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**Obstacles to Freedom of Association and Collective
Bargaining System in Turkey:
A Close Look at the Employer Dominated Trade Unions**

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To the people who choose to take side of the social justice....

Abbreviations

C87	Freedom of Association and Protection of the Right to Organise Convention
C98	Right to Organise and Collective Bargaining Convention
CAS	ILO Conference Committee on the Application on Standards
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
CFA	ILO Committee on Freedom of Association
DISK	Confederation of Progressive Trade Unions of Turkey
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECSR	European Committee of Social Rights
EI	Education International
ESC	European Social Charter
ETUC	European Trade Union Confederation
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICFTU	International Confederation of Free Trade Unions
ILO	International Labour Organisation
IOE	International Organisation of Employers
ITUC	International Trade Union Confederation
KESK	Confederation of Public Workers' Unions
MESS	Turkey's Metal Industrialists Union
NGO	Non-Governmental Organisation
TURK-IS	Confederation of Turkish Trade Unions
UDHR	Universal Declaration of Human Rights
UN	United Nations

1-INTRODUCTION

The power of the sovereign states to rule is only a narrow side of the politics and in the broad sense; it includes all the efforts that has direct and indirect effects on the issues that concern the society¹. Since collective action is stronger than the individual act, freely established and functioning associations are essential to influence policies that shape our lives. Trade unions at this point have a crucial role to play because of their associational power² by representing the demands of the workers on the working conditions and socio-economic policies.

Freedom of association and right to collective bargaining are fundamental rights³ and independence of trade unions gives these rights their very meaning. Yet, trade unions and workers are facing many obstacles to enjoy these rights fully because of the interference by the employers, governments and sometimes -usually- both through different channels. One of the risks of these acts of interference is the possible effect on the management of trade unions which might form a distance between the unions and the workers. Moreover, they carry the risk to affect the will of workers regarding their membership status as a result of anti-union discrimination. Both of the risks lead to non-effective collective bargaining processes which weaken the working class, worsen the working conditions, and harm democracy.

The relationship between the freedom of association, collective bargaining systems and the employer domination on trade unions are a neglected part of the freedom of association issues in general, even though it is very dangerous for the core of these rights. This work tries to understand this relation.

1.1 Aim of the thesis and the research question

Governments and employers are the two primary actors that exert pressure on trade unions. The interventions by the former largely stem from the potential threat that the organised power of the workers pose to their authority; whereas the interventions of the latter result from the clash between the interests of the employers and those of the workers.

International law makers are aware of this risk and international labour standards prohibit the interference of the State, employers and their organisations in trade unions' establishment, functioning and administration. In addition to the already existing supervisory bodies of international organisations; a special monitoring mechanism, the Committee on Freedom of Association (CFA) of the International Labour Organisation (ILO) has been established to deal

¹ Adnan Tug, *Sendikalar Hukuku* (2nd edn, Yetkin Publications 1992) p.213 (Law of Trade Unions)

² Erik Olin Wright, 'Working-Class Power, Capitalist-Class Interests, and Class Compromise' 105/4 *American Journal of Sociology*, 2000, pp.957-1002, p.962

³ ILO International Labour Office, *Freedom of Association and the Right to Collective Bargaining: Europe* (Global Report under the Follow-up to the ILO Declaration 2004)

with the problems regarding freedom of association which shows the international attention given on the subject.

This thesis tries to examine the current state of the freedom of association and collective bargaining in Turkey, and the role of the Government, employers and the supervision of ILO in this process. It discusses whether the legislation and practices are in Turkey comply with international standards, how ILO monitors the freedom of association and collective bargaining practices in Turkey and whether its supervision mechanisms are effective when violations occur that jeopardize the independent functioning of trade unions.

While this thesis is asking *if the collective bargaining system in Turkey is in compliance with international standards*, main question it seeks to answer is; *can the monitoring mechanisms of ILO provide sufficient protection regarding the threat of employer dominated trade unions in the collective bargaining system in Turkey?*

With the answers, it aims to highlight an issue which needs attention and to contribute the present and future works for free trade unions.

1.2 Why this topic was chosen?

According to the data from 2014, the employment rate of the global working age population is 65.7%⁴. Workers are a major part of the world's economy and society. Moreover, being a worker provides a common platform regardless of the race, religion or sex. According to the Marxist theory, they have the power and valid reasons to change the economic order. For the other approaches; they can change the working conditions and employment policies for better. One common base of all the approaches is that the workers have the potential to make a change and they face with obstacles by those who seek to control their organised power.

The lawyers' duty is to shed light on the sufficiency of the laws and their implementation to be able to point out the gaps between law and practice. Without their implementation, rights are just written documents. Therefore, the reason of the topic choice is briefly to provide an understanding on an important issue which threatens the abovementioned fundamental rights of the workers and which is a common complaint in daily life conversations in Turkey but not often subjected to researches.

Free trade unions are capable to make a change for good regarding both a life with dignity in employment and the democracy in general. Turkey is selected as a country which ratified the relevant conventions yet has been subjected to various criticisms and alleged violations on the topic; with the hope to contribute to reveal some of its reasons and possible solutions to improving workers' rights in the country. This hope targets the right holders to enjoy their rights

⁴ OECD, 'Employment rate (indicator)' <<https://data.oecd.org/emp/employment-rate.htm#indicator-chart>>

and freedoms fully and equally which should not be hampered by the other actors of the employment.

1.3 Methodology

International law that includes labour rights as human rights is usually not arranged in a vertical manner and instead it has a horizontal effect as a result of the principle of sovereign equality⁵. Therefore consent of the states plays a crucial role in this field⁶. Main focus of this thesis is to analyse the national law of Turkey, who gave this consent to the relevant international instruments which will be stated further on. While the national and international legal sources including the jurisdiction of ILO Committees' are mainly used for the analysis on this research, it adopted an inter-disciplinary approach, rather than a legal formalism. Socio-legal research method in this sense helped to provide a bigger picture beyond the text of the legislation by perceiving law as a part of wide social surroundings⁷ in conformity with human rights approach⁸. In addition; statistical data, views of governments, employers' and workers' organisations, articles and research reports are used as other materials.

Other than the legal sources, theories regarding the class conflict are given only for a further thinking while interpreting the legal norms. Analyses of these theories are not taking part of this research.

1.4 Delimitations

Since the main focus of the thesis is Turkey, international and regional instruments on freedom of association and collective bargaining are selected only from the ones that Turkey had ratified. Therefore, instruments as American Convention on Human Rights and African Charter on Human and Peoples' Rights are excluded from the content.

Relevant provisions of the instruments other than ILO are mentioned briefly for providing the general idea of the international legal framework of the freedom of association and right to collective bargaining. Yet, only the ILO's standards and jurisprudence are used for the country analysis since it provides the most specific regulations on the international labour standards. Convention No.87 on Freedom of Association and Protection of the Right to Organise (C87) and Convention No.98 on Right to Organise and Collective Bargaining (C98) are the main materials in this scope.

⁵ Shazia Qureshi, 'Research Methodology in Law and Its Application to Women's Human Rights Law' 22/2 Journal of Political Studies, 2015, pp.529-543, p.538

⁶ Shazia Qureshi, 'Research Methodology in Law and Its Application to Women's Human Rights Law' 22/2 Journal of Political Studies, 2015, pp.529-543, p.538

⁷ David Nelken, 'Rethinking Legal Culture 1' 8 Law and Sociology, 2006, pp.200-224, p.204

⁸ Qureshi p.534

Government has two roles regarding the subject; one as the authority which is obliged to regulate the law and monitor its implementation in general, and one as the employer in the public sector. This thesis focuses only on the former and excludes its role as an employer except for brief privatization examples.

Convention No.98/2 prevents any kind of acts of interference by the employers on trade unions. While this provision includes lighter interferences as well, it particularly prohibits the acts in the level of domination which are more visible and easier to point out. Therefore, even it is hard to draw the line between such levels, it might be important to mention that the examples on the thesis are mostly referring to domination related discussions.

1.5 Introduction of the following chapters

In the first chapter, historical background of the trade unionism and the story behind the adoption of norms about freedom of association and right to collective bargaining in international law are explained. Then, the relation between the trade unions and politics are briefly mentioned. In this chapter, general background is provided to help the reader understand the historical evolution of trade unionism and how it emerged as a fundamental right.

The second chapter is descriptive and informative. It explains the framework and content of international law regarding the freedom of association and right to collective bargaining, then tells briefly where Turkey stands as a State Party. Later on, the tools of the trade unions to give function to the freedom of association are explained with their elements for the compliance with the international standards.

The third chapter explains the monitoring mechanisms of international bodies. This section covers two separate sets of institutions: firstly, the supervisory bodies such as the Human Rights Committee (HRC) and European Court of Human Rights (ECtHR) and secondly, ILO's supervisory bodies.

The fourth chapter focuses on the theories and different approaches about the questions regarding class conflict or compromise. Then, the changing and evolving industrial relations of the dynamic world of work are examined. With the help of the information under this chapter, different perspectives on the intentions of the actors of employment are provided which may also help to understand the future of the employment relationship.

At this point, reader has the necessary information to evaluate the situation in the following chapters. In chapter five Turkey is examined as the main focus of the thesis regarding its historical background on trade unionism, current laws and some relevant statistics. Then, it discusses three examples; Turk-Metal, TEKEL resistance and Turk-Is regarding the domination of employers over the workers' organisations. Lastly, the situation of Turkey in the last ten years in the eyes of ILO's supervisory bodies is examined concerning the abovementioned rights.

Last chapters are regarding the analysis and recommendations. Chapter six includes the analysis of the overall situation in Turkey and it is the central chapter of the thesis that seeks to answer the research question. Following the main findings, chapter seven provides brief recommendations based on these analyses. Then the concluding remarks summarize the purpose, content and the reached conclusions of the thesis with the hope of raising questions for right owners as workers and trade unions; right providers as employers, governments, courts and international organisations; and right defenders as all of us who choose to take the side of the democracy and social justice.

2-CHAPTER 1: FREEDOM OF ASSOCIATION AND TRADE UNIONS

Unions of workers have a complicated structure that has political, economic and social roots⁹ and they did not appear in the stage of history on a sudden. Understanding these roots and their evolution is important in order to make sense of the current state and the challenges that the trade unions face today.

2.1 Historical background

Two revolutions lie at the heart of the emergence of trade unions: Industrial Revolution in the economic sense and French revolution in the ideological sense¹⁰.

With the invention of the steam engine, the Industrial Revolution had begun and so did the mass production. Dissolution of the feudalism turned the villagers of the time to workers in the factories as a result of migration from rural to urban areas¹¹. In the factories, workers started production in a collective environment for the first time¹². Working conditions though were very bad and got worse in time. Employers also tended to use child labour and women had started to be seen as a source of cheap labour in the market¹³. French revolution in 18th century, took down the monarchies, where the authorities had strong control over all areas of life. Instead it brought, “laissez faire, laissez passer” liberalism, to the political arena. Its impact on the factories was that the State relinquished its interference or decreased it to the minimum¹⁴. As a result, workers were left to the mercy of the employers with unclarified working conditions.

All these developments pushed workers to be organised, seek solutions for the bad working conditions and fight for their rights¹⁵ in the workplace. But these attempts were considered as illegal at the time and they were crushed. Anti-Combination Act in United Kingdom in 1799, Chapelier Act in France in 1791 and Allegemenie Gewerbeordnung in Germany in 1845 brought coalition ban to the workers¹⁶. Silk workers from Lyon responded to these attempts by saying; “*Live working or die fighting*”¹⁷! As a result of the use of force by the military, many workers died in France and Germany during the uprisings. In the United States, the process of the Ford Hunger March was also violently crushed as late as 1932. The struggles of workers for a better life were also tried to be blocked by the interferences of different authorities. Speech of Pope

⁹ Engin Unsal, *Sendika Özgürlüğü ve Uluslararası Çalışma Örgütü ile T.C. Hükümetleri İlişkileri* (Beta Publications 2003) preamble (Freedom of Trade Unions and Relation of the Turkish Republic Governments with the International Labour Organisation)

¹⁰ Adnan Mahirogullari, *Dünyada ve Türkiye’de Sendikacılık* (Ekin Publications 2011) p.5 (Trade Unionism in the World and in Turkey)

¹¹ Ibid

¹² Unsal, p.7

¹³ Ibid

¹⁴ Mahirogullari p.6

¹⁵ Unsal, p.7

¹⁶ Mahirogullari, p.7

¹⁷ Rene Mouriaux, *Le Syndicalisme en France* (1992)

Leo that states; “*these two classes should exist in harmony to be able to provide political balance, they should saturate each other. Each of them needs the other. Capital can’t do a thing without the working class. Working class is in need of the capital at the same amount*”¹⁸, in 1891 can be given as an example. This statement did not reflect the reality of the time since workers did not have rights and tools to protect themselves from the arbitrary working conditions, therefore such harmony did not exist. They had to raise their voice together to obtain their rights; otherwise they were not brought to them.

Despite the obstacles, the “echo of the factories”¹⁹ had finally heard by the States. Trade unions’ rights and freedoms became legally accepted in many countries and regulated at different levels. The gains of the workers became permanent, when the trade union rights had adopted in international law and turned to universal values.

The notion of trade union was firstly described as the “*union, established by the workers with the aim of protecting and improving the working conditions*” by Sidney and Beatrice Webb²⁰. It was a social event that was born from the obligation of the workers to defend themselves against the inevitable consequences of the economic system²¹ and emerged as a result of the “divorce” of the workers from owning the production tools²². The term “yellow unions” on the other hand which referred to the employer dominated trade unions in daily language, was used in France in 1899 for the first time by a group that called themselves “les jaunes”, for opposing red which symbolizes communism²³. They refused to take part in strikes against the employers²⁴.

Improvements regarding trade unionism had affected the humanity and civilization deeply²⁵. The struggles and efforts of the trade unions contributed to solidifying democracy in many countries and become an indispensable part²⁶. Trade unions were on the rise until 80s following their recognition and protection in international arena. Then, with the effects such as the oil shock in 1973, the weakening of the ideologies, globalism and neo-liberalism, they took the position of defending their gained rights²⁷.

¹⁸ Papa XIII Leo, *Encyclical Letter on the Condition of Labor* (translated from Unsal p.6)

¹⁹ *L’Echo de la Fabrique* was the name of the journal of the silk workers in Lyon

²⁰ Definition by Sidney and Beatrice Webb is translated from Mahirogullari p.2 with reference to Patrick de Laubier, *Histoire et sociologie du syndicalisme: XIXe-XXe siècles* (Masson 1985) p.11

²¹ Metin Kutal, ‘Sendika Hürriyeti’ 8 Sosyal Siyaset Konferanslari, 1962, p.101 (Freedom of Trade Unions)

²² Sidney Webb; Beatrice Webb, *The History of Trade Unionism* (2nd edn, 1896)

²³ George L. Mosse, ‘The French Right and the Working Classes: Les Jaunes’ 7 Journal of Contemporary History, 1972, pp.185-208, p.197

²⁴ George L. Mosse, *Masses and Men Nationalist and Fascist Perceptions of Reality* (Wayne State University Press 1987) p.135

²⁵ Kemal Sulker, *100 Soruda Türkiye’de İşçi Hareketleri* (3rd edn, Gercek Publications), 1976, p.10 (Workers’ Movements in Turkey in 100 Questions)

²⁶ Nusret Ekin, ‘Türkiye de Endüstri İlişkilerinin Gelişimi ve 1936 İş Kanunu’ Sosyal Siyaset Konferansları Dergisi, 1986, pp.33-51, p.46 (Development of the Industrial Relations in Turkey and 1936 Labour Act)

²⁷ Mahirogullari, preamble

Today, the States are interdependent and countries that defend a democratic character are subject to complying with international norms and standards including trade union rights²⁸. Yet, issues as employer dominated trade unions still arise out of the past in today's economies.

2.2 Trade unions and politics

Relation between trade unions and politics became more interlinked at the beginning of the 20th century. The reason for this is the legal identity of the trade unions, recognition of general suffrage, and the attention of the political parties to the organised power of trade unions²⁹. On the other hand, with the class consciousness, trade unions also started to pay attention to their relation with political parties in different ways. For example, they established some, such as the Labour Party in Norway or made close relations such as the Socialist Party in France and French Democratic Confederation of Labour.

Trade unions can mobilize massive support for the political parties, yet they can also cause harm if their interests differ from the agendas of the political parties. Either way, States are under the obligation to provide freedom for trade unions, respect the labour rights and refrain from interfering their functioning according to international law³⁰.

2.3 Conclusion

The gains of trade unions' rights and freedoms are a result of a massive struggle. Historical experiences prove that strong, independent and democratic trade unions are crucial in societies that claim respect for human rights³¹. The opposite of this is also true since free and independent trade unions can only develop where human rights are respected³². Yet today, labour rights are in crises with the effect of the current form of globalization which some say has "*failed more people than it has benefited*" and world is continuing to split to winners and losers³³. A cure is needed and fully enjoyed freedom of association and collective bargaining rights is a part of it.

²⁸ Unsal, preamble

²⁹ Mahirogullari, p.40

³⁰ CFA, *Digest of Decisions and Principles of the Freedom of Association Committee* (1996) para.449 (See the Digest of 1985, para. 351.)

³¹ Lance Compa, 'Workers' Freedom of Association in the United States: The Gap Between Ideals and Practice' *Workers' Rights as Human Rights*, 2003, pp.23-52, p.52; CEACR, *General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization*, 2008 (International Labour Conference, 101st Session, 2012) para.51; CFA, *Digest of Decisions and Principles of the Freedom of Association Committee* (2006) para.677 (See the 1996 Digest, paras. 31 and 673; and 338th Report, Case No. 2006, para. 266.)

³² CFA Digest of 2006, para.33 (See the 1996 Digest, para. 35; 300th Report, Cases Nos. 1682/1711/1716, para. 173; 302nd Report, Case No. 1773, para. 469; 316th Report, Case No. 1773, para. 614; and 338th Report, Case No. 2378, para. 1153)

³³ W.R. Bohning, *Labour Rights in Crisis-Measuring the Achievement of Human Rights in the World of Work* (Palgrave Macmillan 2005), p. 181

3-CHAPTER 2: INTERNATIONAL LAW AND INDEPENDENCE AS A “MUST”

In liberal democracies, trade unions’ independence from the employers and the government is essential. Many international instruments guarantee the freedom of association with the special reference to trade unions from the beginning. Yet, Article 2 of the ILO Convention No.98 is the most concrete regulation that prohibits employer dominated trade unions and protects workers’ organisations from any kind of interference³⁴.

3.1 Obligations of the States under the international law

International law allows States to make restrictions in some circumstances described by law, though none of these allowed interventions may restrict the core of the rights regarding freedom of association and the right to collective bargaining. They are part of basic human rights that should be respected in all countries irrespective of their economic development and sociocultural traditions³⁵. International regulations that oblige the States regarding the abovementioned rights are as below:

3.1.1 International and regional instruments

The Universal Declaration of Human Rights (UDHR) was accepted in 1948 as the first international document that claims universal protection for fundamental human rights for all people in all nations. Article 23/4 of the UDHR includes the right of any person “*to form and to join trade unions for the protection of his interests*” as a fundamental human right as well as Article 22 of the International Covenant on Civil and Political Rights (ICCPR) and Article 11 of the European Convention on Human Rights (ECHR) in scope of the freedom of association. Right to “*form trade unions and join the trade unions of his choice*” for the “*promotion and protection of his economic and social interests*” is also guaranteed in Article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Moreover, it guarantees the right to strike unless it will be exercised in conformity with the national law. Two Covenants directly refer to C87 and states that, the relevant Articles³⁶ cannot apply “in such a manner as to prejudice, the guarantees provided for in that Convention.” According to the Article 5 of the European Social Charter (ESC), State Parties “*undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom*” and Article 6 guarantees the right to collective bargaining. In addition, UN Declaration on Social Progress and Development assures right to form and join trade unions and collective bargaining in Article 10. For the achievement of the objectives of social progress and development, Article 20 of the

³⁴ CFA Digest of 2006, para.855 (See the 1996 Digest, para. 759; 325th Report, Case No. 2068, para. 321; 329th Report, Case No. 2198, para. 683; 330th Report, Case No 2186, para. 379; 331st Report, Case No. 2185, para. 676; 334th Report, Case No. 2316, para. 506; 337th Report, Case No. 2388, para. 1355; and 338th Report, Case No. 2374, para. 509)

³⁵ Compa p.28

³⁶ Article 22 of the ICCPR and Article 8 of the ICESCR

Declaration requires “*the full democratic freedoms to trade unions, freedom of association for all workers, including the right to bargain collectively and to strike.*” So the framework of the international law on trade unions includes the emphasis on freedom of association and some of them states specifically the right to collective bargaining and right to strike as a part of this right.

