TRADE UNION RESPONSES TO PRECARIZATION: THE CASE OF MANDATORY ALTERNATIVE DISPUTE RESOLUTION IN TURKEY

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DECLARATION OF ORIGINALITY

I, Batuğhan Yüzüak, certify that

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ABSTRACT

Trade Union Responses to Precarization: The Case of

Mandatory Alternative Dispute Resolution in Turkey

The world of work has gradually fallen under the influence of the precarization trend, especially since the 1980s. One of the domains that this trend that can be observed is the changes in the judicial system and labor litigation. Trade union perceptions in the context of dual labor markets provide a valuable gateway into the implications of these changes for workers' rights and employment security. Turkey introduced a voluntary form of alternative dispute resolution (ADR) for individual labor disputes in 2012, which the country then made compulsory in 2018. In the current practice, ADR in individual labor disputes is a prerequisite for litigation. In the context of a low rate of unionization and collective bargaining coverage, trade union confederations in Turkey are organized along political lines. This thesis examines trade union responses to the introduction of alternative dispute resolution for individual labor disputes. In doing so, the thesis also investigates how their responses have changed over the course of three phases: the introduction of voluntary ADR, the transition from voluntary to mandatory ADR, and the implementation of mandatory ADR. This thesis is an exploratory, qualitative study that relies on six in-depth interviews and five written interviews with respondents from the three largest confederations and seven trade unions affiliated with these confederations. Based on a thematic analysis, the thesis finds that even though the initial responses of trade unions differ from each other in the first two phases, they have reached a consensus in the third phase against the use of mandatory ADR in individual labor disputes. The thesis argues that this consensus is especially noteworthy given the political divisions

between these unions. This thesis demonstrates that confederations and trade unions object to the practice of mandatory ADR because, they see this practice, compared to labor litigation, has led to the erosion of the rights and employment security of non-unionized workers especially. While this common response might lead to a momentum for trade union revitalization, the restrictive political atmosphere and the labor regime seem to restrict such possibility.

ÖZET

Sendikaların Güvencesizleştirmeye Tepkileri:
Türkiye'de Zorunlu Arabuluculuk Örneği

Çalışma hayatı, özellikle 1980'lerden beri gitgide güvencesizleştirme eğiliminin etkisi altına girmiştir. Bu eğilimin görülebildiği alanlardan biri de yargı sistemindeki değişiklikler ve iş davalarıdır. İkili işgücü piyasası bağlamında örgütlenen sendikaların algıları, bu değişikliklerin işçi hakları ve istihdam güvenliği üzerindeki sonuçlarına yönelik değerli ölçüt sağlar. Türkiye, 2012 yılında bireysel iş uyuşmazlıkları için gönüllü bir alternatif uyuşmazlık çözümü (ADR) biçimi getirmiştir ve ülke, 2018'de bunu zorunlu hale getirmiştir. Mevcut uygulamada, bireysel iş uyuşmazlıklarında ADR, dava için bir ön şarttır. Düşük sendikalaşma oranı ve toplu pazarlık kapsamı bağlamında, Türkiye'deki sendika konfederasyonları siyasi çizgileri bağlamında örgütlenmiştir. Bu tez, bireysel işçi uyuşmazlıkları için sendikaların alternatif uyuşmazlık çözümünün getirilmesine yönelik tepkilerini incelemektedir. Bunu yaparken, tez aynı zamanda tepkilerinin üç aşamada nasıl değiştiğini de araştırmaktadır: gönüllü ADR uygulamasının başlatılması, gönüllüden zorunlu ADR uygulamasına geçiş ve zorunlu ADR uygulanması. Bu tez, en büyük üç konfederasyondan ve bu konfederasyonlara bağlı yedi sendikadan temsilcileriyle altı derinlemesine görüşmeye ve beş yazılı görüşmeye dayanan keşfedici nitel bir çalışmadır. Tematik bir analize dayalı olan tez, ilk iki aşamada sendikaların ilk tepkileri birbirinden farklı olsa da üçüncü aşamada bireysel işçi uyuşmazlıklarında zorunlu ADR kullanımına karşı bir fikir birliğine vardıklarını ortaya koymaktadır. Tez, bu sendikalar arasındaki siyasi bölünmeler göz önüne alındığında bu mutabakatın özellikle dikkate değer olduğunu savunmaktadır. Bu tez,

konfederasyonların ve sendikaların zorunlu ADR uygulamasına itiraz ettiklerini, çünkü bu uygulamanın iş davalarına kıyasla, özellikle sendikasız işçilerin haklarının ve istihdam güvenliğinin aşınmasına yol açtığını göstermektedir. Bu ortak yanıt, sendikanın yeniden canlanması için bir ivme yaratabilirken, kısıtlayıcı siyasi atmosfer ve çalışma rejimi bu olasılığı kısıtlıyor gibi görünmektedir.

