this paper, limiting strikes, forcing arbitration, “dialogue” over good faith collective bargaining. Reaching agreement would most certainly occur if there were more trust and confidence between the parties, and this report best serves as evidence of there being none.

The report further expresses concern that the *“labour courts’ reluctance to limit [the right to strike] creates significant difficulty for employers seeking an injunction against a strike. [...] Many public employers feel that the labour courts do not give adequate treatment to collective disputes, especially with regard to requests for injunctions against industrial actions” (P.59)*.

Suggesting to limit the right to strike in order to improve dialogue does not imply an honest desire to seek meaningful social dialogue or collective bargaining, as it would at best address the symptoms and not the causes of the problem. The chilling effect implied by this report includes a judiciary designed to silence opposition, and eliminate the possibility of legitimate industrial relations processes.

Forced arbitration

Looking at solutions, the report comes up with a simple answer: strike days need to go down in Israel, and the best way to achieve this is simply to eliminate the possibility for workers to conduct strikes in the public sector. Again, without reference, data or a clear definition, the report states that *“In many other OECD member countries, some limitations to the right of strike are implemented in order to maintain those essential services” (P.55)*. The solution, according to the report, is to introduce forced arbitration when disputes arise. On that, the report apparently takes as an argument in favour the fact that the ILO does not oppose forced arbitration (P.55).

Mediation consists of choosing an independent authority that brings the parties to react on an agreement but it lacks the power of implementation and in case of a difficult conflict, it may not result in dispute resolution. Arbitration entails a third party who examines the dispute or bargaining process, provides data and recommendation and exerts political pressure to negotiate. In this case, arbitration cannot compel the parties to accept the dispute resolution. Arbitration may also encourage the parties to take extreme positions instead of going toward the middle since the third party will probably propose a middle position.

Arbitration does not “manage conflict” as the report indicates. Usually, it resolves unresolved issues between two parties by a determination made by a third party. Parties in a conflict typically prefer to avoid arbitration and are as such incentivised to stay in the negotiations and retain control over the resolution of the issues themselves. It should be noted of course that arbitration comes in different forms and can be either binding or non-binding. Non-binding arbitration would still allow either party to reject the arbitrator’s decision and enable a judicial remedy or, indeed, allow the union to strike.

The following chapter attempts to place disproportional blame on Histadrut for the level of strikes. Unfortunately, the report does not consider the overall deficiency in the public administration of public contracts and the consequential absence of productive dispute resolution channels. Furthermore, there is no clear description of the legal framework and possible shortcomings in Israel. These omissions leave the external reader with the astonishing conclusion that trade unions have so much power to represent the sole reason for the poor state of social dialogue in Israel.

A report drafted behind closed doors

As a final point, it should be noted that this report, which intends to “improve labour relations”, was drafted behind closed doors at the OECD with no, or very little access and opportunities for comments and consultation by the Israeli trade unions.

While TUAC facilitated contacts between the OECD and Histadrut at the beginning of the project in 2019, neither TUAC nor Histadrut were consulted in the progress of drafting the report, asked for evidence, nor informed about its conclusions in a timely manner.

The OECD Working Party on Public Employment and Management in charge of overseeing the drafting did not approach or seek the involvement of the TUAC in its work before the publication of the report. This is particular disheartening considering the content of the report and its focus on Israeli trade unions.

The political use of the OECD report

On top of the prolonged crisis triggered by COVID-19, which affected economic development in Israel as in all other OECD economies, Israel has been characterised by considerable political instability over the past year, which makes even more challenging to implement reforms.

Yet, since the publication of this OECD report, the government of Israel has pushed forward a number of actions that seem directly inspired by the policy recommendations provided by the OECD:

1. The Government is forcing a change in collective labour relations, undermining its obligations for negotiation with trade unions (e.g. on issues of job classifications and

organizational restructuring), demanding increased employers' discretion and exerting autonomous decisions. This is manifested by increasing (and uncompromising) demands to maintain the agreements made for the COVID-19 crisis, implementing wide employers' discretion in workers' job/role classifications, and promoting organisational change.

2. The government seeks to further limit the right to take industrial action, manifested by increasing (and uncompromising) demands to implement obligatory mediation/arbitration clauses as well as reduced ability for industrial action after collective agreements' expiration. Furthermore, the government promotes a unilateral reclassification of "necessary" social services (that entail further limitations on the right to take industrial action) and act to impose obligatory mediation in collective industrial disputes through peak-level negotiations.
3. The government promotes increased employers discretion in pay-setting mechanisms, in unilateral decisions of the Minister of Finance, in the regulation of working conditions, and promotes a gradual increase of the individual performance-based pay as a substitute for collective frameworks for remuneration.

Stemming from this framework, a number of concrete actions by the Israeli Government followed:

1. **Managerial flexibility.** The Government has attempted to broaden the scope of flexibility in the public service. In the public sector, specifically during the COVID-19 crisis, Histadrut negotiated an exceptional crisis management mechanism, including permitting flexible hours, shift employment, and role flexibility based on the manager's discretion. Outside of the crisis, all of these steps create a degradation of employment conditions equally severe as being laid off.
2. **Simplifying the pay structure.** While this is a positive concept, the Government's attempts to reduce the components of seniority and employee experience raise severe concerns. The Government has attempted to distinguish the pay structure from the framework agreement and combine the terms of their negotiation with managerial flexibility.
3. **Personal contracts.** The use of personal contracts outside collective framework agreements was already used in Israeli state-owned enterprises. More recently, the Ministry of Finance is attempting to erode teachers' collective agreements by introducing the same type of contracts in the public education system, creating different groups which would de facto exclude some teachers from collective agreements.
4. **Repeated attempts to restructure the allowances system.** This is exemplified by three separate attempts to cut car ownership allowances in public sector wages, first via the Arrangements law, then via the Budget Negotiations, and finally in the incorporation of a law to limit the use of private vehicles.

ⁱ OECD (2019), *Recommendation of the Council on Public Service Leadership and Capability*, <https://www.oecd.org/gov/pem/recommendation-on-public-service-leadership-and-capability-en.pdf>

ⁱⁱ "Unions can induce lower quit rates, better job production standards, more information exchange and better communications. Although there is evidence of this positive effect in the private sector, there are a few studies in the public sector ((OECD, 2019[16]), (OECD, 2019[17])). For instance (OECD, 2019[18]), finds that on average students are seven percent more productive in unionised schools. On the contrary, (OECD, 2019[19]) finds that teachers' unions have a negative overall effect on student performance, even though they tend to have a positive impact on schools' resources, because of a detrimental effect on productivity" (P.49).