3.1.2 ILO

Freedom of association is one of the fundamental principles of ILO and it is at the heart of the international labour standards since its foundation. Starting from the Treaty of Versailles -the founding treaty of ILO that ended World War I- and the Constitution of ILO, it has been recognised as a fundamental principle. In 1944, Declaration of Philadelphia which declares the aim and purpose of the ILO reaffirmed this and emphasized freedom of association as essential for sustained progress. In 1998, Declaration of Fundamental Principles and Rights at Work had been adopted which obliges States “*to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights*” including “*freedom of association and the effective recognition of the right to collective bargaining*³⁷.”

Two main conventions are the C87 with 153 ratifications and C98 with 164 ratifications as of 13 May 2016 out of the 187 member states. The relatively high number of ratifications should not be misleading though, since many categories of workers can not enjoy these rights fully³⁸. C87 guarantees and sets the principles regarding right to organise between the State and the unions of employers’ and workers’ while C98 protect workers and trade unions especially from the acts of interference by the employers³⁹. C87 provides to workers the right “*to establish and, subject only to the rules of the organisation concerned*” and “*to join organisations of their own choosing without previous authorization.*” According to the Convention, workers have the right to elect their representatives in full freedom; therefore democratic administration inside the trade union is an essential element of the freedom of association. It also ensures that the States should take “*all necessary and appropriate measures*” for trade unions to exercise the right to organise freely.

C98 is at the heart of this thesis. Article 2/1 of the Convention prohibits any acts of interference of the organisations of workers’ and employers’ to each other in their establishment, functioning or administration. Article 2/2 explains what constitutes such interference as the “*acts which are designed to promote the establishment of workers’ organisations under the domination of employers or employers’ organisations, or to support workers’ organisations by financial or other means, with the object of placing such organisations under the control of*

³⁷ Article 2

³⁸ ILO Report of the Director-General, *Freedom of association in practice: Lessons learned-Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (International Labour Conference 97th Session Report I (B), 2008), para.15

³⁹ Lee Swepston, ‘Closing the Gap between International Law and U.S. Labour Law’ Workers’ Rights as Human Rights, 2003, p.56

employers or employers' organisations". Article 4 also obliges the States to take necessary measures, "where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation" between the parties regarding "the regulation of terms and conditions of employment by means of collective agreements."

Other relevant Conventions of the ILO include Convention No. 151 -and Recommendation No.159- on Labour Relations (Public Service) which applies to all people that are employed by the public authorities except armed forces, police and high level policy-making or managerial employees and employees with highly confidential duties. Convention 151 also requires independence from the interference of public authorities on the establishment, functioning or administration of the trade unions. Convention No.135 -and Recommendation No.143- on Workers' Representatives, Convention No.11 on the Right of Association (Agriculture) and the Recommendation No. 91 on Collective Agreements are other relevant instruments of the ILO on the abovementioned rights.

One thing to remember when it comes to the ILO that its conventions are intended to establish the minimum labour standards⁴⁰, so the State Parties can do a lot more in principle, in accordance with its sources.

3.1.3 Where does Turkey stand as a State Party?

Turkey is a State Party to all the above mentioned Conventions, yet, has not ratified the Convention No.154 on Collective Bargaining.

3.2 Definition of the notions and content of the international labour standards

Purpose of the trade unions is closely linked with social justice and democracy within nations. This link and the tools of trade unions to reach their aims are discussed below by referring to ILO's jurisprudence.

3.2.1 No lasting peace without social justice

ILO is built on this principle and sees the social justice as in unity with other rights⁴¹. This principle finds its form in the Constitution of ILO which states that the "*universal and lasting peace can be established only if it is based upon social justice.*" Freedom of association and trade unions are the essential constituents of providing social justice in a globalizing world which opens the door to participatory actions against the obstacles on the other principles as the

⁴⁰ Edward E. Potter, 'A Pragmatic Assessment from the Employers' Perspective' Workers' Rights as Human Rights, 2003, p.118

⁴¹ Lee Swepston, *Promoting social dialogue and respecting and realizing fundamental principles and rights at work* (Background Paper for the Doga Forum on Decent Work and Poverty Reduction on 25-26 October 2011), p.2

responsive measures based on non-discrimination⁴². Aim of the trade unions to provide better and decent working conditions also contributes to social justice in the big picture.

3.2.2 Freedom of association at the heart of democracy

Freedom of association is “*at the heart of democracy from the grassroots to the higher echelons of power*”⁴³. In the world of work, it is in form of trade unions. On the other hand, democracy is also at the heart of the freedom of association to protect it from the external and internal pressures.

3.2.2.1 Function of trade unions as a pressure group

Trade unions have the ability to put pressure on governments on behalf of the interest of the workers that they represent. Freely expressed opinions and public meetings help the workers to raise their voice on the political decisions that concern them while also contributing to the improvement of democracy, social development and protection of the rights⁴⁴.

The right to organise public meetings and demonstrations is therefore an important aspect of trade union rights, if they are falling within the exercise of trade union objectives⁴⁵. For example, the demonstrations on May Day that aims to voice the demands of the workers derive from its social and economic nature and it is one of the traditional forms of this right⁴⁶. A general prohibition for trade unions against engaging in political activities is contrary to the principle of freedom of association as long as they are related to such demands. Therefore, “*to express publicly their opinion regarding the government’s economic and social policy*”⁴⁷ is a part of this principle.

This right is not absolute and may be subjected to restrictions by the State which is responsible for maintaining public order, security and take necessary preventive measures⁴⁸. Yet, such restrictions cannot be arbitrary⁴⁹ and public authorities cannot intervene in the legitimate

⁴² CEACR General Survey of 2012, para.49

⁴³ Ibid

⁴⁴ Derya Demirdizen; Kuvvet Lordoglu, ‘Türkiye’ de Sendika İçi Demokrasi ya da bir İmkansızın Arayışı mı?’ V Sosyal Haklar Uluslararası Sempozyumu, Bildiriler Kitabı, 2013, p.225 (Internal Democracy of Trade Unions in Turkey or a Search for the Impossible?)

⁴⁵ CFA Digest of 2006, para.134 (See the 1996 Digest, paras. 133 and 464; 300th Report, Case No. 1818, para. 364; 308th Report, Case No. 1934, para. 131; 309th Report, Case No. 1852, para. 340; 311th Report, Case No. 1969, para. 148; 332nd Report, Case No. 2238, para. 968; and 334th Report, Case No. 2222, para. 219.)

⁴⁶ CFA Digest of 2006, para.137 (See the 1996 Digest, para. 135; 308th Report, Case No. 1894, para. 539; 323rd Report, Case No. 2074, para. 148; and 324th Report, Case No. 2055, para. 683.)

⁴⁷ CFA Digest of 2006, para.503 (See the 1996 Digest, para. 455; 321st Report, Case No. 2031, para. 167; 328th Report, Case No. 2129, para. 604; 332nd Report, case No. 2238, para. 967; 334th Report, Case No. 2313, para. 1116; 336th Report, Case No. 2365, para. 910; and 337th Report, Case No. 2365, para. 1661.)

⁴⁸ CFA Digest of 2006, para.146 (See the 1996 Digest, para. 143; and 300th Report, Case No. 1791, para. 339.)

⁴⁹ CFA Digest of 2006, para.142, (See the 1996 Digest, para. 139; 316th Report, Case No. 1773, para. 612; and 334th Report, Case No. 2222, para 219.)

activities⁵⁰. Use of force as a result of a legitimate intervention should be proportionate with the danger⁵¹ and police should be given “*precise instructions*” to ensure that “*people are not arrested simply for having organized or participated in a demonstration*”⁵². Providing special training on freedom of association to the police forces is needed in this sense⁵³. Despite the measures taken, if an alleged violation of this right occurs, independent judicial investigations should be conducted rapidly since delays to response such allegations create impunity in practice and reinforces the climate of violence and insecurity⁵⁴ which damages the democracy.

3.2.2.2 External and internal aspect of trade union democracy

The democratic processes with a trade union are subject to both external and internal factors. The external factor refers to the pressure from the external actors as the governments and the employers while the internal factor is referring to structure of the trade union that should ensure the participation of its members in management and decisions⁵⁵. Trade unions can represent the organised power of the workers only if they are truly democratic⁵⁶ and these two aspects are also interrelated that can form a vicious or virtuous circle.

3.2.2.2.1 External aspect of the democracy:

External pressures on trade unions generally take the form of anti-union discrimination which “*may jeopardize the very existence of trade unions*”⁵⁷. In principle, no one should be “*dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities*” and it is also important “*to forbid and penalize in practice all acts of anti-union discrimination in respect of employment*”⁵⁸. This is also true in cases of trade unions that

⁵⁰ CEACR General Survey of 2012, para.60

⁵¹ CFA Digest of 2006, para.140 (See the 1996 Digest, para. 137; and, for example, 300th Report, Case No. 1811/1816, para. 311; 304th Report, Case No. 1837, para. 55; 308th Report, Case No. 1914, para. 670; 311th Report, Case No. 1865, para. 336; 320th Report, Case No. 2027, para. 872; 328th Report, Case No. 2143, para. 593; 330th Report, Case No. 2189, para. 453; 332nd Report, Case No. 2218, para. 422; 336th Report, Case No. 2340, para. 651; and 337th Report, Case No. 2323, para. 1031.)

⁵² CFA Digest of 2006, para.151 (See the 1996 Digest, para. 147; 300th Report, Case No. 1818, para. 364; and 336th Report, Case No. 2340, para. 651.)

⁵³ CEACR General Survey of 2012, para.60 (See the CEACR, observation, 2010)

⁵⁴ CEACR General Survey 2012, para.72-73

⁵⁵ Oluranti Samuel; Kehinde Kester, ‘Democratic Values and the Practice of Trade Unionism in Nigeria’ (2000) <http://www.ilo.org/public/english/iira/documents/congresses/regional/lagos2011/2ndparallel/session2b/democratic_values.pdf>

⁵⁶ Zorlutuna p.78

⁵⁷ CFA Digest of 2006, para.769 (See 331st Report, Case No. 2169, para. 639.)

⁵⁸ CFA Digest of 2006, para. 771 (See the 1996 Digest, paras. 696 and 748; and, for example, 305th Report, Case No. 1874, para. 270; 309th Report, Case No. 1925, para. 116; 316th Report, Case No. 1972, para. 708; 320th Report, Case No. 1998, para. 254; 321st Report, Case No. 2055, para. 355; 327th Report, Case No. 2125, para. 778; 330th Report, Case No. 2203, para. 808; 331st Report, Case No. 2097, para. 277; 333rd Report, Case No. 2229, para. 108; and 334th Report, Case No. 2239, para. 394.)

are not recognized by the employer as the representative of the majority of the workers⁵⁹. Legislation should be dissuasive, make clear provision for appeals⁶⁰ and appeals should be allowed even against the discrimination in hiring process⁶¹. This pressure is perceived as very broad regarding international standards and includes favouring non-union workers as well⁶². Trade union officials should also be protected to be able to perform their duties independently which is directly related to the right to elect the representatives in full freedom⁶³.

Governments should ensure that the provided protection is effective for the compliance with international standards⁶⁴. If they are “*not accompanied by procedures to ensure that effective protection against such acts is guaranteed*”⁶⁵, there is no compliance. For example, legislation does not provide enough protection in scope of C98 if employers can dismiss workers by paying their compensation because of their trade union activities⁶⁶ since it is not proportionate with the prejudice suffered by the worker⁶⁷. The amount of the compensation should take into account “*both the damage incurred and the need to prevent the repetition of such situations in the future*”⁶⁸ and it should fulfil certain conditions⁶⁹. Regarding the remedies in case of a violation,

⁵⁹ CFA Digest of 2006, para.776 (See the 1996 Digest, paras. 693 and 701; 316th Report, Case No. 1989, para. 194; 333rd Report, Case No. 2291, para. 917; 334th Report, Case No. 2316, para. 506; and 337th Report, Case No. 2241, para. 914.)

⁶⁰ CFA Digest of 2006, para. 822 (See the 1996 Digest, paras. 743 and 745; 299th Report, Case No. 1687, para. 455; 307th Report, Case No. 1877, para. 401; 316th Report, Case No. 1934, para. 211; 330th Report, Case No. 2203, para. 808; 335th Report, Case No. 2236, para. 967, and Case No. 2265, para. 1315.)

⁶¹ CFA Digest of 2006, para.784 (See 338th Report, Case No. 2158, para. 186.)

⁶² CFA Digest of 2006, para.787 (See 307th Report, Case No. 1886, para. 466.)

⁶³ CFA Digest of 2006, para.799 (See the 1996 Digest, para. 724; and, for example, 302nd Report, Case No. 1809, para. 381; 306th Report, Case No. 1796, para. 506; 311th Report, Case No. 1944, para. 543; 320th Report, Case No. 1995, para. 371; 332nd Report, Case No. 2262, para. 394; 334th Report, Case No. 2222, para. 210; 335th Report, Case No. 2226, para. 756; 336th Report, Case No. 2336, para. 538; 337th Report, Case No. 2262, para. 260; and 338th Report, Case No. 2402, para. 467.)

⁶⁴ CFA Digest of 2006, para.815 (See the 1996 Digest, para. 699.)

⁶⁵ CFA Digest of 2006, para.818 (See the 1996 Digest, paras. 739, 740 and 742; and, for example, 320th Report, Case No. 2034, para. 745; 324th Report, Case No. 2035, para. 574; 330th Report, Case No. 2186, para. 372; 331st Report, Case No. 2215, para. 178; 332nd Report, Case No. 2227, para. 608; 333rd Report, Case No. 2186, para. 350; 334th Report, Case No. 2222, para. 210, and Case No. 2215, para. 236; 335th Report, Case No. 2236, para. 967; 337th Report, Case No. 2395, para. 1200; and 338th Report, Case No. 2186, para. 53.)

⁶⁶ CFA Digest of 2006, para.791 (See the 1996 Digest, para. 707; and, for example, 308th Report, Case No. 1934, para. 134; 310th Report, Case No. 1773, para. 459; 316th Report, Case No. 1934, para. 211; 318th Report, Case No. 2004, para. 400; 321st Report, Case No. 1978, para. 35; 332nd Report, Case No. 2262, para. 394; 333rd Report, Case No. 2186, para. 351; 335th Report, Case No. 2265, para. 1351; 336th Report, Case No. 2336, para. 535; and 337th Report, Case No. 2262, para. 262.)

⁶⁷ CEACR General Survey of 2012, para.191

⁶⁸ CFA Digest of 2006, para.844 (See 336th Report, Case No. 2336, para. 537; 338th Report, Case No. 2404, para. 1053, and Case No. 2248, para. 1200.)

⁶⁹ For the details of the conditions: CEACR General Survey of 2012, para.185: “(i) be higher than that prescribed for other kinds of dismissal, with a view to the effective dissuasion of this type of dismissal; (ii) be adapted in accordance with the size of the enterprises concerned (it has considered, for example, that while compensation of up to six months’ wages may be a deterrent for small and medium-sized enterprises, that is not necessarily the case for highly productive and large enterprises); 441 and (iii) the amount be reviewed periodically (particularly in countries with galloping inflation where the compensation soon becomes merely symbolic), based for example on a minimum number of wage units or units of taxable income.”

all complaints should be examined in a prompt and impartial framework⁷⁰. Long delays in the processing of cases mean the denial of justice according to the Committee on Freedom of Association⁷¹. Burden of proof is also an important element of this process and it should be on the employers “*to prove that the motive for the decision to dismiss a worker has no connection with the worker’s union activities*”⁷² since it is hard to prove this motive for the worker⁷³. Reinstatement of the workers without loss of pay⁷⁴ who are dismissed in such way is also a duty of the Governments as a part of this principle⁷⁵.

Prohibition of acts of interference under C98/2 refers to a total independence of trade unions⁷⁶ which is essential to defend the interests of their members effectively. As an example of the acts of interference by the employers; bribes offered to union members, efforts to create “puppet unions⁷⁷” and provoking unionists to justify their dismissal⁷⁸ can be given. Express provisions and sufficient sanctions should be included in national legislation for the practical application of Articles 1 and 2 of C98⁷⁹ and they are only sufficient if they are accompanied by efficient procedures to ensure their implementation⁸⁰. Governments also have to be neutral to all trade unions and should not show any favouritism⁸¹.

⁷⁰ CFA Digest of 2006, para.817 (See the 1996 Digest, para. 738; and, for example, 307th Report, Case No. 1877, para. 403; 310th Report, Case No. 1880, para. 539; 321st Report, Case No. 1972, para. 77; 327th Report, Case No. 1995, para. 211; 330th Report, Case No. 2126, para. 152; 334th Report, Case No. 2126, para. 73; 335th Report, Case No. 2228, para. 897; 336th Report, Case No. 2336, para. 536; 337th Report, Case No. 2395, para. 1200; and 338th Report, Case No. 2402, para. 467.)

⁷¹ CFA Digest of 2006, para.826 (See the 1996 Digest, para. 749; and, for example, 304th Report, Case No. 1719, para. 415; 309th Report, Case No. 1945, para. 66; 320th Report, Case No. 1937, para. 95; 329th Report, Case No. 1948/1955, para. 396; 331st Report, Case No. 1955, para. 18; 333rd Report, Case No. 2291, para. 915; 335th Report, Case No. 2228, para. 897; 336th Report, Case No. 2203, para. 428; 337th Report, Case No. 2395, para. 1194; and 338th Report, Case No. 1890, para. 179.)

⁷² CFA Digest of 2006, para.831 (See the 1996 Digest, para. 752; and 335th Report, Case No. 2265, para. 1348.)

⁷³ CFA Digest of 2006, para.782

⁷⁴ CFA Digest of 2006, para.840 (See, for example, 318th Report, Case No. 1974, para. 306, and Case No. 2004, para. 401; 319th Report, Case No. 1962, para. 152; 320th Report, Case No. 1989, para. 325; 323rd Report, Case No. 2034, para. 406; 324th Report, Case No. 2090, para. 212; 326th Report, Case No. 2103, para. 296; 327th Report, Case No. 2125, para. 778; and 328th Report, Case No. 2068, para. 206.)

⁷⁵ CFA Digest of 2006, para.839 (See the 1996 Digest, para. 756; 320th Report, Case No. 1995, para. 372; and 323rd Report, Case No. 2034, para. 403.)

⁷⁶ CFA Digest of 2006, para.855 (See the 1996 Digest, para. 759; 325th Report, Case No. 2068, para. 321; 329th Report, Case No. 2198, para. 683; 330th Report, Case No. 2186, para. 379; 331st Report, Case No. 2185, para. 676; 334th Report, Case No. 2316, para. 506; 337th Report, Case No. 2388, para. 1355; and 338th Report, Case No. 2374, para. 509.)

⁷⁷ CFA Digest of 2006, para.858 (See the 1996 Digest, para. 760; 324th Report, Case No. 2090, para. 209; 330th Report, Case No. 2090, para. 232, and Case No. 2203, para. 810; and 337th Report, Case No. 2388, para. 1354.)

⁷⁸ Kivanc Eliacik, ‘Sendikalar Yasası: Bir Yalanın Anatomisi’ *Bianet* (19 July 2012)

<<http://bianet.org/bianet/print/139770-sendikalar-yasasi-bir-yalanin-anatomisi>> (Trade Unions Act: Anatomy of a Lie)

⁷⁹ CFA Digest of 2006, para.862 (See the 1996 Digest, para. 764; 330th Report, Case No. 2203, para. 810; and 333rd Report, Case No. 2186, para. 358.)

⁸⁰ CFA Digest of 2006, para.861 (See the 1996 Digest, para. 763; and 333rd Report, Case No. 2168, para. 358.)

⁸¹ CFA Digest of 2006, para.341 (See the 1996 Digest, para. 305; 309th Report, Case No. 1851/1922, para. 242; and 323rd Report, Case No. 1888, para. 192.)

External pressure also affects the right to collective bargaining as a result of the influence of external actors on workers' choice, and undermines the position and power of the trade union to bargain⁸². Therefore, in order to be considered compliant with the international standards, parties for bargaining have to be free from interference of employers or their organisations⁸³.