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CHAPTER 1

INTRODUCTION

The defining features of the world of work have changed substantially from the dominance of standard employment to the proliferation of atypical employment since the late 1970s (Palier & Thelen, 2010). With the pressure of global competition in the context of the liberalization of global trade, the trade unions have started losing their power. Trade unions' loss of power was combined with employers demanding more flexibility in employment to be able to respond to the increased competition in the global markets.

In this context, trade unions face a dilemma between defending their members in return for a compromise on the flexibilization of the labor market and challenging flexibilization at risk of losing more ground. Trade unions especially in Western European countries secured employment for their core members in exchange for allowing employers to hire other people with flexible employment schemes (Palier & Thelen, 2010). In other words, the trade unions started to protect what they have, instead of representing and protecting the whole class of employees within their reach (Palier & Thelen, 2010). This situation has contributed to the dualization of the labor market into two significant groups; mostly unionized core employees, who have regular jobs protected under collective agreements, and the peripheral employees lacking those securities in the name of flexibility. Dualism has become the defining feature of the new world of work (Gumbrell-McCormick, 2011).

In the meantime, the gradual introduction of flexibility measures has increased the number of peripheral workers who lack securities that core employees

enjoy. Scholars argued that these two groups of employees have different, sometimes even contradictory demands (Palier & Thelen, 2010). Core workers demand more strict rules of employment and more benefits to retain their niche in employment. The peripheral workers demand the exact opposite to push the employers to create more jobs they desperately need since the strict rules of employment and other benefits that core workers demand raises the cost of employment. The challenge that this relatively new labor market structure poses to trade unions (and the peripheral group of employees) has gained increased scholarly attention.

Standing coins the term precariat to refer to the people facing a low level of security in terms of job, labor market, employment, work, skill reproduction, income, and representation (2011). Standing (2011, 2014) also expresses that neoliberalization and economic globalization have led to the emergence and gradual increase in the number of the precariat. The precarization begins when at least one of those insecurities is extended or scaled up to the point affecting either more people or the same people more deeply than before. Using Standing's concept, the peripheral workforce can be also identified as the precariat.

This relatively new dualism in the labor market creates a challenge for the trade unions. Starting from the late 1990s on, with the increasing number of the peripheral workforce, the trade unions could no longer ignore the demands of the peripheral workforce. Besides, since employing the peripheral workforce has become more profitable for the employers, the core workforce and their trade unions faced an increased risk of losing their jobs and membership base, respectively. Thus, trade unions have started to get concerned about the peripheral workforce and to adopt strategies of coordinating the demands of two groups of employees in the dual labor markets. This move necessitates a change of vision from representing the core

members to representing the whole class of workers. These inclusionary efforts of trade unions and their attempts to coordinate the demand of both groups of employees have brought about the phenomenon of union revitalization (Frege & Kelly, 2003).

One of the main concerns of trade unions during the 1990s and 2000s was the employment security for their core membership base and the precarious peripheral workforce due to rising unemployment. Employment security, in Standing's terms (2011), is the protection of employees against arbitrary firing and the existence of regulations and applications that serve this purpose. Any regulation that actually or potentially eases the way of dismissing an employee thus harms the employment security. The employment securities that Standing (2011) mentions are intertwined. When the employment security is at risk, it also affects the other securities. Easy dismissals, for example, also results in the erosion of job security, which is defined as retaining a niche in employment (Standing, 2011). Another security directly related to employment security is income security, which is the assurance of a stable income. In the case of losing a job, income security is directly compromised due to a lack of wage-income. This is the situation especially in the countries where there are no unemployment benefits or when these benefits are not adequate (Standing, 2014).

Alternative Dispute Resolution (ADR) mechanisms in labor disputes came to the political agenda in the socio-economic context presented above. The emergence of ADR in a wide array of national legal systems was also argued as a result of neoliberalism and globalization (Nader, 1999). ADR is an alternative to the traditional systems of dispute resolution, which is litigation in the courts that gives rulings based on imperative provisions and whose decision is binding for both sides of litigation (Barrett & Barrett, 2004). ADR mechanisms for labor disputes can be

separated into two broad categories, namely; collective and individual. The former is a mechanism that has been used to settle disputes over collective agreements that might end up in industrial action if left unsolved. The second one is the mechanism to settle individual disputes between an employee and an employer. This thesis focuses on the latter. It examines arbitration in individual labor disputes, which is the only and dominant ADR mechanism for individual labor disputes in the Turkish case.

The defenders of the ADR model claim that it is a cost and time saving, efficient system of dispute resolution delivering win-win results for both sides of a dispute as the sides collectively come to the solution (Stražišar, 2018). Even though ADR can be embedded in different institutional settings, the general idea of the ADR consists of at least two sides of a dispute (employers and employees) and an intermediary agent whose purpose is to mediate the sides into finding a common solution to their dispute without resorting to traditional court litigation.

The literature lists the following as the main principles of ADR: the balance of power between the sides of the dispute (Oren & Ronen, 2014), the voluntariness of process (Katz, 1993), and the confidentiality of process and solutions (Stipanowich, 2004). The first principle dictates that ADR should be used when the sides of the dispute have equal power to defend themselves against the accusations and demands from the other side. It also includes the notion that the sides can obtain the necessary information about the applicable law in their case and no side should be able to coerce the other side. The second principle ensures that no side was forced to participate in the ADR processes and the litigation should always remain an option. The last principle, in contrast to the traditional litigation system, is to not to

publicize the information about the ADR process and agreement that the sides prefer to keep confidential.

Arbitration, which is the specific form of the ADR that Turkey adopted for individual labor disputes, consists of two sides of the dispute and an impartial arbitrator whose main duty is to mediate the dispute between the sides and facilitate a solution that both sides agree. On certain occasions, if the sides cannot come to an agreement and fail to settle their dispute between themselves, the arbitrator can offer a solution to facilitate dispute settlement. The main principles of ADR that were presented above are also valid for arbitration. Arbitration processes can be fully voluntary, court-annexed, or mandatory. The former is initiated by the sides and keeps them totally out of litigation if successfully finalized. The second one is the arbitration that is referred by the courts, before or during the official litigation, and the lawsuit drops if the arbitration is successful. The last one presents arbitration as a prerequisite for litigation. A formal litigation process can start only if the sides have not been able to settle their disputes through arbitration.

During the traditional litigation processes in labor disputes, the main point of reference is the labor code. The classical theory of law dictates that the laws are enacted to protect the weaker side (Rivero & Savatier, 1991). In the case of the labor codes that regulate the employment relationship, the weaker side is the employees. Thus, the main function of the labor code is to protect the workers as the weaker side. However, ADR mechanisms do not necessarily take the labor code as its main reference. Specifically, arbitration is a mechanism that facilitates a settlement, which does not have to be in line with the laws and regulations (Nader, 1999). If the sides can agree on a solution, it is the final decision. There is no common conception of justice that the ADR rests on, which makes justice a private matter between the sides

(Reuben, 2000). Therefore, if the sides can agree on a solution to their disputes, the arbitration is deemed done successfully, even though the solution might not resemble the traditional solution or comply with the common conception of justice codified in the labor law. Nevertheless, the application of ADR to individual labor disputes poses significant challenges, as the sides of these disputes do not possess the balance of power (Oren & Ronen, 2014). Without the imperative provisions in labor codes that empower the employee side, employers often have the upper hand in the arbitration process.

Currently, other than Turkey, only Malaysia and Argentina practices mandatory arbitration for individual labor disputes. However, the system that those countries practice is different than the Turkish model. Malaysia has a very detailed and specific definition of disputes that are subject to mandatory arbitration determined by the category of the dispute i.e. dues and wages, the wage of the employee and depend on whether the dispute falls under Malaysia's two-court system (Sharifah Suhana & George, 2002). In Argentina, the arbitration is not an alternative to the litigation but is an essential part of the courts, making it a pathway of litigation if the dispute is not solved through mediation and arbitration (Kuhner, 2006). This situation make Argentina's system a court-annexed ADR case.

On the other hand, voluntary arbitration is more common than the mandatory practice. In USA and most of Europe, the ADR mechanisms are used for individual labor disputes (Ozmumcu, 2016) either specifically or virtually, as labor disputes are subject to private law and categorized under legal disputes.

Given the abovementioned functioning of ADR in individual labor disputes, its inclusion into the national judicial systems may have far-reaching consequences. Thelen & Streeck (2005) argue that layering is a form of institutional change that

relies on an introduction of a new mechanism without abolishing the existing ones, which then gradually culminates into the mainstreaming of the new mechanism. ADR, especially if it is compulsory, can be thought of as a layering mechanism (Nader, 1999) which brings about a different set of rules and different understandings of dispute and law. In this understanding, a dispute should be resolved not through confrontation (litigation) but mediation. Edwards (1986) describes this phenomenon as non-legal values taking over the rule of law. He argues that the resolution of conflicts based on these non-legal values enforced in the ADR may bring about lower standards than the labor code enforces.

When applied to individual labor disputes, ADR may bring about the precarization of employment security, as it risks undermining the statutory barriers to dismiss an employee. In other words, the cost of dismissing an employee may be reduced with the ADR in two ways. First, it makes the dues of an employee a matter of discussion rather than a right and an entitlement protected by the labor code and traditional litigation. Second, it enhances the position of the employer in individual labor dispute resolution and results in a situation where the employer will have the upper hand. Value judgments, as Edwards (1986) argued, might overshadow the statutory labor standards and, thus, disempower the employee vis-à-vis the employer. Moreover, when ADR is deemed mandatory for individual labor disputes, it further strengthens the hand of the already stronger party (Resnik, 2015). It is highly likely that mandatory ADR in individual labor disputes increases the precarization of workers.