3.2.2.2 Internal aspect of the democracy:

In a democratic state, the institutions and the organisations should be democratic as well⁸⁴. Internal aspect of the democracy regarding trade unions is about the transparent representation, democratic structure and the functioning of their management⁸⁵. In other words, democratic trade unions include the power of the majority with the protection of minority⁸⁶, participation and supervision⁸⁷. So, it is not just about the fair elections but includes the processes afterwards⁸⁸.

Internal structure of the trade unions is set by legislation broadly and they are regulated in the statutes of trade unions. This is in line with the principle in C87/3 which stipulates that the trade unions “*may decide for themselves the rules which should govern the administration of their organizations and the elections which are held therein*”⁸⁹. Yet, legislation should contain certain rules “*to promote democratic principles within trade union organizations or to ensure that the electoral procedure is conducted in a normal manner*”⁹⁰.

The iron law of oligarchy⁹¹ is also posing a danger to the trade unions when their benefits are perceived as equal with the benefits of the management. Internal democracy helps to control such bureaucracy and forwards information to the members regarding the processes that

⁸² CFA Digest of 2006, para.863 (See the 1996 Digest, para. 766; 304th Report, Case No. 1852, para. 494; and 337th Report, Case No. 2395, para. 1188.)

⁸³ CFA Digest of 2006, para.868 (See the 1996 Digest, paras. 771 and 789; 329th Report, Case No. 2198, para. 683; 331st Report, Case No. 2217, para. 205, and Case No. 2185, para. 676; and 337th Report, Case No. 2388, para. 1354.)

⁸⁴ Fevzi Sahlanan, *Sendikaların İşleyişinin Demokratik İlkelere Uygunluğu* (Press of Faculties 1980) p.1 (Compliance of the Functioning of Trade Unions to Democratic Principles)

⁸⁵ Adnan Mahirogullari, *Dünyada ve Türkiye’de Sendikacılık* (2nd edn, Ekin Publications 2013) p.22 (Trade Unionism in the World and in Turkey)

⁸⁶ “*To be able to talking about democracy, minority rights should be protected in addition to the power of the majority,*” translated from Yol-Is, ‘Sendika İçi Demokrasi’ <<http://www.yol-is.org.tr/TR/dosya/1-1398/h/sendikaicidemokrasi.pdf>> (Intra-Union Democracy)

⁸⁷ Dilara Zorlutuna, *Sendikalar Hukukunda Demokrasi* (Legal Publications 2016), p.84 (Democracy in the Law of Trade Unions)

⁸⁸ Ibid p.83

⁸⁹ CFA Digest of 2006, para.392 (See the 1996 Digest, para. 354; 307th Report, Case No. 1905, para. 154; 308th Report, Case No. 1920, para. 520; 326th Report, Case No. 2067, para. 512; and 335th Report, Case No. 2276, para. 404.)

⁹⁰ CFA Digest of 2006, para.399 (See the 1996 Digest, para. 361.)

⁹¹ Term refers to the sociological thesis of Robert Michels and alleges, “*all organizations, including those committed to democratic ideals and practices, will inevitably succumb to rule by an elite few (an oligarchy).*” Sluyter-Beltrão Jeff, *Iron law of oligarchy* (Encyclopedia Britannica, Inc.)

concerns them⁹², which gives them the ability to stand against or support the activities of the union.

Pluralism of trade unions is another important internal factor that affects their functioning. Even though avoiding the multiplicity of small and competing unions is preferable by trade unions, state imposition for unification of trade union movement is contrary to the principle of freedom of association⁹³.

3.2.3 The tools of the trade unions

Workers are in a weaker position compared to the employers who hold the capital and the power to set and implement the rules of the workplace in most of the countries. Yet, in democracies, they have some tools to scale this unbalance. Trade unions are equipped with the tools of solidarity, the power to bargain collectively and right to strike.

3.2.3.1 Solidarity

Solidarity is the source of the other tools and constitutes the power of the workers as an organised group to unify as one voice under the roof of a trade union. In other words, solidarity can be associated with the phrase, “*together we stand, divided we fall*”⁹⁴ regarding the trade unions while it also applies as a general rule for the society. All acts of interference that are stated in C98/2 carry the risk to break this solidarity and consequently, break the organised power of the workers.

3.2.3.2 Collective bargaining

Collective bargaining includes all negotiations which take place between employers and their organisations in one hand and workers’ organisations on the other hand for determining working conditions and terms of employment and/or regulating relations between employers and workers⁹⁵. It is one of the principal and most useful institutions⁹⁶ and an “*essential element in freedom of association*”⁹⁷. It provides workers to take part on the decision making process on the subjects that concern them in the workplace. It is also a powerful instrument for dialogue and it “*contributes to the establishment of just and equitable working conditions and other benefits, thereby contributing to social peace*”⁹⁸. According to the international standards, negotiations

⁹² Zorlutuna p.79

⁹³ CFA Digest of 2006, para.319 (See the 1996 Digest, para. 287.)

⁹⁴ Pink Floyd, *Hey You* (Harvest (UK) and Columbia (US) 1979)

⁹⁵ Article 2 of the ILO Collective Bargaining Convention (C154) 11 August 1983

⁹⁶ CEACR General Survey of 2012, para.167

⁹⁷ CFA Digest of 2006, para.881 (See the 1996 Digest, para. 782; 310th Report, Case No. 1928, para. 175; 311th Report, Case No. 1951, para. 220, and Case No. 1942, para. 269; 321st Report, Case No. 2019, para. 412; 327th Report, Case No. 2119, para. 253; and 338th Report, Case No. 2326, para. 450.)

⁹⁸ CEACR General Survey of 2012, para.167

should be based on good faith of the parties and unjustified delays should be avoided⁹⁹. The bargaining process may end with a collective agreement or a dispute which may end up with the decision for strike.

In the context of globalization and international competition after the 80s, branch-level collective agreements that cover all the enterprises started to be perceived as a burden for the employers¹⁰⁰. Workplace and enterprise level collective agreements became more favorable instead to deal with the wage levels and other conditions¹⁰¹ while the trade unions' interest is growing to restore the branch-level agreements¹⁰². Yet, there is not one certain collective bargaining system that is compatible with international standards. Both systems that grant exclusive rights to the most representative union, and the systems where several unions in an enterprise or a bargaining unit may conclude different agreements are accepted by the ILO¹⁰³. Yet, even though the requirement of majority for representation is allowed, it should not be too high of a percentage since otherwise, promotion of free and voluntary collective bargaining may be hampered¹⁰⁴. If such requirement is not only for the number of workers but also for the enterprises to be able to conclude collective agreements, it can be problematic for the compliance with C98¹⁰⁵.

According to the coverage of the collective agreements, both systems are fine if the agreement covers only the signatories and their members but not all workers, or if it covers all of them¹⁰⁶. While the distinction between the most representative unions and the minority unions is legitimate, it should not go beyond priority in representation for the purposes of collective bargaining, consultation by Governments or the appointment of delegates to the international bodies¹⁰⁷. According to the international standards, minority unions still should be able to defend the interest of their members, organise their administration, activities, and programs; and if no union meets the criteria for the bargaining rights, they should be able to conclude agreements on behalf of their own members¹⁰⁸. One crucial warning is that the distinction between the most

⁹⁹ CFA Digest of 2006, para.937 (See the 1996 Digest, para. 816; 300th Report, Case No. 1804, para. 322; 316th Report, Case No. 1970, para. 566; 318th Report, Case No. 2009, para. 295, and Case No. 1994, para. 455; 330th Report, Case No. 2186, para. 380; 332nd Report, Case No. 2252, para. 880; 335th Report, Case No. 2311, para. 1148; and 338th Report, Case No. 2404, para. 1047.)

¹⁰⁰ Adnan Mahirogullari, 'Küreselleşme Sürecinde Sendikacılığın Gücündeki Değişim (Fransa Örneği)' 16 Cimento Isveren Dergisi, 2002, p.13 (Change in the Power of Trade Unionism in Globalisation Process [Example on France])

¹⁰¹ Ibid, 2002, p.13 (Change in the Power of Trade Unionism in Globalisation Process [Example on France])

¹⁰² Keith D. Ewing, 'The Function of Trade Unions' 34/1 Industrial Law Journal, 2005, p.13

¹⁰³ CEACR General Survey of 2012, para.225

¹⁰⁴ CEACR General Survey of 2012, para.233

¹⁰⁵ CFA Digest of 2006, para.956 (See the 1996 Digest, para. 854; 302nd Report, Case No. 1845, para. 514; and 306th Report, Case No. 1906, para. 553.)

¹⁰⁶ CEACR General Survey of 2012, para.225

¹⁰⁷ CFA Digest of 2006, para.346

¹⁰⁸ CFA Digest of 2006, para.974-975 (See the 1996 Digest, para. 829 and 300th Report, Case No. 1741, para. 55.)

representative and the minority unions should not be in a level to influence the choice of workers regarding the membership to organisations just because of the privileges in law or practice¹⁰⁹.

Conditions for registration should not be excessive where the legislation provides that only registered trade unions may be recognized as bargaining agents¹¹⁰ and the certification for competence should be made by an independent body¹¹¹. In addition, trade unions must be able to choose the delegates who will represent them in the collective bargaining process¹¹².

Lastly, emphasis should be made on the two criteria to be the sole signatory for the collective agreements, which are “*representativeness and independence*”¹¹³. Independence refers the one from the employers as well as the authorities¹¹⁴ and it is a precondition which should be determined by an independent and objective body¹¹⁵.

3.2.3.3 Right to strike

Right to strike is a basic and essential right of the workers to promote and defend their economic and social interests¹¹⁶ and it is an “*intrinsic corollary*” to the right to organise¹¹⁷. It is caused by the power of workers in production. It usually affects the employers directly and immediately which makes it the “*most visible and controversial form of collective action*” in case of a dispute and generally seen as the last resort¹¹⁸ since the serious consequences of a possible strike are not only for employers but also for the workers, their families and trade unions¹¹⁹. Employers’ group in the ILO criticise the perception of the right to strike as an essential right since it is not expressed in the ILO Conventions¹²⁰.

Content of the strike should be related to economic and social interests of the workers yet it also applies outside the workplace for “*seeking solutions to economic and social policy*”

¹⁰⁹ CEACR General Survey of 2012, para.97

¹¹⁰ CEACR General Survey of 2012, para.229

¹¹¹ Ibid

¹¹² CFA Digest of 2006, para.984 (See 307th Report, Case No. 1910, para. 174.)

¹¹³ CFA Digest of 2006, para.967 (See 324th Report, Case No. 1980, para. 672.)

¹¹⁴ CFA Digest of 2006, para.966 (See 324th Report, Case No. 1980, para. 671.)

¹¹⁵ CFA Digest of 2006, para.967 (See 324th Report, Case No. 1980, para. 672.)

¹¹⁶ CFA Digest of 2006, para.522 (See the 1996 Digest, para. 475; and, for example, 299th Report, Case No. 1687, para. 457; 300th Report, Case No. 1799, para. 207; 306th Report, Case No. 1884, para. 695; 308th Report, Case No. 1934, para. 131; 310th Report, Case No. 1928, para. 176; 316th Report, Case No. 1930, para. 365; 327th Report, Case No. 1581, para. 111; 330th Report, Case No. 2196, para. 304; 335th Report, Case No. 2257, para. 466; 336th Report, Case No. 2340, para. 645; and 337th Report, Case No. 2365, para. 1665.)

¹¹⁷ CFA Digest of 2006, para.523 (See 311th Report, Case No. 1954, para. 405.)

¹¹⁸ ILO Industrial and Employment Relations Department (DIALOGUE), ‘Labour Legislation Guide’ <<http://www.ilo.org/legacy/english/dialogue/ifpdial/llg/noframes/ch5.htm>>

¹¹⁹ CEACR General Survey of 2012, para.117

¹²⁰ For a full text of the statement, see International Organisation of Employers, ‘Why the Crisis in the ILO Standards Supervisory System Matters to Governments’ (2013) <http://www.ioe-emp.org/fileadmin/ioe_documents/publications/Policy%20Areas/international_labour_standards/EN/_2013-11-18__Why_the_Crisis_in_the_ILO_Standards_Supervisory_System_matters_to_Governments__web_.pdf>

*questions and problems facing the undertaking which are of direct concern of the workers*¹²¹” such as the social protection and standards of living issues¹²². Therefore, right to strike should not be limited to industrial disputes related to collective bargaining process¹²³. General prohibition of sympathy strikes¹²⁴, general strikes¹²⁵ and political strikes¹²⁶ are not compatible with the international standards if they fit the criteria of a legitimate strike.

Obligation to give prior notice to the employer before calling a strike can be considered as a legitimate requirement¹²⁷ while the requirements as to obtain absolute majority of the workers for calling a strike carry a serious risk on limiting the right¹²⁸.

Right to strike is not absolute and can be restricted by the authorities in certain conditions by suspension or other means of intervention. Restrictions regarding prohibition of a strike might be legitimate if the “*strike ceases to be peaceful*¹²⁹”. It can be temporarily restricted by law until all procedures available are exhausted as negotiation, conciliation and arbitration if such restriction is accompanied by “*adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage*¹³⁰.” Arbitration system should be independent and the outcomes of it should not be determined before by law¹³¹. Compulsory arbitration is allowed only if both parties of the collective bargaining request so¹³².

¹²¹ CFA Digest of 2006, para.526 (See the 1996 Digest, para. 479; 304th Report, Case No. 1851, para. 280; 314th Report, Case No. 1787, para. 31; 320th Report, Case No. 1865, para. 526; 326th Report, Case No. 2094, para. 491; 329th Report, Case No. 2094, para. 135; and 331st Report, Case No. 1937/2027, para. 104.)

¹²² CFA Digest of 2006, para.527 (See the 1996 Digest, para. 480; 305th Report, Case No. 1870, para. 143; 320th Report, Case No. 1865, para. 526, and Case No. 2027, para. 876; 336th Report, Case No. 2354, para. 682; and 337th Report, Case No. 2323, para. 1039.)

¹²³ CFA Digest of 2006, para.531 (See the 1996 Digest, para. 484; 300th Report, Case No. 1777, para. 71; and 320th Report, Case No. 1865, para. 526.)

¹²⁴ CFA Digest of 2006, para.534 (See the 1996 Digest, para. 486; 303rd Report, Case No. 1810/1830, para. 61; 307th Report, Case No. 1898, para. 325; 320th Report, Case No. 1963, para. 235; 333rd Report, Case No. 2251, para. 985; and 338th Report, Case No. 2326, para. 445.)

¹²⁵ CFA Digest of 2006, para.543 (See the 1996 Digest, para. 494.)

¹²⁶ CFA Digest of 2006, para.529 (See the 1996 Digest, para. 482; 300th Report, Case No. 1777, para. 71; 304th Report, Case No. 1851, para. 280, and Case No 1863, para. 356; 314th Report, Case No. 1787, para. 31; 320th Report, Case No. 1865, para. 526; and 333rd Report, Case No. 2251, para. 985.)

¹²⁷ CFA Digest of 2006, para.552 (See the 1996 Digest, para. 502; 325th Report, Case No. 2049, para. 520; and 333rd Report, Case No. 2251, para. 996.)

¹²⁸ CFA Digest of 2006, para.557 (See the 1996 Digest, para. 508; and 316th Report, Case No. 1989, para. 190.)

¹²⁹ CFA Digest of 2006, para.545 (See the 1996 Digest, paras. 496 and 497; and 306th Report, Case No. 1865, para. 337.)

¹³⁰ CFA Digest of 2006, para.549 (See the 1996 Digest, para. 500; 307th Report, Case No. 1899, para. 83, and Case No. 1898, para. 324; 309th Report, Case No. 1912, para. 364; 324th Report, Case No. 2092/2101, para. 731; and 336th Report, Case No. 2369, para. 212.)

¹³¹ CFA Digest of 2006, para.569 (See 299th Report, Case No. 1768, para. 110.)

¹³² CFA Digest of 2006, para.564 (See the 1996 Digest, paras. 515 and 553; 302nd Report, Case No. 1845, para. 512; 303rd Report, Case No. 1810/1830, para. 62; 307th Report, Case No. 1890, para. 372; 310th Report, Case No. 1931, para. 506; 314th Report, Case No. 1948/1955, para. 75; 333rd Report, Case No. 2281, para. 631; 335th Report, Case No. 2303, para. 1376; and 338th Report, Case No. 2329, para. 1275.)

According to the international standards, no one should be penalized¹³³, dismissed¹³⁴ or face with discrimination as a result of taking part in a legitimate strike. Compensating workers by bonuses who did not participate in the strike action is also a form of discriminatory practice¹³⁵. Police intervention in a strike can be justifiable only if the strike stops being peaceful and start to constitute a threat to public order; in these situations, police should receive adequate instructions to avoid the danger of the use of excessive force¹³⁶.

3.3 Conclusion

Trade unions are vital for the workers and the rest of the society because of their contribution to the democracy. Therefore, their independence is essential for the effective use of the tools which are guaranteed by the international law.

Being free from the interventions of the external factors that carry the risk to affect the choice of the workers is an important aspect for the freedom of association and the right to organise¹³⁷ since people make contact and maintain relation of participation only if they find it meaningful¹³⁸. Such interferences can be in a shape of acts that are designed to promote the establishment of trade unions under employer domination or support trade unions by financial or other means to control them¹³⁹.

Strong and independent trade unions are essential to compensate the legal and economic weakness of the workers¹⁴⁰ and a precondition for making them the representative of the workers' organised power instead of being a tool to control them¹⁴¹. Yet, despite the emphasis of the ILO on the necessity of specific provisions accompanied by civil remedies as rapid appeal procedures with effective and dissuasive sanctions; protection against act of interference remains non-existent or inadequate in a large number of countries¹⁴².

¹³³ CFA Digest of 2006, para.660 (See the 1996 Digest, para. 590; and, for example, 302nd Report, Case No. 1849, para. 211; 307th Report, Case No. 1890, para. 372; 310th Report, Case No. 1932, para. 515; 311th Report, Case No. 1934, para. 127; 316th Report, Case No. 1934, para. 211; 318th Report, Case No. 1978, para. 218; 321st Report, Case No. 2056, para. 137; 324th Report, Case No. 2072, para. 587; 326th Report, Case No. 2091, para. 154; 331st Report, Case No. 1937/2027, para. 105; and 333rd Report, Case No. 2164, para. 608.)

¹³⁴ CFA Digest of 2006, para.661 (See the 1996 Digest, para. 591; 306th Report, Case No. 1904, para. 596; 326th Report, Case No. 2116, para. 356; 333rd Report, Case No. 2164, para. 608; 334th Report, Case No. 2267, para. 658, and Case No. 2211, para. 678; and 338th Report, Case No. 2046, para. 104.)

¹³⁵ CFA Digest of 2006, para.675 (See the 1996 Digest, para. 605; and 326th Report, Case No. 2105, para. 446.)

¹³⁶ CFA Digest of 2006, para.647 (See the 1996 Digest, para. 582; 320th Report, Case No. 1865, para. 524; 324th Report, Case No. 2093, para. 437; 325th Report, Case No. 2068, para. 314; 335th Report, Case No. 2228, para. 901; 336th Report, Case No. 2153, para. 175; and 338th Report, Case No. 2364, para. 976.)

¹³⁷ CFA Digest of 2006, para.786 (See 302nd Report, Case No. 1826, para. 411.)

¹³⁸ Reference to George Burdeou and translated from Yol-Is

¹³⁹ CEACR General Survey of 2012, para.194

¹⁴⁰ CEACR General Survey of 2012, para.51

¹⁴¹ Zorlutuna p.78

¹⁴² CEACR General Survey of 2012, para. 196

4-CHAPTER 3: PROTECTION MECHANISMS OF INTERNATIONAL LABOUR STANDARDS ON FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

The States' role is important for all the international protection mechanisms since all of them require their cooperation in ensuring compliance with international standards regarding their commitments. Even in the cases where States are reluctant to take the necessary steps, statements of the Governments to the supervisory bodies reflect their view on the concerning issues¹⁴³.

4.1 Existing protection mechanisms

Key supervisory mechanisms that concern Turkey, such as the treaty bodies of the United Nations (UN) and the ECtHR are explained briefly in this chapter. ILO's supervisory mechanisms play a central role among them and provides the most specific and detailed protection regarding trade union rights. Therefore, they take the first place in the line below.