Unionized workers may be protected from the undermined employment security that the ADR risks generating. Many trade unions provide legal support and mobilize their organizational power to protect their members. However, the non-

unionized workers do not have access to those protective mechanisms. In these conditions, the dualism in the labor market may be deepened as the core workers have the organizational power and most are supported in legal matters by their respective trade unions while the peripheral workforce lacks similar support.

Throughout the world, precarization has been an ongoing phenomenon, which affects employment relations, thus the trade unions. The trade unions in different countries have developed different responses to diverse modes of precarization. The presence of trade unions as significant actors in an economy influences the overall economy, macro and micro-economic policies (Driffill, 1984) including the labor policies. Through collectively representing worker interests, trade unions can change the course of the economy. However, trade unions exhibit significant diversity in their understanding of their role in the economy, their definition of worker interest, and their preferred set of strategies. While they may pursue more narrow strategies based on the interests of their members only, they may also act as political actors that aim to protect the economic interests of the working class and even the whole citizenry (Hassel & Addison, 2003).

1.1 Methodology

Against this background, this thesis treats trade unions as political actors, the political strategies of which may vary depending on their subjective problem definitions, the perception of their role in solving these problems, and their political strategies. In this regard, this thesis examines the Turkish trade unions' responses to the introduction of ADR for individual labor disputes –as a case of precarization trend-. The main question of this thesis is as follows: How do trade unions perceive the introduction of alternative dispute resolution for individual labor disputes in

Turkey and what are the determinants of these perceptions? This main question is supported by the following auxiliary question: How and to what extent do the trade union perceptions of the ADR in individual labor disputes consider the potential and actual pitfalls of this model for non-unionized workers?

This thesis relies on an exploratory, qualitative methodology. To answer these questions, the thesis relies on the data collected using semi-structured interviews conducted with officials and representatives of three major trade union confederations and their member trade unions. The study uses a purposeful sampling strategy, which involves selecting the individuals who are deemed to be knowledgeable and/or experienced in the topic of a query (Creswell & Plano Clark, 2011). Following this strategy, the study employs two inclusion criteria. The first one was to reach out to all three largest trade union confederations based on their number of members in Turkey. The second one was to include at least one representative from one of the largest trade unions affiliated with these three confederations.

For the field research, I have applied to The Ethics Committee for Master's and Ph.D. Theses in Social Sciences and Humanities and received approval numbered SBB-EAK 2020/41. The initial emails that state the purpose of the thesis and express a request for an interview with a high-ranking official were sent to those confederations and three of their affiliated trade unions with the largest membership in November 2020. Despite the reminders sent through emails and phone calls, some organizations did not respond to the request for interviews. Thus, the sample was expanded to include the first six most populous trade unions under each confederation. In total, 18 trade unions and 3 confederations were invited to this research. In most cases, I have been forwarded to the collective agreement departments under trade unions, thinking that I am researching arbitration practices

as it applies to collective agreements that are in effect since the 1960s. After a week of discussions, all responded trade unions and confederations forwarded me to their legal consultancy departments even though the request was to interview a person in a high-ranking elected position, preferably with someone in the board of management. This marks from the very beginning that the confederations and trade unions deem the mandatory arbitration in individual labor disputes merely as a legal issue rather than a political one.

In late November 2020, I started to receive replies from the institutions that I have been insisting to get an online interview. Most of them requested interview questions in advance, which I have shared. Although I invited all representatives to an online interview (rather than a face-to-face interview due to the pandemic), some preferred to answer the questions in written form without face-to-face communication, making it harder to pursue follow-up questions.

I conducted six online (face-to-face) in-depth interviews and five written interviews. Face-to-face and written interview data come from 10 institutions in total. Among three major confederations, only Confederation 3 refused to make a face-to-face interview. Nevertheless, they sent me a report expressing their official stance on the introduction of ADR in individual labor disputes. For trade unions, I managed to conduct at least one in-depth interview with a trade union under each confederation. The distribution of the institutional affiliations of the interviewees is given in Table 1.

The recordings of online in-depth interviews were transcribed verbatim. Both transcribed material and written interviews are qualitatively analyzed using thematic content analysis, which is an analytic tool to generate common themes from the data to examine trade union perceptions of the ADR in individual labor disputes.

Thematic content analysis is preferred in this thesis as it enables the researcher to identify the points of divergence and convergence among the perceptions of trade unions. The divergence-convergence axis is the main axis of analysis for this thesis. This method is also beneficial for determining the change in responses between time intervals, which constitutes the second axis of analysis. As there is no chance of asking follow-up questions that are essential for semi-structured interviews, the written answers are used less throughout the thesis.

Table 1. Distribution of the Institutional Affiliations of the Interviewees

Confederation 1 (In-depth)	Confederation 2 (In-depth)	Confederation 3 (Written)
Trade Union 1/1 (In-depth)	Trade Union 2/1 (In-depth)	Trade Union 3/1 (Written, followed by an in-depth)
Trae Union 1/2 (In-depth)		Trade Union 3/2 (Written)
		Trade Union 3/3 (Written)
		Trade Union ¾ (Written)

For the sake of ensuring confidentiality, the confederations are randomly named Confederation 1, Confederation 2, and Confederation 3. Their member trade unions are named with a two-digit code following the trade union, first indicating its confederation of origin, and the second refers to the order of the timing of the interview. For example, if the interview is conducted first with a specific trade union under Confederation 1, its code is Trade Union 1/1. It is important to note here that the confederations in this thesis are ideologically aligned. Conferation 1 is progressive leftist in ideology. While Confederation 3 puts itself in centrist position swinging between moderate left and right depending on the government, Confederation 3 is a right-wing and Islamist confederation.

This study has some limitations. First, all respondents are lawyers, meaning that the views that they hold are significantly informed by the legal scholarship. Union representatives with organizer responsibilities, political duties in the form of the following policymaking, and developing political strategies might have brought a different perspective. Second, the trade unions and the confederations of the civil servants have not been included in the study as employment relations of civil servants are subject to a different set of rules and regulations. Third, almost half of the qualitative data collected in this study was in written form and I could not have the chance to ask follow-up questions which is essential for semi-structured interviews. While these written statements were of significant use in mapping confederation and trade union perceptions, they were limited in detailing and substantiating these perceptions. Last but not least, even though the ADR in individual labor disputes has been inducted into the labor relations system of Turkey in 2012, the practice became prevalent in 2018. Thus, the trade unions and confederations' responses are still in their preliminary form and will possibly become more visible in near future.

1.2 Outline of the Chapters

Following this chapter, Chapter 2 presents a literature review on the determinants of trade union responses to labor reforms. This part includes a short historical review of the trade unions and their position within broader industrial relations. Following a discussion on the power resources of the trade unions and the contemporary political-economic dilemmas they face, this chapter sets out the recent trends of trade union revitalization. The second part of this chapter offers an overview of selected case studies on trade union responses to precarization trends in different country contexts.

Chapter 3 lays out the country context within which this study is conducted. This chapter offers a snapshot of the main features of employment and industrial relations in Turkey. After presenting the statistics of the Turkish labor market and industrial relations like the unemployment rate, unionization rate, and collective agreement coverage, the chapter continues with sketching the main components of the Turkish industrial relations system including the main actors and institutional mechanisms within which these actors navigate. Then, the chapter situates the introduction of ADR in individual labor disputes in its context.

Chapter 4 presents the main findings. The analysis here is based on two dimensions: the convergence and divergence among trade union perceptions and how trade union responses have changed over the course of the introduction and implementation of ADR in individual labor disputes. While the analysis based on the first dimension demonstrates that trade unions differ in their understanding of ADR especially when it was voluntary, the incorporation of the time dimension into the analysis indicates that their perceptions converged over time especially when ADR became mandatory and its detrimental impact on non-unionized workers are observed. Chapter 5 concludes this thesis by discussing the main findings of this research in the light of the literature review keeping the global trends and changes in industrial relations in mind.

CHAPTER 2

THE LITERATURE REVIEW

In the literature, to my best knowledge, there is no specific study examining trade union responses to the introduction of mandatory ADR in individual labor disputes yet. For this reason, this thesis relies on a broader literature on trade union responses to the impact of globalization on labor markets, neoliberalism, and precariousness in examining the question of trade union responses to the introduction of ADR in individual labor disputes in the Turkish case. The chapter starts with presenting the theoretical framework first and then offers a review of case studies on trade union responses.

2.1 Determinants of trade union responses to labor reforms

Korpi (1983) in his influential book, The Democratic Class Struggle, argues that the unorganized social conflicts among sections of a society tend to be replaced by institutionalized political conflicts in welfare states. This alteration in the shape of the conflict, both expanded the welfare state in its early years, and in countries with strong labor-inclusionary institutional structures, led to more egalitarian social outcomes (Korpi, 1983). Even though the doubts on whether the class still matters, Edlund & Lindh (2015), in their analytical study, find that Korpi's theory is still largely valid for welfare states, especially the mature ones.

In the early years of the welfare state establishment after the Second World War, one of the most important social conflicts was between the workers and employers. In this context, representatives of both classes, namely trade unions and employer's organizations, emerged as key institutional political actors with

significant power over domestic politics (Korpi, 1983). Even though trade unions existed long before the welfare states, they became one of the dominant political actors that have the claim to represent the workers, the largest class in a capitalist social formation.

Even though the trade unions still largely have a claim to represent the worker in the above-mentioned sense, some scholars argue that it is not a fact in the era of neoliberalism given the decline trade unions experience globally (Ackers, 2015). Ackers (2015) claims that some of the reasons for this decline are globalism, the transition to post-industrial society mainly in the West, and strategic mistakes by unions during the transition periods in the progress of capitalism. It is also evident from ILO ACTRAV Working Paper titled Trade Unions in the Balance that the union density and collective agreement coverage rates are dropping down globally (aggregately more than %25 for developed countries) with a few exceptional regions like North Africa after Arab Spring Movements (Visser, 2019).