4.1.1 ILO's monitoring mechanism

ILO's supervisory mechanism is a unique one. It combines technical examination by independent experts with the tripartite review at the political level¹⁴⁴ and offers technical assistance on the detected problems. This mechanism is based on two types. First; the regular supervision is conducted by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Conference Committee on the Application of Standards (CAS). Other procedures are the representations, complaints and the special procedure for complaints regarding freedom of association¹⁴⁵. Another important feature of the ILO is that its supervisory mechanisms also follow the unratified Conventions in order to understand the reasons beyond non-ratifications to be able to address them.

According to the regular supervision; CEACR examines the periodic reports of the Governments on the application of the Conventions. The copy of these reports is first sent to the employers' and workers' organisations for their statements. After the examination of these, CEACR makes two kinds of comments in the form of observations or direct requests. Observations include the fundamental comments of the Committee on a specific Convention while the direct requests are sent directly to the Government regarding more technical questions or request further information. CEACR also concludes general surveys every year on a specific theme. Therefore, CEACR is responsible for examining the conformity of the legislation and the

¹⁴³ Icelandic Human Rights Centre, 'International Supervisory Mechanisms for Human Rights' <<http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/part-i-the-concept-of-human-rights/international-supervisory-mechanisms-for-human-rights>>

¹⁴⁴ Lee Swepston, 'Human rights law and freedom of association: Development through ILO supervision' 137/2 International Labour Review, 1998

¹⁴⁵ For detailed information see ILO, 'ILO supervisory system/mechanism' <<http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/ilo-supervisory-system-mechanism/lang--en/index.htm>>

practice of the States with particular Conventions¹⁴⁶. After such examination, the annual report of the CEACR is submitted to the International Labour Conference and examined by CAS which is a tripartite body. In more difficult cases, CAS focuses on selected observations and invites the Government to provide information on these specific issues by the individual cases. Consequently, it publishes conclusions and recommendations on specific steps that Government should take or invite ILO missions for technical assistance.

Among the three special procedures in scope of the ILO's supervisory mechanism which are the representations, general complaints and special complaint procedure regarding freedom of association, none of these accept individual complaints aside from the Governments who are State Parties on a relevant convention, employers' and workers' organisations. Representations¹⁴⁷ give the right to the unions of employers' and workers' to present their allegations to the ILO Governing Body against the State which "*has failed to secure in any respect the effective observance*" on Conventions that it ratified. The ones related to the C87 and C98 are usually referred to the ILO Committee on Freedom of Association's examination. General complaints¹⁴⁸ over the application of ratified conventions are filed against a member State by another, which ratified the same convention, but such mechanisms are rarely used since inter-state relations are very delicate¹⁴⁹. It can also be filed by the ILO Governing Body as a result of a delegate's application or by its own will and it can appoint a Commission of Inquiry to work on the complaint. Lastly, special procedures for monitoring freedom of association were established with the co-operation of the Economic and Social Council of the UN to work on the complaints of governments, workers' or employers' organisations which only concern freedom of association related cases. Government does not need to ratify the relevant Conventions to be the subject of a case, but only needs to be a member of the ILO. Two bodies of this procedure are the Fact-Finding and Conciliation Commission and Committee on Freedom of Association. Commission requires the consent of the States who are not ratified the relevant Conventions but the CFA, another tripartite body in scope of the ILO, does not.

While many believe that ILO's supervision mechanism is very successful and effective, still there are criticisms regarding it "*failed to adapt to the radical changes in the global economy*"¹⁵⁰.

4.1.2 Supervisory bodies of international organisations other than ILO

Regarding the two Covenants; the supervisory committee that is associated with ICCPR is the Human Rights Committee; whereas the body that is associated with ICESCR is the

¹⁴⁶ CEACR, (International Labour Conference, 101st Session Report III (Part4A), 2012) p.2

¹⁴⁷ Article 24 and 25 of the Constitution of the International Labour Organisation, 1 April 1919

¹⁴⁸ Article 26 to34 of the Constitution of ILO

¹⁴⁹ Icelandic Human Rights Centre, 'International Supervisory Mechanisms for Human Rights'

¹⁵⁰ Philip Alston, 'Facing Up to the Complexities of the ILO's Core Labour Standards Agenda' 16/3 The European Journal of International Law, p.472

Committee on Economic, Social and Cultural Rights (CESCR). Both Committees receive periodic and obligatory reports from the Governments regarding the implementation of the Covenants. After examining the reports, they provide “concluding observations”. These two Committees also accept inter-state complaints. Regarding the individual complaints, First Optional Protocol to the ICCPR and Optional Protocol to the ICESCR provide such mechanism, but since Turkey did not ratify the protocols, it is not possible to monitor Turkey by individual complaints. Committees also publish general comments to clarify their interpretation of the Covenants on particular issues. Yet, they do not have any general comment regarding freedom of association in particular. Non-Governmental Organisations (NGO’s) can take part in the reports’ examinations through preparing shadow reports.

As a State Party to the European Convention on Human Rights, Turkey is also responsible in front of the supervisory body of the Convention which is the European Court of Human Rights. Turkey accepted the jurisdiction of the Court to receive individual complaints regarding the alleged violations of the ECHR. Judgments of the ECtHR are binding, yet its scope of protection regarding trade union rights is limited. For example, it does not guarantee the right of trade unions to be consulted¹⁵¹ and the right to strike¹⁵². Regarding collective agreements, ECtHR states that it forms “*one of the principal means – even the foremost of such means – for trade unionists to protect their interests*” but leaves it to the margin of appreciation of states to organise their systems and granting special status to representative trade unions if appropriate¹⁵³. Lastly, the European Social Charter and the Revised ESC is monitored by the European Committee of Social Rights (ECSR). ECSR receives periodic reports from the State Parties of the Charter regarding its implementation and publishes its conclusions. ESC is the first and fundamental instrument that regulates the economic, social and cultural rights in the scope of the Council of Europe¹⁵⁴ and it supplements the ECHR in these rights¹⁵⁵. ECSR accepts collective complaints by the social partners and NGO’s but Turkey did not accept this clause.

¹⁵¹ National Union of Belgian Police v Belgium App no 4464/70 (ECtHR 27 October 1975)

¹⁵² Schmidt and Dahlström v Sweden App no 5589/72 (ECtHR 6 February 1976)

¹⁵³ Demir and Baykara v Turkey [GC] App no 34503/97 (ECtHR 12 November 2008)

¹⁵⁴ Mehmet Semih Gemalmaz, *Ulusalüstü İnsan Hakları Hukukunun Genel Teorisine Giriş* (7th edn, Legal Publications 2007) p.1069 (Introduction to the General Theory of Supranational Human Rights Law)

¹⁵⁵ Council of Europe, ‘European Committee of Social Rights (ECSR)’

<http://www.coe.int/t/democracy/migration/bodies/ecsr_en.asp>

5-CHAPTER 4: CLASS CONFLICT OR COMPROMISE?

This chapter includes some theories regarding the relationship of the workers and employers to discuss if they have conflicting interests or if they can compromise in relation to their class identity. By the help of different approaches, factors that might affect the intent of the parties in collective bargaining process and their outcomes under the jurisdiction of the international law mechanisms can be understood more thoroughly. It is also important to note that the theories or models are not applied at the same level in the same way in different countries and they are manifested differently in diverse contexts¹⁵⁶.

5.1. Marxist theory and others

Marxist theory is based on the conflicted class interests that can never compromise in reality as a result of their opposite nature to each other. This conflict stems from the relations of production; employers own the tools of production and make profit out of the services of workers who use these tools and produce goods and services for a wage that is determined by the employers. The Marxist theory states that such system of production leads to exploitation of the services of the workers in capitalist economies. Therefore, strikes are crucial in this approach¹⁵⁷ since it represents the power of the workers in influencing production and directly affects the profit of the employers. The theory also alleges that, all the other issues that are related to social formation are caused by this fundamental conflict¹⁵⁸.

Marxist theory is criticized due to its “*almost infinite plasticity of the class concept*¹⁵⁹” and suggested that it “*should not shut the door*” to alternative arguments¹⁶⁰. Weberian theory defines class as just one of the “*multidimensional*” aspects of social inequalities¹⁶¹. Contemporary Marxists such as Wright keeps the class debate but adds middle classes to the list. He also states that, classes can have different aspects in different societies and historical periods¹⁶². The Fabian school on the other hand, combines the economic and political role of the trade unions in the line of social democracy¹⁶³.

In opposition to the Marxist theory, there are the corporatist approaches which believe that the workers and employers might/do have common benefits. In liberal democracies, class identity is still there as a part of the “*democratic class struggle*” and “*corporatist deals,*” they

¹⁵⁶ Yildirim Koc, ‘Türkiye’de Sendikacılık: Sorunlar ve Çözüm Önerileri’ Türkiye’de Sendikal Kriz ve Sendikal Arayışlar, 2007, pp.157-207, p.178 (Trade Unionism in Turkey: Problems and Solution Offers)

¹⁵⁷ Mahirogullari, *Dünyada ve Türkiye’de Sendikacılık*, p.32

¹⁵⁸ Jan Pakulski, ‘Anti class analysis: social inequality and post-modern trends’ Alternative foundations of class analysis, 2011, pp. 179-220, p.181

¹⁵⁹ Ibid

¹⁶⁰ Melvin Tumin, ‘Reply to Kingsley Davis’ 18 American Sociological Review, 1953, p.672-73

¹⁶¹ Pakulski, p.186

¹⁶² Erik Olin Wright, *Class counts : comparative studies in class analysis* (Cambridge University Press; Paris : Maison des Sciences de l’homme, 1997)

¹⁶³ Mahirogullari, *Dünyada ve Türkiye’de Sendikacılık*, p.34

are represented in the legal system in the shape of collective bargaining¹⁶⁴. The attitude of the Trades Union Congress (TUC) can be given as an example to this situation when they stated, most of their members want their employers to be successful since “*their jobs depend on that success*” and unionists want employers who recognizes union rights to look good compared to other employers¹⁶⁵. One other approach is that the trade unions are “*strategic mid-level actors,*” and they can influence high level actors as well as mediate between the conflicting positions horizontally and vertically¹⁶⁶. The independence of the unions is decisive to shape the content of this mediation’s outcomes. “*Third way*” is another argument which states that, if workers and trade unions are treated with respect, they will work harder and employers may abide by better wages and labour rights with taking into account the gains in quality and productivity¹⁶⁷. In another approach, relationship between the workers and employers is taken as not merely based on economic factors but it takes human dignity as a starting point¹⁶⁸ which is similar to the ILO’s principle on “*freedom with dignity*”¹⁶⁹.

According to the models of trade unionism; in the service model, trade unions have a visible bureaucracy which is based on a relationship of exchange with its members and it is based on the advantages it provides for them¹⁷⁰. Good relationship with the management is more important than the relationship with the union members in this system and bargaining process is executed by a small committee while the union is reluctant to take the measures as strike since it means putting pressure on employer¹⁷¹. Alternatively, in the organising model; trade unions aim to strengthen the workers with the skills of solving their own problems and provide support to defend their rights¹⁷².

One gap of the corporatist approaches which is based on good faith of the parties might be the risk on what might happen if partnership agreements do not exist or fall apart when the representational role of trade unions are weak¹⁷³. Some economists allege that the strikes are against the benefit of the nation¹⁷⁴, and some authorised unionists adopted the approach that the

¹⁶⁴ Pakulski, p.209

¹⁶⁵ Ewing, p.10

¹⁶⁶ Barbara J. Fick, ‘Not Just Collective Bargaining: The Role Of Trade Unions In Creating And Maintaining A Democratic Society’ 12/4 WorkingUSA, 2009, pp. 249-264, p.259

¹⁶⁷ Anne C.L. Davies, *Perspectives on labour law* (2nd edn, Cambridge University Press 2009) p.15

¹⁶⁸ Robin Allen; Rachel Crasnow; Anna Beale, *Employment Law And Human Rights* (Oxford University Press 2007) p.1

¹⁶⁹ ILO Report of the Director-General, *Prosperity For Welfare: Social Purpose in Economic Growth and Change* (International Labour Conference 58th Session, 1973) p. 61

¹⁷⁰ Ayse Bugra; Fikret Adaman; Ahmet Insel, *Çalışma Hayatında Yeni Gelişmeler ve Türkiye’de Sendikaların Değişen Rolü* (Research Report of Bogazici University Social Policy Forum, 2005), p.52 (New Developments in the Life of Work and Changing Role of the Trade Unions); ILO Trade Unions International (TUIS), *Trade Unions and the Informal Sector: Towards A Comprehensive Strategy* (ILO Bureau for Workers’ Affairs, 1999)

¹⁷¹ Massachusetts Nurses Association, ‘Organizing Model vs. Service Model’ <<https://www.massnurses.org/labor-action/labor-education-resources/member-mobilization/organizing-vs-service>>

¹⁷² Ayse Bugra; Fikret Adaman; Ahmet Insel p.52; (TUIS)

¹⁷³ Ewing p.11

¹⁷⁴ Ayse Bugra; Fikret Adaman; Ahmet Insel p.26

economic growth is more important than the social rights¹⁷⁵ for example. On the contrary, ILO emphasizes that, “*the fundamental and permanent mission of the trade union movement is the economic and social advancement of the workers*”¹⁷⁶. Wright, at this point, draws attention to a “*negative class compromise*”, which considers compromises as “*one-sided capitulations*” at their core but parties may agree to compromise to refrain from mutual damage since both have the ability to cause severe damage to each other but none of them are strong enough to vanquish the other¹⁷⁷. Wright suggests a new approach which claims that the employers are best satisfied if the working class is disorganised and compete with each other but if the power of the working class crosses a certain threshold, it will begin to have positive effects on the interests of employers¹⁷⁸.

Under certain conditions, cooperation between the employers and workers can become a precondition of the effectiveness of trade unions instead of being a strategy¹⁷⁹ and in such conditions, trade unions stop to “*create both opportunity and threat for the employers*”¹⁸⁰.

5.2 Changing and evolving relations of employment

In today’s world, we are witnessing “*the emergence of a new supply side trade unionism*” where the trade unions are compelled by the Governments to accept their changing role in the economy¹⁸¹. Form of the struggle which is at the forefront changed in some places even though the root causes of this struggle is still there¹⁸², but somewhere deeper in general. In the changing conditions of employment relations, the workers constitute the majority of the population, yet their characteristics have evolved such as the emergence of white collar workers, who usually choose to defend their rights individually¹⁸³. Also, other types of struggle grow with the reflection of globalisation such as the problems of migrant workers. The common result of the globalisation though is the back-up policies that increased the power of employers and the pressure on the trade unions. Even though the traditional class struggle has lost its intensity, “*it has not been replaced by social peace*”¹⁸⁴ and as we know, there is no lasting peace without

¹⁷⁵ Ibid p.50

¹⁷⁶ ILO, *Resolution concerning the Independence of the Trade Union Movement* (International Labour Conference 35th session, 26 June 1952) (See the Digest of 1985, para. 352.)

¹⁷⁷ Wright, ‘Working-Class Power, Capitalist-Class Interests, and Class Compromise’, p.957

¹⁷⁸ Ibid p.959

¹⁷⁹ Ruya Gokhan Kocer, ‘Trade Unions at Whose Service?’ *Coercive Partnerships and Partnership in Coercion in Turkey’s metal sector* 14/3 *Industrielle Beziehungen: Zeitschrift für Arbeit, Organisation und Management*, 2007, pp.245-269, p.247 refers to Peter Boxall; Peter Haynes, ‘Strategy and Trade Union Effectiveness in a Neo-liberal Environment’ 25/4 *British Journal of Industrial Relations*, 1997, pp.567-591, p.568-571

¹⁸⁰ Peter Haynes; Michael Allen, ‘Partnership as Union Strategy: A Preliminary Evaluation’ 23/2 *Employee Relations*, 2001, pp.164-187, p.182

¹⁸¹ Ewing, p.2

¹⁸² Alan J. Spector, ‘Class Structure and Social Change: The Contradictions of Class Relations in Advanced Capitalist Society’ 65 3/4 *Social Inquiry*, 1995, pp.329-338, p.336

¹⁸³ Mahirogullari, ‘Küreselleşme Sürecinde Sendikacılığın Gücündeki Değişim (Fransa Örneği)’, p.6

¹⁸⁴ Spector p.335

social justice¹⁸⁵. Moreover, these new forms can still be related to the traditional conflict since “*class struggle is still the driving force*” if they form a threat against capitalism¹⁸⁶. Traditional forms of class struggle based on production also continue in the form of strikes for example, but their effectiveness is disputable nowadays¹⁸⁷.

On a political level, democratization trends do not lead directly to social justice but they provide a platform beyond determinism which takes the economy as the solemn determinant¹⁸⁸. So, political will and international protection mechanisms are important to provide this direct outside pressure, and also contribute indirectly to the inside pressures to put in place the necessary domestic legislation. As to the Rueschemeyer, Stephens, and Stephens; an organised working class is central for promoting democracy in most countries¹⁸⁹.

5.3 Conclusion

Since capitalism is continuing to shape the employment relations in general, its main contradictions are also continuing with some changes. After all, “*if the self-interest of governments truly matched the interests of workers around the world, we would not need an international system to promote respect for standards*”¹⁹⁰. Trade unions have different approaches such as more radical policies or corporatist ones, which are both accepted in liberal democracies up to a certain level. This level is surpassed when the partnership becomes a precondition of the effectiveness of a trade union. International standards try to manage this relationship by promoting a social consensus and emphasizes that the international labour standards “*cannot be made subject to prior economic development*”¹⁹¹. As it is mentioned in the introduction, a discussion regarding which theory is superior, is a subject of another research while the focus of this work is about who is/can demand and who is/can provide the rights of the workers regarding freedom of association and collective bargaining process.

¹⁸⁵ Preamble of the ILO Constitution

¹⁸⁶ Spector, p.335

¹⁸⁷ Ibid p.334

¹⁸⁸ Ayse Bugra; Fikret Adaman; Ahmet Insel, p.46

¹⁸⁹ Fick p.251

¹⁹⁰ Alston, p.473

¹⁹¹ Bohning, p.2

6-CHAPTER 5: COUNTRY ANALYSIS ON TURKEY

In the light of the provided information until now, this chapter examines the history and evolution of the labour standards and trade unionism in Turkey, as well as how it has been perceived under the ILO conventions. It constitutes the backbone of this thesis in terms of providing the needed data for the answers to the research question.

6.1 Turkey's commitment to international labour standards

Before the discussions of employer domination in three examples, a brief review of Turkey is provided below regarding the country's history, current laws and statistics as background information.

6.1.1 History of trade unionism in Turkey

The history of trade unionism in Turkey can be divided into three periods: 1947-1963, 1963-1980 and post 1980 until today.

After the amendment of the Associations Act, which removed the prohibition of the establishment of class based associations, Turkey's first trade union act was established in 1947. This Act accepted the principle of national unionism, held strong bonds with the State¹⁹² and put broad bans on the political activities of the trade unions. As a member of the ILO since 1932, Turkey could not send any representatives of trade unions to the conferences because of the lack of such unions before¹⁹³.

Turkey became a member of ILO in 1932, UN in 1945 and it ratified the ECHR in 1954. After such links with international organisations, disharmony between domestic law and international law became more obvious in time¹⁹⁴. In 1961, the second Constitution of Turkey was adopted, which granted fundamental rights and freedoms to the trade unions in constitutional level for the first time. After, in 1963, new Trade Unions Act (Act No.274) and Collective Agreement, Strike and Lock-out Act (Act No.275) were adopted. Content of these laws are influenced by the French Labour Law and they were more consistent with the international and contemporary standards¹⁹⁵. They softened the broad ban on the political activities of trade unions and prohibited the direct and indirect interference of employers in their establishment, administration and activities¹⁹⁶. Under this legal framework, trade unions were able to conclude collective agreements at the work place and the sectoral level -if they represented the majority of

¹⁹² Mahirogullari, *Dünyada ve Türkiye'de Sendikacılık*, p.154

¹⁹³ Ibid p.151 (fn.35)

¹⁹⁴ Mesut Gulmez, '1924'ten 1982'ye Anayasal Sendikal Haklar ve Ulusalüstü Kurullarla Uyumlu 'Yeni' Anayasa İçin Öneriler' 5th International Social Rights Symposium, 2013, p.69 (Constitutional Trade Union Rights from 1924 to 1982 and Recommendations for a 'New' Constitution in Compliance with Supranational Norms)

¹⁹⁵ Mahirogullari, *Dünyada ve Türkiye'de Sendikacılık*, p.165

¹⁹⁶ Article 17 of the Trade Unions Act No.274, 15 July 1963

the workers- and the right to strike was permitted in case of failed negotiations or the infringement by employers on collective agreements. Nevertheless, the strikes were still subjected to broad limitations¹⁹⁷. Compared to the previous regulations, the 60s and 70s constituted “*a very favorable climate for the development of trade unionism*” and improved the workers’ conditions and class consciousness in Turkey¹⁹⁸. Union density reached 27% in 1979¹⁹⁹. Meanwhile and in part because of the effects of the ongoing Cold War period, employers were afraid of the possible effects of an organised working class getting involved in revolutionary activities. In Turkey, employers started to face strong pressures by the trade unions on the collective bargaining processes²⁰⁰ as a reflection of such conditions. Consequently, when the actors of the leftist political movement took over the management of the Confederation of Progressive Trade Unions’ (DISK), employers felt the need to take the side of the workers’ organisations which were not affiliated with DISK²⁰¹.