According to the same working paper, almost two-thirds of workers are informally employed, especially in developing countries, meaning that the density rates are lower than calculated globally (Visser, 2019). This situation can be inferred as one of the key evidence of the dualization of the labor markets (Gumbrell-McCormick, 2011; Palier & Thelen, 2010) as informally employed workers have a lower chance of, if not none, being a member of trade unions and benefit from them. The decline mentioned above undermines the claim of trade unions to represent workers as a class and forces trade unions to adapt to the new realities of labor relation context.

In more recent decades, as they experience a decline in their power, the trade unions are adopting strategies to cope with the adverse effects of neoliberalism,

globalism, and precarization. The combination of these efforts, which are developed to either struggle or revert the negative effects of those phenomena on the labor markets, is called the union revitalization (Frege & Kelly, 2003). The authors also note that it is hard to come up with a comprehensive definition as the strategies developed are specific to their country context even though there are some common trends.

Frege & Kelly (2003) classifies six major revitalization trends that trade unions adopt to tackle their problems: organizing, organizational structuring, coalition building, partnership with employers, political action, and building international links. Those terms respectively refer to recruiting new members with inclination to recruit atypical workers, arranging their internal organizational structure to be more inclusive, making alignments with other social movements, finding or developing mutual interest areas with employers, taking an active role in the policy-making bodies, and/or elections, and alignment in regional or global umbrella labor organizations.

These efforts are relatively new and it is still a question whether they will bring about the desired outcomes in the future. Ibsen & Tapia (2017) finds in their extensive metadata analysis of the literature on revitalization that revitalization is necessary for the unions to establish themselves once again as political actors representing workers via strategies that might even involve the use of force. Their metastudy shows that the trade unions are still one of the major actors in the labor relations context as the conflicts between employers and workers are still ongoing.

One of the platforms where the conflict between workers and employers manifests itself is the legal arena. Currently, the labor code and its reforms are one of the platforms in which labor conflicts and solutions to such conflicts are regulated.

While some legal reforms aim to address an existing phenomenon in industrial relations and regulate it through codifying it into labor code, others introduce a new phenomenon to industrial relations. Both types of reforms have the power to change the outlook of industrial relations in a country and trade unions, as political actors, tend to develop responses accordingly.

Kochan et al. (1993) argue that in any kind of reform that affects the industrial relations of a country, the actors develop strategic responses to these reforms, also considering the responses of other actors. As in all political reforms, the outcomes of reforms in the context of labor relations and politics are the results of the interplay of power between political actors. The power resources theory suggests that the more powerful an actor, the more it can alter the outcome according to its interests. Power is an instrument that actors need to yield from power resources. Power resources are defined as "…characteristics which provide actors - individuals or collectivities - with the ability to punish or reward other actors." according to Korpi (2006:77). As power depends on the power resources of actors, and as outcomes vary depending on the power of actors in each context, power resources can be inferred as one of the most important determinants of the outcome.

Korpi (2006) states that the power resources for any political actor have several dimensions like domain, scope, convertibility, degree of scarcity, and centrality. In his terms, the domain refers to the number of people potentially are affected by the actor. The scope is the variety of occurrences a power resource can be used. Convertibility infers to the potential of a power resource to be used in different ways. How and to what extent free any actor can use a power resource determines the degree of scarcity. Centrality refers to how essential a specific power resource is

in people's daily lives. For Korpi, (2006) every power resource has those inherent dimensions.

When the dimensions Korpi (2006) mentions are taken into account in a broad sense and applied to the industrial relations system, the following can be deemed as power resources for trade unions: membership base, the corresponding percentage of workers a trade union represents, the coverage rate of collective agreements done by a trade union, the existence and effectiveness of social dialogue mechanisms in the country, and the degree of competition between trade unions in a particular context. These power resources can be considered in analyzing the response of a trade union regarding any reform.

Madimutsa and Leon (2017) find that the trade unions' responses to reform proposals include three scenarios: the total rejection of reform, altering the course of reform by participating in the process, or fully participating in the process by supporting the reform. After the realization of reform, they argue that unions' responses also vary: they can work to altering the course of reform by participating in the process (2017). If their initial responses fail to deliver the desired outcomes due to lack of power, they can choose to enhance their power resources in the aftermath of the reform (Korpi, 2006).

The content of the reform as well as its perception by trade unions is the main determinant of whether the trade unions will accept, aim to alter, or reject the legal reform. The content of reform is about the change the reform will bring about in the industrial relations and/or labor market. The content becomes the determinant of to what extent a trade union will be able to gain a benefit or has to forfeit due to the reform. How the content is framed is another factor as it draws the shape of the

reform and provides the actor with the area of maneuver. The content of the reform that this thesis scrutinizes will be explained in the next chapter.