The year of 1980 represents an important point of departure from the previous positive developments regarding trade union rights in Turkey. The first blow to the trade unions emerged as “24 January Decisions” as a result of the economic decisions taken to open the Turkish economy to the international markets in order to fight high inflation and unemployment rates²⁰². To be able to compete in international arena, Turkey adopted neo-liberal policies and left the workers without sufficient protection against unjustified dismissals by the employers in order to decrease the labour costs²⁰³. Following, the military coup on 12th September in the same year, which is the second blow, trade union activities had temporarily banned as many other organisations. Military regime also declared their commitment to the new neo-liberal economic policies²⁰⁴. During this period, many trade unions were closed while their leaders were arrested except the ones affiliated with Confederation of Turkish Trade Unions (Turk-Is)²⁰⁵. International Confederation of Free Trade Unions (ICFTU)²⁰⁶ carried some of these cases to the ILO and sent representatives to some domestic trials as observers²⁰⁷. After the coup, ILO expressed its “*grave concern at the seriousness of allegation*” about complaints as the “*death, arrest and imprisonment of trade unionists, the banning of a very large number of trade unions, in*

¹⁹⁷ Uzeyir Ataman, *6356 Sayılı Sendikalar ve Toplu İş Sözleşmesi Kanunu'nun Değerlendirilmesi* (Lastik-Is Sendikası Research Publications 2012), p.9 (Evaluation of the Act No. 6356 on Trade Unions and Collective Labour Agreements)

¹⁹⁸ Dudley Jackson, ‘The Political Economy of Collective Bargaining. The Case of Turkey’ 16/9 British Journal of Industrial Relations, 1971, p.72-73; Cahit Talas, *Türkiye'nin Açıklamalı Sosyal Politikalar Tarihi* (Bilgi Publications 1992) p.176 (History of Turkey’s Explanatory Social Politics)

¹⁹⁹ Kocer p.249

²⁰⁰ Ibid

²⁰¹ Koc, p.158

²⁰² Zivi Y. Hershlag, *The Contemporary Turkish Economy* (Routledge 1998), p.38-44

²⁰³ Kocer p.250

²⁰⁴ Ergin Yildizoglu; Ronnie Marguiles, ‘Austerity Packages and Beyond: Turkey since 1980’ 12 Capital/Class, 1988, p.38

²⁰⁵ Ibid

²⁰⁶ ICFTU is dissolved in 2006 to form ITUC

²⁰⁷ Mahirogullari, *Dünyada ve Türkiye’de Sendikacılık*, p.60 (fn.166)

particular two of the Turkish trade union Confederations, the Confederation of Unions of Progressive or Revolutionary Workers (DISK) and the Confederation of Unions of Nationalist Workers (MISK), to the freezing of their assets and the suspension of the right to strike” in a case before the CFA²⁰⁸.

New Acts on Trade Unions (Act No.2821) and Collective Agreement, Strike and Lock-out (Act No.2822) which were adopted in 1983, included the same provision regarding the prohibition of the acts of interference by the employers’ and workers’ organisations in the internal matters of each other. But much more restrictive laws were adopted compared to the 1963 regime²⁰⁹ such as a double threshold system to be a collective bargaining agent; with the requirement of the representation of 10% of the workers in the sector and more than 50% of the workers in the workplace level²¹⁰. Trade unions tried to react to the deterioration of their rights with demonstrations as Spring Protests²¹¹ and strikes, which lead to some positive changes. Yet, it also lead the Government to push workers to the private sector with privatization policies and private sector employers pushed them to de-unionization²¹².

Neoliberal policies of post-1980 conditions in Turkey created the proper conditions for the risk of employer domination on trade unions in practice²¹³ despite the international commitments to the ILO C87 and C98.

6.1.2 Current-domestic law and a brief evaluation

The most relevant and current laws are the Constitution of Turkey and the Trade Unions and Collective Labour Agreements Act (No.6356) of 2012 on the subject. Legislation concerning the public sector is excluded from the evaluation as a result of the focus of this research on private sector.

The *Constitution* as the highest norm in the hierarchy of laws; guarantees the freedom of association of trade unions, the right to collective bargaining and the right to strike²¹⁴. Article 90 of the Constitution states that, “*In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.*”

²⁰⁸ Committee on Freedom of Association (CFA), Interim Report No.207, March 1981, *Case No 999-Turkey*, *Complaint date: 17 September 1980*

²⁰⁹ Korkut Boratav, *Türkiye İktisat Tarihi* (9th edn, Imge Publications 2005) p.147-164 (Turkey’s History of Economics); Zulkuf Aydın, *The Political Economy of Turkey* (Pluto Press 2005) p.52-56

²¹⁰ Article 12 of the Collective Agreement, Strike and Lock-out Act No.2822, 5 May 1983

²¹¹ Spring Protests are the first big protest after the coup in 1980. It started in 1989 as a result of disputes about the collective bargaining process, led by Turk-Is and 600,000 affiliated public workers, spreaded and affected the following protests in 1990. Aziz Celik, ‘90’ ların Hak Mücadeleleri’ *Bianet* (6 January 2015) <<http://bianet.org/bianet/emek/161305-isci-sinifinin-ayaga-kalktigi-yillar>> (Right Struggles of 90s)

²¹² Koc p.162

²¹³ Kocer p.249

²¹⁴ Article 51-54 of the Constitution of Turkey, 7 November 1982

Consequently, international conventions, such as C87 (ratified in 1993 by Turkey) and C98 (ratified in 1952 by Turkey) have direct effect on the Turkish legal system and jurisprudence. It should be kept in mind at this point that ratification of the conventions does not mean their ipso facto implementation²¹⁵ and some of the long standing ratifiers had gone to the wrong direction about their commitments²¹⁶.

Trade Unions and Collective Labour Agreements Act No. 6356 replaced the Acts No. 2821 and 2822. Currently it is the main legislation on the topic regarding private sector and it was adopted in 2012. Government claims that the Act replaced the legislation imposed by the military regime and created conditions for a more-democratic and free industrial relations²¹⁷. The Act regulates the principles and the procedures on the establishment, management, operation, audit, activities and organisation of workers' and employers', trade unions and confederations, collective labour agreements and strikes. As in the previous Act, it is prohibited for the workers' and employers' organisations to intervene directly or indirectly in each other's establishment, administration or activity.

Activities of the trade unions are limited to the sector they were established in; therefore solidarity between trade unions in different branches is not possible regarding to this provision²¹⁸. As a result, the cases when they might share common aims are excluded from the protection²¹⁹. *Principle of free establishment of trade unions* without a previous permission and individual freedom of workers regarding to be or not to be a member is guaranteed. Workers have to use *e-State* system²²⁰ regarding a change in their membership status which notifies the State and employer simultaneously which is criticized by the workers organisations because of the risk of intervention. Despite the positive effects of the system -free, easy to access compared to the previous notary condition, its effect on the union density etc. - since the resignation of membership should also be done through the system; there is the risk that employers can use this notification for questioning trade unions' ability to conclude collective agreements²²¹. *In case of a dismissal* of a worker as a result of his/her trade union membership, burden of proof is on the employer under the Article 25 of the Act²²². But, if the worker believes the reason of the dismissal is different than what the employer claims, the worker is the one who has to prove it. Since probably no employer will claim that the dismissal is caused by anti-union discrimination,

²¹⁵ Bohning p.125

²¹⁶ Ibid p.129

²¹⁷ Conference Committee on Application of Standards, *Individual Case (CAS) Right to Organise and Collective Bargaining Convention, 1949 (C98)-Turkey* (102nd ILC session, 2013)

²¹⁸ Ataman p.44

²¹⁹ Ataman p.44

²²⁰ e-State is a system which makes it possible for the State to provide some of its services through an electronic environment and aims easy and modern access. turkiye.gov.tr, 'Frequently Asked Questions'

<<https://www.turkiye.gov.tr/bilgilendirme?konu=sikcaSorular>>

²²¹ Ataman p.14

²²² As the Government also stated in Individual Case (CAS) C98-Turkey, 102nd ILC session, 2013

the burden of proof is on the worker's shoulders in practice²²³. Chapters regarding freedom of association have some positive developments yet there are still important problematic issues²²⁴.

According to the Article 34 which regulates the three *types of the collective agreements*; such agreements can cover one or more workplaces in the same branch of activity. First, it can be concluded at the enterprise level only in workplaces, where there is more than one workplace in the same branch of activity belonging to the same employer. Second, group collective agreements can be concluded between the employers' organisation and trade unions concerning workplaces and third, in enterprises in the same branch of activity of the member employers'. Consequently; they are all workplace based systems²²⁵. Framework agreements on the other hand, which is regulated in Article 33, have a broader scope concerning the beneficiaries. However, they are not collective agreements and they may only cover the issues of vocational training, health and safety at work, social responsibility and employment policies. Framework agreements are a new concept for Turkey and accepted in accordance with employers' demands in the travaux preparatoires of the Act No.6356 because they were seeking common standards for the administrative aspects of collective agreements at the workplace level. This aspect of the current legislation has been criticized by some trade unions for carrying the risk to limit collective agreements and they argue that the framework agreements should set only the minimum standards²²⁶.

For being a competent collective bargaining agent, trade unions need to fulfil the criteria of a *double threshold*, which is subjected to high criticism of the workers' organisations and the ILO. Under the new Act, trade unions should represent at least 3% (gradually; it will be 1% until 1.7.2016 and 2% until 1.7.2018) of the workers engaged in the given branch of activity and more than half of the workers employed in the workplace or 40% of the workers in the enterprise. Beneficiaries of a collective agreement are the members of the competent trade union, who manage to pass these thresholds. Workers who are not members of the concerning trade union may benefit from the agreement by paying monthly solidarity dues, the amount of which is determined by the trade union. This amount cannot be higher than the membership dues. Limit on the amount is criticized by the trade unions, because of their efforts to conclude the agreements are more than paying monthly dues, and such regulation might cause a result of damage on the promotion of unionization²²⁷. In case of a dispute regarding competence as a collective bargaining agent, employers or trade unions who receive the certificate of competence can apply to the Court which should give a decision in two months. Until then, the collective bargaining process stops.

²²³ Ataman p. 14

²²⁴ Ibid p.11

²²⁵ Ibid p.102

²²⁶ Ibid p.102

²²⁷ Ibid p.111

The compensation amount for employers in case of their acts that constitute an anti-union discrimination is determined as minimum of no less than 1-year-salary of the worker. Workers who are employed in companies with 30 or less workers were not able to have this compensation but recently, on 22 October 2014, the Constitutional Court repealed this regulation²²⁸.

The right to strike contains strict limitations in the new Act, as a reflection of a continuous tradition. Regarding the *strike vote*; if the absolute majority of the workers employed on the date decides against the strike, it cannot be implemented. After the Constitutional amendment in 2010, the prohibition of *general strike, political strike and solidarity strike* was repealed. Yet, in Article 58 of the Act No.6356, the definition of a lawful strike only includes for the purpose of collective bargaining. Since general, political and solidarity strikes are not included in the definition, there is the risk that they still may be considered as illegal²²⁹. If no strike decision is taken within 60 days from the date of the notification of the dispute, the competence certificate of the trade union to conclude collective agreements becomes void. Council of Ministers has the ability to *suspend a lawful strike* for 60 days if it is prejudicial to public health or national security. Even though this measure is meant to be for exceptional cases, there are many lawful strikes that are suspended by the Council in practice²³⁰. It can be concluded that the chapters that define the collective agreement process are more problematic compared to other chapters of the Act²³¹.

Turkish and international confederations criticize the Act No.6356 on similar points. Turk-Is draws attention to the scope of the right to form trade unions and states that the workers who are not working in the designated branch of activities are left outside of the protection. It also criticizes the negative effects of employers' right to object to the competence of trade unions on collective bargaining process²³². It is satisfied with the overall content of the Act though and believes that it meets the minimum elements of the working class²³³. DISK, on the other hand claims that the Act No.6356 is a different version of the previous Act "with some make up" and the root causes of the problems remain²³⁴. This approach is shared by the international

²²⁸ Judgment No. 2013/1 E., 2014/161 K. (Constitutional Court of Turkey) 22 October 2012

²²⁹ ARTICLE 58 - (1) The expression "strike" means any concerted cessation by workers of their work with the object of halting the activities of a given establishment or of paralysing such activities to a considerable extent, or any abandonment by workers of their work in accordance with a decision taken to that effect by an organisation. (2) Lawful strike means any strike called by workers in accordance with this law with the object of safeguarding or improving their economic and social position and working conditions, in the event of a dispute during negotiations to conclude a collective labour agreement. (3) Unlawful strike means any strike called without fulfilling the conditions for a lawful strike.

²³⁰ As an example, see Metal işçilerinin grevine erteleme kararı. 'Metal işçilerinin grevine erteleme kararı' *Al Jazeera* (30 January 2015) <<http://www.aljazeera.com.tr/haber/metal-iscilerinin-grevine-erteleme-karari>> (Decision of suspension against the strike of the metal workers)

²³¹ Ataman p.10

²³² Aysel Alp, 'Türk-İş İlanla İsyan Etti' *Hurriyet* (11 October 2012) <<http://www.hurriyet.com.tr/turk-is-ilanla-isyan-etti-21675896>> (Turk-Is Rised Up with Ad)

²³³ Ataman p.22

²³⁴ DISK, 'BARAJsiz, YASAKsiz SENDİKAL HAKLARIN GÜVENCE ALTINA ALINDIĞI BİR YASA İSTİYORUZ!' (3 October 2012) <<http://disk.org.tr/2012/10/barajsiz-yasaksiz-sendikal-haklarin-guvence-altina>>

confederations including European Trade Union Confederation (ETUC) and International Trade Union Confederation (ITUC). In their common letter to the president of Turkey, they draw attention to the European Commission's report in 2012 which has raised concerns on the thresholds on collective bargaining and strict limitations on the right to strike. The international confederations state that millions of workers cannot use their constitutional rights within this Act; and it allows the intervention of the State and maintains bureaucracy²³⁵.

Briefly, the new Act embraces a model of trade unionism which focuses on the workplace and still has many problematic aspects that may accentuate the risk of anti-union discrimination and employer domination. Since democratic norms regarding trade unions are not strongly rooted in Turkey and both law and practice change rapidly, the effects of the new laws can be observed better in the following years.

6.1.3 Some statistics

Informal economy is still an important problem in Turkey and official number for unregistered employment rate is 31.8%²³⁶. Workers in informal economy cannot reach the right to collective bargaining since they are not registered members. Nevertheless, statistics below provide helpful data to zoom in to the concrete and recent circumstances of the country:

The employment rate in Turkey is 45% and it remains well below of the OECD's average around 65% while *unemployment rate* is declared as 11.1% by January 2016 which is above the OECD's average around 7%²³⁷. Employed people aged 15 and older, constitute 26,275,000 people²³⁸.

Employment status by the same date shows that, 68% of the people are "regular and casual employees" while 4.4% are employers, 17.4% are "own account workers" and 10.2% are "unpaid family workers"²³⁹.

As from January 2015, 1,297,000 of workers out of 12,181,000 are *member of trade unions* which constitutes 10.65% of the workers in the formal economy according to official

alindigi-bir-yasa-istiyoruz/> (We Want an Act that Guarantees Rights of Trade Unions Without Bans and Thresholds!)

²³⁵ Anadolu Agency, 'Uluslararası İşçi Örgütlerinden Gül'e Sendika Yasası Uyarısı' *Hurriyet* (27 October 2012) <<http://www.hurriyet.com.tr/uluslararasi-isci-orgutlerinden-gule-sendika-yasasi-uyarisi-21791422>> (Warning about Trade Unions Act to Gul from International Organisations)

²³⁶ Turkish Statistical Institute, 'Labour Force Statistics January 2016' <<http://www.turkstat.gov.tr/prehaberbultenleri.do?id=21570>>

²³⁷ OECD, 'How Does Turkey Compare? Employment Outlook 2015' <<https://www.oecd.org/turkey/employment-outlook-turkey-en.pdf>>

²³⁸ Institute

²³⁹ Turkish Statistical Institute, 'Employment status by years' <www.tuik.gov.tr/PreIstatistikTablo.do?istab_id=2266>

statistics²⁴⁰. Regarding the distribution of the number of workers between confederations; Turk-Is has 877,587, Hak-Is has 436,542, DISK has 144,264 and Aksiyon-Is has 26,089 members by January 2016²⁴¹.

In *private sector*, there are approximately 14,000,000 workers. Yet, as a result of the collective bargaining system, only 550,000 of them are in the scope of protection of collective agreements which is the equivalent of 3-4%²⁴² since they are not members of the unions that have concluded collective agreements.

In January 2014, the private sector witnessed 11 strikes in 54 workplaces which included 6,880 workers²⁴³. In the same year, numbers of complaints by workers' that are concluded by Provincial Director of Labour are 106,548 in total. Union based reasons are only 43 among them which constitute only 0.02%.

Turkey does not have a system for collecting data on anti-union discrimination in the private sector. Both the CEACR and CAS request Turkey to establish such a system and provide all statistical data regarding anti-union discrimination²⁴⁴.

High number of unemployed workers and workers in the informal economy can be some of the reasons of the low trade union density. In light of the given data, there is a climate which can create a danger of employers threatening replacement of workers who are engaged in union activities.

6.2 Discussion of employer domination on workers' organisations: three examples

To discuss the effect of the loopholes in the legislation and effects of the other factors that may lead to employer domination of workers' organisations, three examples are chosen from publicly known cases. Possible domination is examined in two ways; employer domination as first and internal domination in the trade unions as second. Leading discussion is based on Turk-Metal, which is labelled as yellow-union in some quarters²⁴⁵. This discussion based on the Article of Ruya Gokhan Kocer with the title "*Trade Unions at Whose Service? Coercive Partnerships and Partnership in Coercion in Turkey's metal sector*"²⁴⁶ which helps to discuss

²⁴⁰ Aziz Celik, 'Sendikalaşma Gerçekten Artıyor Mu' *Emegin Halleri* (27 January 2015) <<https://azizcelik.org/2015/01/27/sendikalasma-gercekten-artiyor-mu/>> (Is Trade Union Density Really Increasing?) ; Official Gazette of Turkey, <<http://www.resmigazete.gov.tr/eskiler/2015/01/20150124-9.pdf>>

²⁴¹ Ministry of Labour and Social Security, <http://www3.csgb.gov.tr/csgbPortal/ShowProperty/WLP%20Repository/csgb/dosyalar/istatistikler/calisma_hayati_2014>

²⁴² Ibid

²⁴³ Ibid

²⁴⁴ Committee of Experts on the Application of Conventions and Recommendations, *Observation (CEACR) Right to Organise and Collective Bargaining Convention, 1949 (C98)-Turkey* (105th International Labour Conference session, 2016)

²⁴⁵ Examples about this are provided in the following of the text

²⁴⁶ Kocer p.245-269

other examples that are subject to similar accusations at times. Overall, the risk of employer domination and its internal reflection on workers' organisations in Turkey's current condition is discussed.

6.2.1 Turk-Metal

Turk-Metal was established in 1973 in the metal sector and it is affiliated with Turk-Is. Some of the principles of Turk-Metal are, “*considering the interests of the country more important than those of the union*” and endorsing “*dialogue and compromise*”²⁴⁷. It is one of the trade unions that continued its activities without interruption during the period of 1980's military coup²⁴⁸. It has the highest membership in the metal sector and has organised many workplaces²⁴⁹.

Turkey's Metal Industrialists Union (MESS) on the other hand is the largest employer union in the sector²⁵⁰. Kocer states that the member employers of MESS believed that the collective agreements at the workplace level carry the risk to high costs for employers in the form of wages. Since the other bargaining agents of workers' organisations might take the previous agreements as a starting point; demands of the subsequent agents might appear to be higher in practice²⁵¹. Therefore, MESS started to look for an ally from the trade unions which may cooperate. Between the other trade unions in the metal sector, Turk-Metal was capable and willing to work for employers' interest²⁵² with the effect of the lack of internal union democracy which is explained below. According to Kocer, Turk-Metal does not see contradictions between the interests of employers and workers²⁵³ and refuses to stick together with other trade unions²⁵⁴. As a result of this cooperation, outcome of the collective bargaining system had changed in favor of MESS. “*De facto sectoral agreements*”²⁵⁵, which determines the wage level and other conditions had emerged since Turk-Metal had the authorisation to conclude collective agreements in many of the workplaces. Because of the shift in the balance and employers' satisfaction with the content of the collective agreements between MESS and Turk-Metal, they started to take it as a starting point this time and used it against other competent trade unions during the process of collective bargaining²⁵⁶. Some employers chose to leave MESS by finding them too generous and tried to deal with the negative effects of the unionization alone in their work places by firing the leaders of Birlesik Metal-Is which is affiliated with DISK because of

²⁴⁷ Ibid p.255

²⁴⁸ Ibid. p.253

²⁴⁹ Ministry of Labour and Social Security, <http://www.csgeb.gov.tr/media/1719/2016_ocak_6856.pdf>

²⁵⁰ Kocer p.252

²⁵¹ Ibid

²⁵² Ibid p.253

²⁵³ Nadir Sugur; Theo Nichols, *Global İşletme, Yerel Emek: Türkiye’de İşçiler ve Modern Fabrika* (İletişim Publications 2005) p.215 (Global Management, Local Labour: Workers in Turkey and Modern Factory)

²⁵⁴ Kocer p.254

²⁵⁵ Ibid p.255

²⁵⁶ Ibid p.254

their trade union activities. But then, they found a less risky solution and started to promote unionization in Turk-Metal which resulted once more in a win-win situation for the employers and the management of Turk-Metal, just not for the workers²⁵⁷. With these agreements, employers had the chance to block higher wages which may be an outcome of collective agreements by other trade unions. In return, Turk-Metal gained the permanent support of the employers which ensures its financial security and expanding its membership numbers²⁵⁸. Since with the given high unemployment rate in Turkey, the threat of dismissal is a real concern for the workers, which creates pressure to leave other unions and become a member of Turk-Metal.

Such partnership also carries the risk to influence other trade unions because of the double threshold requirement in the collective bargaining system. To be able to pass the threshold, they need to raise or at least protect the number of their members since the system requires high amount of representation in both branch and the workplace level in order to conduct collective agreements, so quantity of the members plays a determining role. Therefore, legal framework in combination with the given conditions creates the risk for them to accept the abovementioned de-facto sectoral agreements²⁵⁹.

Another very important aspect is the domination inside the trade union. Lack of internal democracy of the union regarding the management and their relation with members create such risk which is a reflection of the external domination and also one of its reasons. In relation to that, Turk-Metal was ruled by the same person, Mustafa Ozbek for 34 years (1975-2009). Because of the lack of internal democracy, his supporters were appointed in strategic positions and got the opportunity to control the elections of the delegates who determine the local branch officials later on²⁶⁰.

This internal domination has different ways to keep the members silent such as offering free holidays in luxurious residences of Turk Metal, using nationalism in a sensitive way for uniting workers or posing threats²⁶¹. Sometimes, these measures are not enough to control the workers because main reason of the trade unions' existence is to be useful for the workers; therefore it needs at least a certain amount of credibility among them²⁶². Towards the end of 1990s one of these situations occurred for Turk-Metal when the reactions and allegations to yellow unionism increased²⁶³ and workers started to rise against the union. To maintain its power and credibility, Turk-Metal took some steps, including organising strikes and made promises to not sign any collective agreement if a satisfactory wage level was not achieved. Although, it broke this promise and suffered from the loss of credibility; with the help of its close collaboration with

²⁵⁷ Ibid p.16 Author gives examples of two companies; KERUT and WOLVIL according to conducted interviews.

²⁵⁸ Ibid p.255

²⁵⁹ Ibid p.256

²⁶⁰ Ibid p.260

²⁶¹ Ibid p.257-262

²⁶² Michael Terry, 'Can 'Partnership' Reverse the Decline of British Trade Unions?' 17/3 Work, Employment and Society, 2003, pp.459-472, p.470

²⁶³ Refik Sonmezsoy; Erdogan Asliyuce, *En Büyük Grev* (Turk-Metal Publications 1991), p.123 (The Biggest Strike)

employers and their dismissal threats, it remained as the strongest trade union in the metal sector²⁶⁴.

Discussions on employer domination are still on-going for Turk-Metal. Lastly in April 2016, in the case of workers who are dismissed by their employers after collectively resigning from Turk-Metal and joining Birlesik Metal-Is as a part of the demonstrations in the metal sector, Supreme Court decided contrary to the Labour Court's judgment and rejected the demands of the workers regarding compensation and reinstatement²⁶⁵. Supreme Court decided that the employer has violated its obligation on equal treatment yet it found the collective actions of the workers were far from being moderate and therefore against the law²⁶⁶.

6.2.2 TEKEL resistance

TEKEL is a former state monopoly of tobacco and alcoholic beverages with 12,000 employers in 43 factories and workplaces in 21 cities. When it was privatized, it followed a policy against the rights of the workers during this process which would deprive them from the right to collective bargaining and right to strike²⁶⁷. In 2009, TEKEL workers who were offered to work with 4-C status²⁶⁸ with a wage reduction and 10 months long job contracts with no guarantee of renewal started a resistant movement. Workers from different cities met in Ankara, the capital, occupied the streets in the centre, put their tents up, formed a "tent city²⁶⁹" and lived there for 78 days for protecting their acquired rights and resisting against 4-C status²⁷⁰.

TEKEL workers are organised in Tek Gida-Is which is affiliated with Turk-Is and Government tried to solve the problem through the top officials of the confederation²⁷¹. One unique aspect of the TEKEL resistance though, is the workers who formed committees and organised their resistance as a bottom-up strategy. Official hierarchy in the trade unions remained, but members played the key roles as spokespersons and activists²⁷² to achieve their goal. They also complained about the lack of support from Tek Gida-Is and Turk-Is²⁷³.

²⁶⁴ Ibid p.257-258

²⁶⁵ Ozgun Cetin, 'Metal Direnişçilerine Yargıtay Darbesi' *BirGun* (14 April 2016) <<http://www.birgun.net/haber-detay/metal-direniscilerine-yargitay-darbesi-109024.html>> (Blow to Metal Resisters from the Supreme Court)

²⁶⁶ Ibid

²⁶⁷ Tolga Korkut; Ece Yildiz, 'TEKEL RESISTANCE: 'World-Wide Action' for TEKEL Workers' *Bianet* (16 February 2010) <<http://bianet.org/english/world/120077-world-wide-action-for-tek-el-workers>>

²⁶⁸ Article 4/C of the Civil Servants' Act (No.657) regulates the status of the "temporary personnel" which is outside the scope of the definition of "employee". This personnel works with job contracts where the duties and wages are determined by the Council of Ministers.

²⁶⁹ Metin Ozugurlu, 'The TEKEL resistance movement: Reminiscences on class struggle' 35/2 *Capital & Class*, 2011, pp.179-187, p.181

²⁷⁰ Ibid p.180

²⁷¹ Ibid p.182

²⁷² Ibid p.181

²⁷³ Mahirogullari, *Dünyada ve Türkiye'de Sendikacılık*, p.230

Over time, the statements of the Government became more aggressive and instead of discussing the demands of the workers, prime minister called the protests in Ankara an invasion and gave one month to the workers to accept the 4-C status²⁷⁴. While the atmosphere was getting tenser, solidarity among workers got stronger in many aspects. As an example, there were scenes in the tent city where workers from different regions were performing their traditional dances with the company of other regions' traditional music. This kind of creative symbolism helped to transfer contrasts into mutualism and created working class culture, which the workers learned from experience²⁷⁵. It turned whole resistance to become a symbol and left strong marks in the name of solidarity.

Government did not take a step back despite all the determined efforts of the workers. Therefore, workers started to put pressure on Turk-Is to take decisions regarding “*general strike, general resistance*”²⁷⁶, one hour work stoppages every Friday, a demonstration in Ankara and solidarity strikes. Yet, allegedly, some parts of the bureaucracy in the union worked against such decisions and their weak stance turned the workers against the union bureaucracy²⁷⁷. After a meeting with the workers, confederation declared a date for general protests which did not satisfy the workers. Some of them accused the management of Turk-Is of being too close to the Government, occupied the building of the Confederation and asked the chairman of Turk-Is to declare a general strike or resign²⁷⁸. Subsequently, the general secretary of Turk-Is and the head of Tek Gıda-Is, Mustafa Turkel, resigned from his duties in the Confederation as a reaction to the workers according to some and as a reaction to the management of Turk-Is according to others²⁷⁹.

After the Council of State had decided in favor of the workers regarding the case that Tek Gıda-Is had filed for suspending the execution of the given 1 month-duration to the workers for accepting 4-C status; workers temporarily suspended their actions and removed the tents to meet again in Ankara in April. Demand of the repeal of 4-C status was moved to Constitutional Court. When the workers attempted to enter Ankara once again in April according to their plan, police forces blocked them and attacked those who were able to return to the city centre. Peaceful press conference that was organised to support the strike of TEKEL workers was faced with violent

²⁷⁴ ‘Workers go on one-day strike as government reacts’ *Hurriyet Daily News* (2 April 2010) <<http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=workers-go-on-one-day-strike-amid-government8217s-reaction-2010-02-04>>

²⁷⁵ Ozugurlu p.185

²⁷⁶ This phrase was frequently used by the workers in TEKEL resistance

²⁷⁷ Ozugurlu p.182; ‘Former Tekel Workers Occupy a Second Union Branch’ *Haber Turk* (25 May 2010) <<http://www.haberturk.com/general/haber/517654-former-tek-el-workers-occupy-a-second-union-branch>>

²⁷⁸ Tolga Korkut; Ece Yildiz, ‘TEKEL RESISTANCE: ‘World-Wide Action’ for TEKEL Workers’ *Bianet* (16 February 2010) <<http://bianet.org/english/world/120077-world-wide-action-for-tek-el-workers>>

²⁷⁹ ‘Sendikacı Türkel, Türk-İş’ ten İstifa Etti’ *Radikal* (24 February 2010) <<http://www.radikal.com.tr/ekonomi/sendikaci-turkel-turk-isten-istifa-etti-982081/>> (Trade Unionist Turkel had Resigned from Turk-Is)

police interference²⁸⁰. A general strike was declared for 26 May 2010 upon these but then, confederations including Turk-Is changed the content of the plan which ended with the occupation of Turk-Is building in central Istanbul by the workers²⁸¹. Constitutional Court refused the demand on the cancellation of the regulation on 4-C status in 2011 in another case²⁸².

6.2.3 Turk-Is

Turk-Is is Turkey's first and the largest confederation with 33 affiliated trade unions and 877,587 members by January 2016²⁸³. Right after its establishment in 1952, 162 of 240 trade unions became a member of the Confederation²⁸⁴. It has adopted cooperative approach and accepted the principle of remaining above politics²⁸⁵. This principle became a provision in its Statute in 1964²⁸⁶. Turk-Is is a member of ITUC and ETUC. It also represents the workers of Turkey in ILO Conferences as being the most representative workers' organisation²⁸⁷. This section provides some examples of historical action of Turk-Is and discusses its relationship with the Governments and the employers. Question of whether a confederation can be also employer dominated is also tried to answer.

Until 1967, Turk-Is was the only confederation in Turkey. Trade unions whose memberships were suspended from Turk-Is had formed a second confederation, DISK, in 1967 which adopted radical approach based on the working-class consciousness. After the foundation of DISK, Turk-Is adopted 24 principles. Some of these principles include accepting the rapid, balanced and fair development of Turkey as a precondition for workers welfare, peace and security; following a policy which aims to provide balance, peace and cohesion between the classes and removing the reasons that may lead to deepened class conflict²⁸⁸. Working for the full enjoyment of Constitutional rights and demands for the discipline in private sector, and benefit of the public are also among these principles.

Turk-Is declared its support for the military coup on 12th September 1980 with a written statement; including the warning about the possible reaction of the working class in case of

²⁸⁰ Committee of Experts on the Application of Conventions and Recommendations, *Observation (CEACR) Freedom of Association and Protection of the Right to Organise Convention, 1948 (C87)-Turkey* (99th ILC session, 2010)

²⁸¹ Tolga Korkut, '26 MAY PROTEST ACTION "Confederations Evaded Opportunity of Labourers"' *Bianet* (26 May 2010) <<http://bianet.org/english/labor/122262-confederations-evaded-opportunity-of-labourers>>

²⁸² 'Anayasa Mahkemesi'nden iptal çıkmadı, 4-C'ye AİHM görüldü' *Hurriyet* (31 March 2011) <<http://www.hurriyet.com.tr/anayasa-mahkemesi-nden-iptal-cikmadi-4-c-ye-aihm-gorundu-17419675>> (No decision of nullity from the Constitutional court, way to ECtHR to 4-C has appeared)

²⁸³ Ministry of Labour and Social Security <https://www.csgeb.gov.tr/media/3095/2016_02.pdf>

²⁸⁴ Orhan Tuna, 'Türkiye İşçi Sendikaları Konfederasyonu' nun Teşekkülü' 12/3-4 İktisat Fakültesi Mecmuası, 1952, p.152 (Formation of the Confederation of Turkish Trade Unions)

²⁸⁵ Jackson p.73; Talas p.176

²⁸⁶ Mahirogullari, *Dünyada ve Türkiye'de Sendikacılık* p.175

²⁸⁷ Article 4/5 of the Constitution of ILO

²⁸⁸ [turkis.org.tr](http://www.turkis.org.tr), <<http://www.turkis.org.tr/dosya/X7MpV4OY8jLz.pdf>>

limitations on constitutional and fundamental freedoms and rights regarding trade unions²⁸⁹. Government which was established after the military coup appointed the general secretary of Turk-Is, Sadik Side, as the Minister of Social Security. ICFTU²⁹⁰ suspended the membership of Turk-Is until the Minister's resignation from the duties within the Confederation²⁹¹.

Same Confederation lead many movements of the working class. It organised protest marches and strikes between 1989-1993 including the Spring Protests which had positive and concrete outcomes in both public and private sectors²⁹². Turk-Is continues to stick together with other confederations regarding different topics as the establishment of private employment agencies²⁹³, but sometimes they take different sides such as the content of their reactions to the recently adopted Act No.6356²⁹⁴.

The example of TEKEL resistance pointed out some reactions of the workers against the Confederation as some other examples like the case of the mine disaster in Soma²⁹⁵. To note, unions affiliated with Turk-Is are usually known with long term presidents²⁹⁶ and discussions of "yellow-unionism" are also generally about these unions. Can it be a mere coincidence? Or if it is not, is it enough to reach a conclusion? But before these, can a confederation be employer dominated? There is not any regulation in international law that says the opposite. Neo-liberal policies and the motivation of employers to seek for an ally, are the grounds for such relation and Turk-Is has a management, members and competence to make decisions which affects the workers. Therefore, the risk should apply to the confederations as well. So the answer of this part of the question is, why not? But beside the theory; in practice, it is not that easy to make a call which is examined in the next chapter.

6.3 From the ILO's side

Turkey, as a part of the international community and State Party of the C87 and C98, attracts attention with repeated violations of its commitments under the international legal regime. While main focus of this research is the employer domination on trade unions which is regulated in C98/2, other related provisions are also taken into account in this chapter because they are considered interlinked with the abovementioned acts of interference. As it was stated before, threats about freedom of association and right to collective bargaining may lead to an atmosphere

²⁸⁹ *Türkiye Sendikacılık Ansiklopedisi* vol 3 (Ministry of Culture-Tarih Vakfi Publications 1996-1998) p.341 (Encyclopedia of Trade Unionism of Turkey)

²⁹⁰ Today, it is ITUC.

²⁹¹ Mahirogullari, *Dünyada ve Türkiye'de Sendikacılık*, p. 60 (fn.166)

²⁹² Koc p.162

²⁹³ 'Turkish parliament passes 'private employment offices bill,' opening way for rented labor' *Hurriyet Daily News* (6 May 2016) <<http://www.hurriyetdailynews.com/turkish-parliament-passes-private-employment-offices-bill-opening-way-for-rented-labor.aspx?pageID=238>>

²⁹⁴ Ataman p.21

²⁹⁵ Suzy Hansen, 'The Mine Disaster That Shook Turkey' *New York Times* (26 November 2014) <http://www.nytimes.com/2014/11/30/magazine/the-mine-disaster-that-shook-turkey.html?_r=0>

²⁹⁶ Nadir Sugur; Theo Nichols p.214-215

that is susceptible to the domination of employers leaving trade unions and workers unprotected. Under this chapter, comments of the three Committees²⁹⁷ of ILO regarding C87 and C98 in 2006-2016²⁹⁸ are examined to show the current practice of the laws and ILO's perception of them. Comments of the Government, employers' and workers' organisations including criticisms towards the ILO are also stated as the constituents of the employment relations in Turkey.

As it was mentioned above, new Trade Unions and Collective Labour Agreements Act (No.6356) has entered into force in Turkey on 7 November 2012. While this Act repealed some regulations that were criticized by the ILO before, it opened some new discussions and carried some old ones to today. Current, remained and the leading discussions are as below:

ILO has been receiving representations from various national and international workers' organisations repeatedly and increasingly especially in the last few years. The organisations have been expressing their concerns to the ILO regarding the *threats against civil liberties*. Such threats include violent repression of peaceful demonstrations, important restrictions on freedom of speech and assembly²⁹⁹ including attacks on trade unionists by the security forces of the police and private enterprises, arrests³⁰⁰ and police assaults³⁰¹. Chairman of the Confederation of Public Workers' Union (KESK) could not attend the ILO Conference in 2013 because of a court order that forbids him to leave the country and 22 trade unionists had spent 289 days in prison before their trials began³⁰². There are also allegations that the police attend meetings and record them which the Government defended such attendance with the necessity to maintain public order³⁰³. Regarding the allegations; CEACR and CAS emphasize that "*respect for basic civil liberties is an essential prerequisite to the exercise of freedom of association*" and requested from the Government "*to take all necessary measures to ensure a climate free from violence, pressure or threats of any kind so that workers and employers could fully and freely exercise their rights under the Convention*"³⁰⁴. CEACR also requested the Government to give adequate instructions to the police that their interventions should be limited to cases "*where there is a genuine threat to public order and to avoid the danger of excessive violence in trying to control*

²⁹⁷ Conference Committee on the Application on Standards, Committee of Experts on the Application of Conventions and Recommendations, Committee on Freedom of Association

²⁹⁸ Year of the comments of the Committees' below is referring to the publication date.