Another determinant is the perceived effect of reform over the membership base as a power resource. A trade union first will most probably calculate the reform's effect on its already existing members. Such a tendency among trade unions, especially in the context of the labor market dualization, can undermine their ability to represent labor market outsiders. Scholars argue that trade unions tend to protect what they already have until the negligence of outsiders (non-unionized, peripheral workers) starts to undermine core workers' benefits (Palier & Thelen, 2010). Only after that, trade union response to reform is likely to change.

The percentage of workers a trade union represents in a country is another determinant of its power. As the percentage grows, so does the power of a trade union. It also enhances the scope dimension of the power resource as some political mechanisms only allow the largest trade union to have a say in the process of reforms. The convertibility dimension becomes important when it comes to the coverage rate of collective agreements done by a trade union. Many countries, including Turkey, stipulate a membership threshold for trade unions to start collective agreement processes.

The existence of functional nationwide social dialogue mechanisms in an industrial relations context is also a determinant of the trade union's power. Those nationwide mechanisms mainly include three sides of industrial relations, namely; the government, trade union(s), and employers' organization(s). Those mechanisms aim to harmonize the interest of players without resorting to industrial actions, which are thought to be harmful to social peace. If those mechanisms exist and serve the

function they were created for, it means that trade unions have a national, high-level institutional platform where they can voice their response.

The number of significant trade unions in a country is also important. If there is a single or dominant trade union in a country, the response to the change will be centered upon the ideology of that trade union. In a multiple trade union context, a single trade union will have to respond to a change in calculating the other trade unions' responses. The number of significant trade unions is also closely linked with the scarcity dimension. For instance, if forming trade unions are easy, the proliferated number of trade unions will mean that every actor will have to consider strategies all other trade unions may develop.

It should be kept in mind that the determinants listed above are not mutually exclusive, but they are intersectional. For example, a response might be shaped by the membership base of a trade union and at the same time by the existence of functional social dialogue mechanisms. On another note, the trade union may strongly oppose a change but if it fails to secure other trade unions' support, the change might be realized.

2.2 Trade union responses to precarization: A review of case studies

This section focuses on trade unions' responses to labor reforms in certain countries where the reforms bring about precarization. For this review, I have chosen the reforms that brought about precarization in the labor markets in their respective countries. The country examples have been chosen considering the economic development, the labor regime, and whether the country is democratic or not. The review consists of countries in Western Europe, Peripheral Europe, and Africa. The literature lacks theory-building studies and comparative approaches. Thus, the

studies mentioned below are the descriptive ones that refer to different power resources of the unions in those countries and their responses to legal reforms.

2.2.1 The Netherlands: Flexicurity and After

In the Netherlands, the early 1990s mark a cornerstone for the labor market as it was the time when trade unions agreed with other social partners on increasing flexibility in the Dutch labor market. The trade-off was increased social security for flexible contracts in exchange for legislation that would ease the use of flexible contracts by employers (Van Oorschot, 2002). This combination of security and flexibility is known as flexicurity. The idea behind the trade union response was that precariousness emerged due to a lack of social protection not due to the absence of jobs.

The Dutch trade unions' first response before the enactment of the reform regulations was to participate in the reform process to alter the course of reform (Van Oorschot, 2002). They have managed to balance out the flexibility via demands to expand social security towards the flexible contract holders. This negotiation was done through effective tripartite social dialogue mechanisms where the trade unions have activated their institutional power resources stemming from their share in social dialogue. Trade unions thought that the number of flexible working people will be small enough not to affect the core members of the trade unions (Van Oorschot, 2002).

However, the trade-off has started to benefit the employers more, as the flexibility became more of a standard while the trade union expectation was that it would be limited to a negligible percentage (Van Oorschot, 2002). Employers have started the extensive use of flexible work arrangements like fixed-term contracts,

which can be terminated after the pre-agreed time; temporary agency work, which is a way of renting the agency's workers for short time; payroll constructions, which allows the employer to transfer administrative obligations to another firm; and "self-employed without personnel" which one-person company is hired instead of hiring that person under an employment contract (Boonstra et al., 2012).

The first reaction of Dutch trade unions to the growing size of flexible workers was the rejection of the new peripheral group of employees, deeming atypical employment as unacceptable (Van Oorschot, 2002). As soon as trade unions understood that rejection does not solve the precarization problem, they became more sensitive and inclusionary to the atypical employees. One of the first strategies developed against the flexibility was to restrict the numbers of atypical employees through collective agreements under which articles were added accordingly. The strategy worked for a while because it was allowing the trade union to safeguard its members while allowing the employer to adjust to fluctuating market demands (Boonstra et al., 2012). However, the expansion of flexibility and decreasing collective agreement coverage was signaling. The political lobbying to change the flexibility laws back was not successful because the trade unions were blamed by the other partners as trying to revert what they agreed during the flexicurity negotiations.