²⁹⁹ *Individual Case (CAS) C87-Turkey* (99th ILC session, 2010)

³⁰⁰ Committee on Freedom of Association (CFA), *Case No 3098-Turkey, Complaint date: 7 August 2014*

³⁰¹ Committee of Experts on the Application of Conventions and Recommendations, *Observation (CEACR) Freedom of Association and Protection of the Right to Organise Convention, 1948 (C87)-Turkey* (105th ILC session, 2016) ; *Observation (CEACR) C87-Turkey* (104th ILC session, 2015); *Observation (CEACR) C87-Turkey* (102nd ILC session, 2013); *Observation (CEACR) C87-Turkey* (101th ILC session, 2012)

³⁰² *Individual Case (CAS) C98-Turkey* (102nd ILC session, 2013)

³⁰³ *Observation (CEACR) C87-Turkey* (100th ILC session, 2011)

³⁰⁴ *Observation (CEACR) C87-Turkey* (105th ILC session, 2016); *Observation (CEACR) C87-Turkey* (104th ILC session, 2015); *Observation (CEACR) C87-Turkey* (102nd ILC session, 2013); *Observation (CEACR) C87-Turkey* (1041st ILC session, 2012); *Observation (CEACR) C87-Turkey* (100th ILC session, 2011); *Observation (CEACR) C87-Turkey* (97th ILC session, 2008); *Individual Case (CAS) C87-Turkey* (99th ILC session, 2010); *Individual Case (CAS) C87-Turkey* (96th ILC session, 2007)

demonstrations,”³⁰⁵ to follow the principle of proportionality³⁰⁶, investigate each case³⁰⁷ and take all necessary disciplinary and judicial measures against the members of the security forces who used disproportionate and excessive force³⁰⁸. Until 2012, Government was willing to improve the relevant legislation and provide trainings for police officers to handle the issue according to their statements in the reports. After 2012, a shift had occurred in Governments approach and it started to claim that all the measures are taken but the violence and interference in practice is lawful since it is not caused by the police or the lack of legislation. Government alleged that the interference is caused by the terrorist activities of trade unionists which are not protected in any part of the world³⁰⁹, therefore security forces acted in accordance with the regulations³¹⁰. Employers followed the shift and mostly stop bringing the issues of police violence to the individual cases. Workers on the other hand, pointed out that the pressure on trade unions regarding civil liberties is worse than ever and trade unions are trying to be suppressed by criminalization³¹¹. Education International (EI) reiterated this statement and indicated that, trade unionists are accused of being a member of an illegal organisation to be able to delegitimize the trade union movement in Turkey³¹². Since civil liberties cannot be exercised in practice because of such interventions, CEACR and CAS urged the Government to review the legislation in full consultation with the social partners that might apply contrary to the Conventions in practice, carry out investigations regarding the allegations and provide information about ongoing processes³¹³.

About the *anti-union discrimination*; workers believe that, this is an issue which deserves more attention regarding its effects in the field that cause loss in the rights of the trade unions and the workers³¹⁴, and because they are widely spreading³¹⁵. Despite the raise in the anti-union dismissals, Government left some of the allegations without an answer³¹⁶. In 2006, 35 members of Tekstil-Is (affiliated with DISK) were dismissed by the administration to break the power of the union which was achieving the majority requirement for the competence for collective

³⁰⁵ *Observation (CEACR) C87-Turkey* (98th ILC session, 2009); *Observation (CEACR) C87-Turkey* (97th ILC session, 2008)

³⁰⁶ *Observation (CEACR) C87-Turkey* (99th ILC session, 2010); *Observation (CEACR) C87-Turkey* (98th ILC session, 2009)

³⁰⁷ *Observation (CEACR) C87-Turkey* (104th ILC session, 2015); *Observation (CEACR) C87-Turkey* (99th ILC session, 2010); *Observation (CEACR) C87-Turkey* (96th ILC session, 2007)

³⁰⁸ *Observation (CEACR) C87-Turkey* (99th ILC session, 2010)

³⁰⁹ *Observation (CEACR) C87-Turkey* (102nd ILC session, 2013)

³¹⁰ *Observation (CEACR) C87-Turkey* (101st ILC session, 2012)

³¹¹ *Individual Case (CAS) C98-Turkey* (102nd ILC session, 2013); *Observation (CEACR) C87-Turkey* (100th ILC session, 2011); *Individual Case (CAS) C87-Turkey* (99th ILC session, 2010)

³¹² *Individual Case (CAS) C98-Turkey* (102nd ILC session, 2013)

³¹³ *Observation (CEACR) C87-Turkey* (102th ILC session, 2013); *Observation (CEACR) C87-Turkey* (101st ILC session, 2012); *Observation (CEACR) C87-Turkey* (100th ILC session, 2011); *Individual Case (CAS) C87-Turkey* (99th ILC session, 2010)

³¹⁴ *Observation (CEACR) C98-Turkey* (105th ILC session, 2016)

³¹⁵ *Observation (CEACR) C98-Turkey* (102nd ILC session, 2013); *Observation (CEACR) C98-Turkey* (101st ILC session, 2012)

³¹⁶ *Observation (CEACR) C98-Turkey* (103rd ILC session, 2014)

bargaining; 22 workers of a British packaging enterprise were dismissed because of their union activities and dockers were injured and imprisoned by the police after their contracts were breached by a large Turkish employer in Tuzla³¹⁷. Around one-fifth of the DISK members who joined affiliated trade unions in the last three years lost their jobs because of their trade union activities³¹⁸ including 164 members of Birlesik Metal-Is who are dismissed and 275 members who forced to resign³¹⁹ according to allegations. In a case that is reflected to the CFA, same dismissals and recruitment of other workers to be able to defeat the majority status of the union were the subjects³²⁰. ITUC also draws attention to the issues of blacklisting and pressures on unionists in the private sector³²¹. These cases are a brief overview of the situation in the country other than to be separate examples. CEACR asked the Government to provide statistical data “*showing progress made in addressing effectively allegations of acts of anti-union discrimination and interference both in the public and private sectors (number of cases brought to the competent bodies, average duration of proceedings and remedies imposed)*”³²². Yet, no such data is collected in the private sector. As a result, the Committee expressed its continuing concerns and requested the Government to establish a system “*to provide information on the functioning of national complaints mechanisms and all statistical data related to anti-union discrimination in the private and public sectors*”³²³; this system is yet to be established. This is important since without the statistics on complaints and how they had been dealt with; the Committees cannot continue their work³²⁴. Accordingly, CAS also requested information regarding the functioning of national complaints mechanisms³²⁵. The state of the *informal economy* is also mentioned in the reports since very big population of the workers cannot be represented by trade unions in practice and left without the fundamental right to organise and collective bargaining because of the requirement of social security number for registration to the e-State system. Regarding this issue, CEACR requested the Government to provide information that it took the necessary measures to not create obstacles to the related rights in C98³²⁶. In another Case No.2789 brought to CFA, a company was accused of setting up a joint Workers’ Council, where the workers’ representative was appointed by the employer to be able to undermine the existing union activities in the workplace. Accordingly, Government was also accused of failing to protect the freedom of workers to establish organisations against the acts of

³¹⁷ *Individual Case (CAS) C87-Turkey* (96th ILC session, 2007); similar allegations can be found in *Case No 2976-Turkey (CFA)*, Complaint date: 15 August 2012

³¹⁸ *Individual Case (CAS) C87-Turkey* (96th ILC session, 2007)

³¹⁹ *Observation (CEACR) C98-Turkey* (196th ILC session, 2007)

³²⁰ *Case No 2976-Turkey (CFA)*, Complaint date: 15 August 2012

³²¹ *Observation (CEACR) C98-Turkey* (101st ILC session, 2012); *Observation (CEACR) C98-Turkey* (100st ILC session, 2011); *Observation (CEACR) C98-Turkey* (98th ILC session, 2009)

³²² *Observation (CEACR) C98-Turkey* (100st ILC session, 2011); *Observation (CEACR) C98-Turkey* (98th ILC session, 2009)

³²³ *Observation (CEACR) C98-Turkey* (105th ILC session, 2016); *Observation (CEACR) C98-Turkey* (103rd ILC session, 2014); *Observation (CEACR) C98-Turkey* (102nd ILC session, 2013)

³²⁴ *Individual Case (CAS) C98-Turkey* (102nd ILC session, 2013)

³²⁵ *Ibid*

³²⁶ *Observation (CEACR) C98-Turkey* (105th ILC session, 2016); *Observation (CEACR) C98-Turkey* (103rd ILC session, 2014)

interference, anti-union discrimination and promote collective bargaining. Government conducted an inspection in the workplace and could not find any concrete evidence on such Council that is established to hinder the freedom of association rights. Therefore, the Committee requested further clarification and indication on whether such Council is established and whether it is functioning. Another aspect of this Case is the allegations regarding the employer who was warning the workers by calling the trade union a terrorist organisation. From this example, it can be seen that the political atmosphere in the country has direct implications for rights in the workplace. Upon the statement of the workers that the labour legislation does not provide sufficient protection against the acts of interference; CFA expressed its hope on a review on the legislation in consultation with the social partners³²⁷.

As a result of the reference in the Act No.6356 to the Labour Act No. 4857 regarding *compensation for anti-union discrimination* and cases for reinstatement, as it was mentioned above, regulations were excluding workers who work in companies with 30 or less workers until recently. This was leaving 6.5 million workers without the job security until the judgment of the Constitutional Court³²⁸. CEACR was waiting for the decision of the Court and trusted that the Government would adopt a new provision that covers all the workers³²⁹. Overall, workers believe; an anti-union climate had developed by both the authorities and employers, “*for whom trade union membership was a reason for pressure and dismissal*”³³⁰. Government on the other hand believes that it provides sufficient protection against all types of discrimination³³¹.

Collective bargaining is one of the main instruments for redistributing income and Turkey is one of the three countries identified by OECD in terms of its income inequality because of the restrictions in law and practice³³² along with Mexico and US according to the data in 2012³³³. Regarding the competence for collective bargaining, workers are suffering from the *double threshold requirement* for a long time despite the repeated concerns of ILO as the CAS observed, and claim that it is a violation of freedom of association³³⁴. Turkey is the only country where a sectoral threshold was necessary for workplace collective bargaining and as a result, 1/3 of the union members are deprived from the collective bargaining rights³³⁵. Such conditions lead in workplaces that 49% of the workers cannot be represented by the union of their choice³³⁶. CEACR emphasizes that a representative union should be able to negotiate a collective

³²⁷ *Case No 2789-Turkey (CFA)*, Complaint date: 2 June 2010

³²⁸ *Individual Case (CAS) C98-Turkey* (102nd ILC session, 2013); *Observation (CEACR) C98-Turkey* (105th ILC session, 2016)

³²⁹ *Observation (CEACR) C98-Turkey* (103rd ILC session, 2014)

³³⁰ *Individual Case (CAS) C87-Turkey* (99th ILC session, 2010)

³³¹ *Observation (CEACR) C98-Turkey* (102nd ILC session, 2013)

³³² *Individual Case (CAS) C98-Turkey* (102nd ILC session, 2013)

³³³ OECD, ‘Inequality’ <<https://data.oecd.org/inequality/income-inequality.htm>>

³³⁴ *Individual Case (CAS) C98-Turkey* (102nd ILC session, 2013)

³³⁵ *Ibid*

³³⁶ *Individual Case (CAS) C87-Turkey* (99th ILC session, 2010); *Individual Case (CAS) C87-Turkey* (96th ILC session, 2007)

agreement regardless of its overall sectoral level representation at the enterprise level. It also observes, regarding the low level of unionization rate in Turkey, current system may cause elimination of some trade unions from the collective bargaining process which was able to bargain on behalf of their members before³³⁷ and result in a decrease in the number of workers covered by collective agreements instead of promoting collective bargaining. As a result of the 3% threshold at the sectoral level, 23 out of 51 unions could lose their competence certificate; in other words, 5.1 million workers covering 6% of the labour force would not be able to find a union that is able to sign a collective agreement³³⁸. In the Case No.3021, violation of C87 and C98 by the branch of activity and the threshold requirement was discussed. Workers alleged that the existence of the threshold is the problem from the beginning; therefore reducing it from 10% to 3% cannot solve any problem and emphasized “*fewer competent unions mean fewer workers covered by collective bargaining*”. They also emphasized that workers are pushed to join a union which is able to engage in collective bargaining process even if they prefer another union that does not have the competence. Regarding the case, CFA stated that the effects cannot be ignored even when the threshold which is temporarily decreased to 1% left some unions out like Sosyal-Is with the consideration of their capacity to engage in collective bargaining process before and draws attention to the decrease in the number of competent trade unions in practice³³⁹.

According to the workers, another risk with the Act No.6356 is the lack of any solution to the long-judicial processes which allegedly employers had been using as a common practice to challenge the issuance of certificates of competence for collective bargaining³⁴⁰. In practice, during such legal proceedings, union members are often dismissed as in the examples of many concrete cases of famous brands in the textile, chemical and metal sectors³⁴¹. In the cases of conflict on detecting the branch of activity of a trade union, time limit for the Court to decide is 2 months; yet it takes much longer as in the case of YAPI-YOL-SEN³⁴². According to the workers, this duration can be 3-7 years, and for the Government, it is approximately 3-7 months in practice³⁴³. CFA emphasizes that “*justice delayed is justice denied*³⁴⁴”, and that cases

³³⁷ *Observation (CEACR) C98-Turkey* (103rd ILC session, 2014); *Observation (CEACR) C98-Turkey* (100th ILC session, 2011)

³³⁸ *Individual Case (CAS) C98-Turkey* (102nd ILC session, 2013); *Case No 3021-Turkey (CFA)*, Complaint date: 9 April 2013

³³⁹ *Case No 3021-Turkey (CFA)*, Complaint date: 9 April 2013

³⁴⁰ Birlesik–Metal trade union which functioned in the automotive sector and had well over 50 per cent of employees, had been deprived of the right to bargain collectively for 820 days and Another enterprise had been split into two in order to prevent the trade union from attaining the representativeness threshold of 50 per cent according to the allegations of workers. See *Individual Case (CAS) C87-Turkey* (99th ILC session, 2010)

³⁴¹ *Individual Case (CAS) C98-Turkey* (102nd ILC session, 2013)

³⁴² YAPI-YOL-SEN was transferred to to another branch and automatically lost its members which caused difficulties for members on behalf of representation and trade unions concerning the competence for collective bargaining and leded them to financial difficulties because of the cut of the membership fees. Committee requested the Government to take the necessary measures to provide right to be represented by the union of their choice to the workers that are affected by the modifications through an amendment. See *Observation (CEACR) C87-Turkey*, 98th ILC session (2009); 97th ILC session (2008); *Case No 2126-Turkey (CFA)*, Complaint date: 17 April 2001; *Case No 2537-Turkey (CFA)*, Complaint date: 28 March 2006

³⁴³ *Individual Case (CAS) C87-Turkey* (96th ILC session, 2007)

concerning anti-union discrimination should be examined rapidly to ensure the effectiveness of the remedies³⁴⁵.

Threshold requirement also entails the risk of dismissals of the trade union members to prevent the unions from being a collective bargaining agent³⁴⁶. CEACR states that, in such systems, if the absolute majority cannot be achieved by any union, right to collective bargaining should be given at least on behalf of their own members to the existing trade unions in the workplace and required for such amendment³⁴⁷, and thresholds should be revised and lowered in consultation with the social partners³⁴⁸. As a response, Government stated that they are open to revise the regulation in case of a request from the social partners³⁴⁹. CEACR shares the opinion that the elimination of dual requirement is necessary “*to encourage and promote the full development and utilization of machinery for voluntary collective bargaining*³⁵⁰.” It has also requested the Government to provide the possibility to engage in cross-sector regional or national agreements and determining details about the duration of the agreement including the possibility to change it when it is agreed by the parties³⁵¹.

ILO is still concerned about the *restrictions on right to strike*. Even though the CEACR had welcomed the Constitutional amendments of 2010 and Act No.6356 that repealed the prohibition of general strikes, sympathy strikes, politically motivated strikes, occupation of work premises and go-slows³⁵²; new Act defines lawful strikes only if they arise from disputes during collective bargaining negotiations³⁵³. CEACR requested the Government to clarify this issue and indicate which legitimate industrial protest actions are protected³⁵⁴.

Period of the notification of strikes are defined as 6 days as in the former regulation and workers believe that, it provides time for the employers to take necessary measures to protect themselves from the negative effects of the strike³⁵⁵. Regarding the competence of the authorities to withdraw the authorisation of bargaining in case of the lack of a decision of strike in 60 days after the notification, CEACR states that such interference is “*likely to hinder rather than*

³⁴⁴ CFA Digest of 2006, para.105

³⁴⁵ *Case No 2976-Turkey (CFA)*, Complaint date: 15 August 2012

³⁴⁶ *Individual Case (CAS) C87-Turkey* (99th ILC session, 2010)

³⁴⁷ *Observation (CEACR) C98-Turkey* (101st ILC session, 2012); *Observation (CEACR) C98-Turkey* (98th ILC session, 2009)

³⁴⁸ *Observation (CEACR) C98-Turkey* (105th ILC session, 2016)

³⁴⁹ *Observation (CEACR) C98-Turkey* (103rd ILC session, 2014)

³⁵⁰ *Observation (CEACR) C98-Turkey* (96th ILC session, 2007)

³⁵¹ *Observation (CEACR) C98-Turkey* (105th ILC session, 2016); *Observation (CEACR) C98-Turkey* (103rd ILC session, 2014)

³⁵² *Observation (CEACR) C87-Turkey* (104th ILC session, 2015)

³⁵³ *Individual Case (CAS) C87-Turkey* (99th ILC session, 2010)

³⁵⁴ Committee of Experts on the Application of Conventions and Recommendations, *Direct Request (CEACR) Freedom of Association and Protection of the Right to Organise Convention, 1948 (C87)-Turkey* (105th ILC session, 2016)

³⁵⁵ Ataman p. 156

promote collective bargaining” and is contrary to the Convention No.98³⁵⁶. It also warned the Government that the responsibility for suspension³⁵⁷ should belong to an independent body (a tripartite body)³⁵⁸. Kristal-Is had filed a complaint to the CFA by accusing the Government of suspending strikes systematically in industries that have no direct connection with national security or public health which leads to a serious violation of the right to strike in Turkey. It draws attention to the fact that from May 2000 to June 2014, 4 major strikes were suspended in the glass industry, 4 in the rubber sector and 1 in the mining industry, on the basis of national security or public health, and alleges that the right to suspend the strike turned to an indefinite ban in practice³⁵⁹. Recently in 2015, Constitutional Court, ruled against the decision of a suspension of the Council of Ministers, regarding Kristal-Is in SISECAM A.S. with the reason of the risk it was posing against public health and national security; and found violation against the Constitutional rights for the first time³⁶⁰. CFA stated that the provision is not violating the Convention itself, yet, the use of practice of suspension and compulsory arbitration imposed in the glass industry is given without any clear reason that may threaten public health and national security³⁶¹. It requested the Government to ensure such restrictions may only be imposed in cases of essential services in the strict sense of the term, public servants exercising authority in the name of the State or an acute national crisis³⁶². Police presence during the strikes also came in front of the Committee, which is waiting for Government’s response³⁶³.

Committees offered the *technical help of the ILO* in every comment to assist the Government for real progress to bring legislation in compliance with the international standards. The wording of this call has changed throughout the last 10 years from inviting to “*urge*”³⁶⁴. Yet, last years, it is softened and turned to a determined invitation. Workers stated that Turkey is not interested in such cooperation because of the lack of political will and they requested the Government to invite a high-level mission of the Office to help for the necessary and rapid measures³⁶⁵. Employers are also recommending the technical assistance of the ILO and workers insist that such assistance should be permanent³⁶⁶. High Level ILO Mission had visited the country upon the request of CAS in 2008 and 2010.

³⁵⁶ *Observation (CEACR) C98-Turkey* (103rd ILC session, 2014)

³⁵⁷ *Observation (CEACR) C87-Turkey* (99th ILC session, 2010)

³⁵⁸ *Direct Request (CEACR) C87-Turkey* (98th ILC session, 2009); *Direct Request (CEACR) C87-Turkey* (96th ILC session, 2007); *Case No 3084-Turkey (CFA)*, Complaint date: 15 July 2014

³⁵⁹ *Case No 3084-Turkey (CFA)*, Complaint date: 15 July 2014

³⁶⁰ *Application No 2014/12166* (Constitutional Court of Turkey) 2 July 2014

³⁶¹ *Case No 3084-Turkey (CFA)*, Complaint date: 15 July 2014 and The Committee notes that it had dealt with similar allegations in *Case No 2303-Turkey (CFA)*, Complaint date: 2 October 2003

³⁶² *Ibid*

³⁶³ *Case No 3011-Turkey (CFA)*, Complaint date: 4 March 2013

³⁶⁴ ILO “urges” the Government to engage in assistance with ILO in *Observation (CEACR) C87-Turkey* (102nd ILC session, 2013); *Observation (CEACR) C87-Turkey* (101st ILC session, 2012); *Observation (CEACR) C98-Turkey* (101st ILC session, 2012)

³⁶⁵ *Individual Case (CAS) C87-Turkey* (96th ILC session, 2007)

³⁶⁶ *Ibid*

Overall, *ILO is criticized* sometimes by the workers with not examining all the issues even though the information is provided by the trade unions, and with keeping silent on “*how the legislative arsenal was being used to harass*”³⁶⁷. According to them, comments on the legal questions are not enough to solve the issues. Government was accused of procrastinating to take steps or making excuses without basis for not taking effective measures in front of the Committees³⁶⁸. Moreover, there are notifications from the Government’s and employers’ side that are contradicting workers’ regarding a social consensus on the final text of the Act No.6356. Government expresses its regret about the individual case that was concluded on C98 against Turkey despite all the improvements it had been made in the legislation -it mostly focuses on legislation instead of the implementation and the situation in practice-. Accordingly, employers claim that 95% of the provisions in the new Act reflected broad consensus among the social partners³⁶⁹. Workers, in contrast, point out the “*missed opportunities*” when social consensus had made but changed afterwards by the Ministry of Labour³⁷⁰ and the new Act is adopted despite the rejection of several times by trade unions³⁷¹. They state that it does not bring any substantial change and “*contains some arrangements which will exacerbate existing problems*” such as the double threshold criteria³⁷². Workers believe that consultations with the social partners are ongoing for years with the lack of “*real progress*” and that this can only be caused by the employers or the Government³⁷³. They also draw attention to the approach “*to search for loopholes in the legislation to keep the union away from the workplace*” is still the biggest obstacle to the effective implementation of the legislation³⁷⁴. Therefore, workers invite CAS to “*take a long, hard look*” and not act “*too early to celebrate*”³⁷⁵.

³⁶⁷ Ibid

³⁶⁸ Ibid

³⁶⁹ *Individual Case (CAS) C98-Turkey* (102nd ILC session, 2013)

³⁷⁰ *Individual Case (CAS) C87-Turkey* (99th ILC session, 2010)

³⁷¹ *Individual Case (CAS) C98-Turkey* (102nd ILC session, 2013)

³⁷² *Observation (CEACR) C87-Turkey* (102nd ILC session, 2013)

³⁷³ *Individual Case (CAS) C87-Turkey* (96th ILC session, 2007)

³⁷⁴ *Individual Case (CAS) C98-Turkey* (102nd ILC session, 2013)

³⁷⁵ *Individual Case (CAS) C87-Turkey* (96th ILC session, 2007)

7- CHAPTER 6: ANALYSIS

Under this chapter, firstly, the possible employer domination based on the given examples of Turk-Metal, TEKEL and Turk-Is is discussed including some observations on the causes and consequences of this dynamic. Secondly, the sufficiency of ILO's monitoring mechanisms is evaluated to answer the research question.

7.1 Discussion and outcomes

An organisation like a trade union can be democratic or it can look democratic, while it is serving to the decisions that are given outside³⁷⁶. In democracies, different opinions should be able to live side by side and be protected under the rule of law. Therefore, both the corporatist approaches and radical approaches are accepted for trade unions in such atmosphere. It is also understandable that the employers prefer to bargain with unions that accept corporatist principles. At this point, it is up to the workers' organisations to draw the line between corporatist principles and decisions which result in employer domination.

In Turk-Metal's case, discussion of de-facto sectoral agreements and pressures on the oppositions are continuing for a long time. Members who want to resign and change trade unions are suppressed. By the union's recent call to Ford workers who were reacting to the employer domination in Turk-Metal, they warned the workers against the "traitors" and "militants" that seize to the union who target the developing economy of the country to ruin the peace in the world of work³⁷⁷. Turk-Metal requested the members "who love their country, nation, work and workplace" to not to give opportunity to such attempts. This is a similar statement to the Government's reports and some employers' attitudes.

Secondly, lack of internal democracy created an elite group in the union which had separated the interests of the leadership and the members³⁷⁸. Discussion on "serving for whose benefit" is close to have an objective outcome as a result of many similar cases³⁷⁹. According to Kocer, it is an example of "partnership in coercion" which defers from other trade unions in the sector since Turk-Metal was willing for such cooperation that benefits employers more than workers while other unions tried to challenge it³⁸⁰.

The case of Tek Gıda-Is and Turk-Is has some common and different aspects from Turk-Metal. Firstly, as common aspects, the complaints of the members arose from time to time towards the union and the confederation, and some of their decisions leave the other constituents

³⁷⁶ Koc, p.176

³⁷⁷ 'Sarı Sendika' *Siyasi Haber* (23 May 2015) <<http://siyasihaber3.org/e/sari-sendika>> (Yellow Union)

³⁷⁸ Kocer p.253

³⁷⁹ For example see 'RENAULT İŞÇİSİ SARI SENDİKAYI SİLDİ...' *Ekonomik Durum* (16 May 2015) <<http://www.ekonomikdurum.com/haber/renault-iscisi-sari-sendikayi-sildi/6321/>> (Renault Worker Crossed Out the Yellow Union)

³⁸⁰ Kocer p.267

of the working class alone. It is true that many of the TEKEL workers could not reach their goals and the affiliated union and confederation might have had played a role in this outcome.

Dominant trade union traditions seek a policy of class compromise in combination with a neo-liberal agenda and it continues to dominate Turk-Is³⁸¹. This tradition creates an internal obstacle for unifying labour resistances³⁸². Therefore, it is not a mere coincidence that the unions which receive attention on domination are usually the ones that are affiliated with Turk-Is and it is a reason why the Confederation is subject to such discussions. Risk of a possible domination in Turk-Is carries a special importance since it represents the workers in ILO Conferences as the most representative organisation of workers³⁸³. There are some examples on the contrary though. In Nestle companies for example, workers are dismissed because they resigned from Oz Gıda-Is (affiliated with Hak-Is) to be able to join Tek Gıda-Is³⁸⁴. A similar example can be given on Caykur. According to the allegations, the employers force the members of Tek Gıda-Is to resign and join to a union that cooperates with the employer³⁸⁵.

Before reaching a conclusion, important role of the external factors in determining the role and strength of the trade unions should be noted again. Post 1980s can be considered a new era in Turkey and globally, where trade unionism movements are weakened and changed strategy to defend their rights that are already gained; and in the world of change, social corporation became more important³⁸⁶. As the laws reflect the economic, social and political conditions of their terms, choices of trade unions and their shifts also carry the reflection of the outside world. But they also carry the compass that may lead the dynamics of the social developments of their term, which gives them responsibility³⁸⁷. Once again, it is still up to the trade unions to draw the line since even if the conditions pave the way for a possible domination; it always takes two to tango³⁸⁸. Overall, the line of the latter cases is not as straightforward as it is in Turk-Metal's case. Workers organisations are free to adopt corporatist principles and it does not point to such domination by itself. The line can be possibly drawn where the trade unions' acts and workers' demands are not met and such situation continues with the will of the management against the will of the members. As a result of these and the lack of a concrete and detailed definition of the acts that constitute domination; it remains more like a grey zone.

³⁸¹ Ozugurlu p.182

³⁸² Ibid

³⁸³ Article 4/5 of the Constitution of the ILO

³⁸⁴ Tek Gıda-Is, 'NESTLE İŞÇİSİ SENDİKAL TAZMİNAT DAVASINI KAZANDI' (16 June 2015)
<<http://www.tekgida.org.tr/Oku/10898/Nestle-Iscisi-Sendikal-Tazminat-Davasini-Kazandi>> (Nestle Workers Won the Case of Union Compensation)

³⁸⁵ Tek Gıda-Is, 'ÇAYKUR'DA YİNE ÖZ GIDA BASKISI' (18 July 2013)

<<http://www.tekgida.org.tr/oku/7325/caykurda-yine-oz-gida-baskisi>> (Pressure of Oz Gıda-Is Again on CAYKUR)

³⁸⁶ Mahirogullari, *Dünyada ve Türkiye'de Sendikacılık* p.224

³⁸⁷ Ataman p.9

³⁸⁸ Roberto Franzosi, *From Words to Numbers: Narrative, Data and Social Science* (Cambridge University Press 2004) p.3

7.2 Root causes

Even if it is not easy to put a “yellow” label on a trade union, it should be remembered that, only the grounds for influence by the employers are enough for the violation of C98/2. Probably, this content is more important to put or not to put such labels. Reasons that create such risks need to be pointed out and the previous chapter provided the clues. They can be divided into three groups:

7.2.1 Legislative problems

Turkish legislation on freedom of association and right to collective bargaining has been a shaky process. Progressive steps were at times followed by regressive legislation and policies. The Act No.6356 is a step forward from the former but it is still behind the acts of 1963³⁸⁹. Despite the improvements it brings, there are still some main problems, which contribute to the risk of employer domination and therefore threaten to the right to freedom of association and collective bargaining.

7.2.1.1 Level of the collective agreements:

Collective agreements that are concluded in the private sector are far from having similar contents³⁹⁰. As it was stated above, Turkish collective bargaining system is limited to workplace level where the agreements cover only the members of the trade unions. As in the Turk-Metal example, this carries the risk of de-facto sectoral agreements that works for the benefit for the employers. Because of the external issues, employers need to be able to compete in the market, therefore, collective agreements which benefit workers in a company more than others may leave that company in a vulnerable position in the absence of a unified stance in the employers’ policies and it can create fear against unfair competition³⁹¹. As long as the current system allows such grounds, controlling trade unions present a way to mitigate risks that they may incur. Moreover, regulations regarding the coverage of collective agreements may also lead workers to join the largest unions even if they actually prefer a different one.

In many countries such as France, collective agreements are conducted at the sectoral level and involve all workers in the sector. Therefore, even though the union density looks lower than %9; collective agreements cover more than %90 of the workers³⁹². Yet, despite the problems it contains, Turkish collective bargaining system is in compliance with the ILO’s standards since

³⁸⁹ Ataman p.9

³⁹⁰ Koc p.174

³⁹¹ Interview with Uzeyir Ataman, Director of the Collective Bargaining and Education Office of Lastik-Is Union (Istanbul 25 March 2016)

³⁹² See Figure 3 in the following report that shows the bargaining coverage and union density rates of various countries in 2013 or latest. ILO International Labour Office, *Labour Relations And Collective Bargaining* (Issue Brief, October 2015) <http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_409422.pdf>

ILO leaves the details of the system at the discretion of the States. It accepts both systems that grant exclusive rights to the most representative union and the systems that several unions in an enterprise or a bargaining unit may conclude different agreements as compatible³⁹³ but it keeps criticizing the double threshold requirement.

7.2.1.2 Threshold requirements:

Double threshold requirement cause competition among the trade unions and damage the solidarity of the working class. These criteria also create the grounds for trade unions to cooperate with employers, since their support might end up with more members and make the union stronger. In the meanwhile, workers are pushed between the options of facing anti-union discrimination and join a union which has the risk to stay under the required threshold where the third option is to join the strongest trade union in the workplace.

7.2.1.3 Restrictions on right to strike and the loopholes in the law:

Right to strike is the most effective tool of the trade unions against the employers and it is the last resort³⁹⁴. The use of this right is prevented by using the loopholes in the legislation as in the example of repealing the prohibition of political, general and sympathy strikes but leaving it unclear in the Act No.6356 or in suspending strikes without legitimate grounds. Consequently, this tool is taken away from the workers who are left unprotected.

7.2.2 General climate

When the neo-liberalist, interdependent policies and globalisation combine with the perception towards the trade unions in Turkey by the Government and employers, the outcome is not so bright for the workers. Historically, almost each Government that has come to power had made changes to the legislation, which in the end has weakened the perception regarding strong trade unions. Other social partners are reluctant to accept the trade unions as an important actor in practice; even they do on the paper. They are mostly seen as a burden instead that should be co-opted or ignored. In turn, the workers do not feel empowered to claim their entitlements under the law with the fear as losing their jobs. Consequently, another vicious circle occurs and trade unions in Turkey keep getting weaker in the system³⁹⁵.

7.2.3 Lack of political will

Assuming that the employers' and workers' have conflicted interests; the role of the Government remains complex as it has to balance the interests of both parties. One of the reasons

³⁹³ CEACR General Survey of 2012, para.225

³⁹⁴ Kivanc Eliacik, 'Sendikalar Yasası: Bir Yalanın Anatomisi' *Bianet* (19 July 2012) <<http://bianet.org/bianet/print/139770-sendikalar-yasasi-bir-yalanin-anatomisi>>

³⁹⁵ Koc p.164

of the gaps between law and practice as it can be concluded is the lack of political will to make the necessary amendments to the legislation and implement the already provided rights and freedoms of workers. On the contrary, the political will is using to repress the trade unions. According to the laws, since Article 90 of the Constitution was adopted in early years, C87 and C98 should have been applied in practice starting as early, caused by this provision³⁹⁶. But the Governments mostly did not follow this principle and used abstract reasons to restrict the abovementioned rights instead. The lack of political will therefore cause implementation problems of the regulations which are similar to the international standards. As a result of this atmosphere, anti-union discrimination has not faced with dissuasive sanctions and employers have not feared to lose anything because of the restrictions on the strikes or the long judicial processes. From the previous chapter, it can also be concluded that; despite all the problems on the ground, Government started to demonstrate that the national law and practice is compatible with the international standards and it does not agree to accept the ILO' s assistance. Briefly, the political will does not seem to be on the side of the workers in Turkey. Turning back to the role of the Government, its obligation is not actually to wait for a consensus between social partners or to make any organisation happy but it is to do what they are required to do under the international commitments³⁹⁷.

7.3 Can the monitoring mechanisms of ILO provide sufficient protection regarding the threat of employer dominated trade unions in the collective bargaining system in Turkey?

One other possible cause of the problem might be the insufficiency of the international protection mechanisms hypothetically. To be able to clarify this issue and to provide an answer to the research question, the relevant discussion is held below. Before, it should be noted that the direct counterpart of the ILO is neither the workers and nor the employers, it is the States. ILO Committees receive complaints and comments from the employers' and workers' organisations but they can only oblige the Governments to comply with their commitments.

From the previous chapter, it can be seen that the ILO pointed out many of the abovementioned root causes through its Committees. It warned the Government regarding the legislation which are not in conformity with international standards and followed the progress. General climate which prevents the exercise of freedom of association is also emphasized almost in every report of the ILO. Contrary to the Government's claims of the progress made by improving the laws and regretted to be a subject of an individual case in 2013 despite all the good work they have done; ILO observed the "*discrepancies between the legislation and practice*"³⁹⁸. It wants to be sure that the provisions of the Conventions are applied both in law and practice, and trusts the Government for taking the necessary measures³⁹⁹ which leads us to

³⁹⁶ Ibid p.1

³⁹⁷ *Individual Case (CAS) C87-Turkey* (99th ILC session, 2010)

³⁹⁸ Ibid

³⁹⁹ Ibid

the political will. ILO is aware of the general atmosphere and the recent individual case regarding C98 on Turkey shows that they are also aware of the problems in the application of the right to organise and collective bargaining.

ILO's monitoring mechanisms are based on the assumption of good faith of the States. Concerning the case of Turkey; it "*urges*" the Government to take certain acts or expresses "*regret*" when it detects non-compliance and offers its assistance. Some says that the ILO is a "toothless" organisation⁴⁰⁰ because of the absence of an ability to impose sanctions. Yet, ILO's teeths are its eyes and it observes the problematic issues relentlessly. It has a very well structured and effective supervision mechanism and as it can be seen so far, it does not let go before solving an issue. Its recommendations are very concrete such as the necessity of training the police regarding the freedom of assembly or as the requirements about specific amendments to certain provisions. It also follows the sufficiency of the national monitoring mechanism closely in this scope as we saw when it detected the lack of a system on collecting statistics regarding anti-union discrimination in private sector.

What is lacking though in ILO's observations is a link through these violations which lead to employer domination. Emphasis on the employer domination rarely finds a place in the reports. Clear reference to the risk of employer-dominated unions was only made by the workers in the last 10 years that this thesis had examined⁴⁰¹ and the individual case regarding C98 is conducted for the first time in 2013 after 2000. The lack of political will in the meantime has led to the worsening in the situation.

ILO urged the Government to elaborate an action plan with clear time lines regarding the detected weaknesses in the system which cause violations of the Conventions⁴⁰². If these urges will not point to the danger of employer domination with a concrete emphasis, there might be a risk that such time lines will not include any solutions regarding to eliminate this risk in the plan of action.

Even though the ILO is aware of many of the root causes that are stated in the previous chapter, some of the issues are given more importance in its reports such as the continuous emphasis on the threat on civil liberties. It is crucial and very positive to give importance to such reasons regarding the general atmosphere which creates the grounds for employer domination. Yet, the other aspects, as the level of collective bargaining system and its coverage on the laws and practice can find more place or emphasis in the reports periodically. Even if the system is not violating the Conventions according to the jurisprudence of ILO, discussions regarding its effect in practice regarding the core of the rights can be made.

⁴⁰⁰ George Tsogas, *Labour Regulation in a Global Economy* (M. E. Sharpe 2001) p. 54

⁴⁰¹ *Individual Case (CAS) C87-Turkey* (99th ILC session, 2010)

⁴⁰² *Individual Case (CAS) C87-Turkey* (100th ILC session, 2011)

Lastly, the insistence of the ILO for the technical assistance is very positive, yet the language should not be softened since it is crucial for the effective enjoyment of the rights in the Conventions in the case of Turkey.

With the strong structure and effectiveness of the monitoring mechanisms of ILO, a better protection could be provided for collective bargaining system, and the employer domination might be curbed. Such protection is important for the trade unions to enjoy their rights fully, for putting pressure on the Government and to demonstrate the lack of political will. It is also important to affect the employers and their partners in trade unions indirectly as a result of the positive change in the grounds that create such problem. To sum up, the answer seems like an almost yes, while the “almost” part contains very important aspects for breaking the vicious circles of the problem and safeguard the future of the freedom of association and right to collective bargaining of the trade unions in Turkey.

8- CHAPTER 7: RECOMMENDATIONS

ILO's strong monitoring mechanism may provide better protection for the workers by linking the relation between the obstacles in the freedom of association and the collective bargaining system with the employer domination on trade unions. Individual case regarding C98 in 2013 is a positive step and should be followed closely. In this monitoring process, inclusion of the employer domination emphasis might be helpful on the way to compliance with international standards.

Considering that the ILO did not have the chance to conduct deep analysis on the Act No.6356⁴⁰³ and the change in Government's language shows that the close international supervision on this Act has a special importance today. CAS already requested the Government to provide detailed information on how this Act governs labour relations in the light of the comments of the Committees⁴⁰⁴.

ILO should keep being insistent until it sees a real progress; and avoid "early celebrations" which might make the authorities feel relieved before. Close supervision is also very important in the means of the double threshold system since it is one of the core obstacles to the right to collective bargaining and since the Government stated that they are open to make an amendment regarding this requirement if the social partners are required, which the workers' organisations already did. Even though the collective bargaining system in Turkey is not contrary to the ILO standards in general, discussions regarding the structure and its effects such as the level and coverage of the collective agreements can also contribute to the solution. In sum, the reasons that create the risk of the employer dominated trade unions and their possible solutions should find its place on the agenda of the ILO as a whole, for contributing to a real democracy and social justice in Turkey that has its feet on the ground.

⁴⁰³ *Individual Case (CAS) C98-Turkey* (102nd ILC session, 2013)

⁴⁰⁴ *Ibid*

9- CONCLUDING REMARKS

Rights regarding freedom of association of trade unions are gained as a result of long-term struggles by the workers of the world. Today, such struggle is continuing in national and international legal platforms in different means and trade unions continue to play a historical role in this respect⁴⁰⁵.

They have tools for it today which are also guaranteed by law, yet, without their full implementation at least in the level of international labour standards, freedom of association and right to collective bargaining cannot be enjoyed effectively by the workers. With the influence of the conditions in the outside world as globalization and neo-liberal policies, non-compliance with the international labour standards may pose a threat of external and internal pressures on trade unions which may end up with employer domination. Examples of trade unions that have remained as the strongest organisations in the sector despite the common and continuous complaints of the workers regarding the management, highlights such danger in Turkey.

Even though that ILO has no means of enforcing its views, its strong supervision mechanism is effective in bringing about positive changes as it can be observed from many examples⁴⁰⁶. Therefore, its emphasis on the risk of employer domination and linking the grounds that create such outcome can play an important role for the future of the trade unionism in Turkey. By that, the pressure that the ILO creates might be felt by the Government and the other stakeholders, that can provide a better protection for the workers. After all, only free trade unions can represent the workers, defend their rights and raise their true voices.

⁴⁰⁵ Koc p.177

⁴⁰⁶ Lee Swepston, 'Crisis in the ILO Supervisory System: Dispute over the Right to Strike' 29/2 International Journal of Comparative Labour Law & Industrial Relations, 2013, pp.199-218, p.200

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