The post-reform responses of Dutch trade unions were to mitigate the effects of the reform by using their power resource deriving from the collective agreement coverage (Van Oorschot, 2002). By that, they tried to decrease the percentage of precarious work in the labor market. The aim was to protect their core workers against the proliferation of precarious work which in turn affects the core employees' employment security. This strategy to use collective agreements has not brought about the success they planned to achieve. The second response was to demand new

reforms to layer the initial one, but it was rejected through the social dialogue mechanisms (Van Oorschot, 2002).

Another strategy that trade unions pursued was the litigation against payrolling which trade unions convinced employees to sue single employers upon employer's misconduct. This strategy generally failed to bring about a significant change because the solutions remained at the individual level and many employees did not want to litigate their employers due to fear of losing their jobs (Boonstra et al., 2012). The Dutch trade unions also tried to organize the sectors which are generally under-organized and employed by migrants. For that strategy, they used large scale media campaigns and created awareness among not only their members but also the general public. Even though the success of this strategy cannot be measured, it is argued to strengthen the hand of trade unions in the social dialogue (Boonstra et al., 2012).

Enhancing their power resources by expanding their scope of representation and by getting support from the public was a response that Dutch trade unions have developed after their initial responses. They aimed at gaining more members to strengthen their representative capacity by adding segments of workers under their organizations and they have tried to win the public vote to strengthen their hand in social dialogue mechanisms. The trade unions in the Netherlands have been able to mitigate the harms of precariousness to some degree but it is unrealistic to state that they were able to halt the progress of precarization (Boonstra et al., 2012).

2.2.2 Germany: Gute Arbeit and Power of Agenda Setting

In line with globalization and the introduction of neoliberal policies, Germany has also gone through the flexibilization of labor market policies since the 1980s, which

were justified on the grounds of global competitiveness. As a result of these changes, the workforce in Germany has started to get more and more precarious (Bispinck & Schulten, 2011) through the proliferation of part-time employment, apprenticeships that do not convert into full-time jobs, temporary agency works, and dependent self-employment, resembling the case of the Netherlands.

German trade unions have been using the tripartite social dialogue and political lobbying to restrict the progress of flexibility in the labor market as they deemed the reform policies as the core reason for precariousness (Bispinck & Schulten, 2011). German trade unions' agenda includes a comprehensive set of rules under which some of the employment types (marginal part-time jobs) are explicitly forbidden, acquiring full-time job positions are easier, and social security coverage is expanded. The trade unions also utilized their relatively high coverage of collective bargaining as a tool (Bispinck & Schulten, 2011). It is seen that the trade unions in Germany have tried to mitigate the effects of the reforms done in the 1980s by activating their institutional power in the tripartite systems which are powerful under the corporatist economy of the country. For this aim, they tried to alter the reform by demanding bans and limitations to downgrade the effects of the reforms, thus the precarization. By this, the German trade unions pushed the changes in the content of the reform aiming to make it more acceptable for the employees.

The number of members is essential for trade unions in Germany as they must meet minimum thresholds to carry out collective bargaining. For this reason, German trade unions have started to expand their membership base from the traditional, core, and regular employees to atypical, peripheral, and irregular employees (Bispinck & Schulten, 2011). For this aim, the trade unions started to organize the workers by giving practical help and counseling in case of unfair

treatment. In response, unions started to recruit the precarious workers as their members. As most of the counseling and practical help was distributed through online websites, Bispinck & Schulten (2011) argue the strategy has been successful at penetrating the precarious workers in almost every sector and place.

At the enterprise level, collective agreements may cover and provide certain rights to the precarious and short-term employees in the same enterprise. The articles of these agreements may include provisions on low wages, on working conditions, and especially on marginal part-time employment. The provisions sometimes can go as far as banning the marginal part-time employment at the individual enterprise-level. However, in the German case, the coverage does not include many precarious workers under temporary agency workers as the Christian yellow unions are actively making collective agreements with agencies in a more employer-friendly fashion to be able to make the agencies' workers of those unions members (Bispinck & Schulten, 2011). As mentioned above, one of the determinants of the trade union responses is the number of significant trade unions. In Germany's case, the yellow unions have been increasing their membership base through expanding towards temporary agencies that are more willing to have collective agreements on lower standards. Thus, the rest of the unions which tried to participate in the post-reform collective agreements to mitigate the effects has been hampered by the other unions.

What differentiates the German case from others is German trade unions' attempt to collectively set an agenda called Good Work (Gute Arbeit). This action should be deemed as the demanding of new reforms to alter or layer the initial ones. Good Work advocates an alternative to the neoliberal agenda (Bispinck & Schulten, 2011) by promoting more regular and justly paid work that does not predominate the lives of employees (Index Gute Arbeit, 2019). With such agenda-setting, the trade

unions have been successful at receiving attention among the public, government, other social partners, and trade union members. Moreover, the terminology has been used by the intelligentsia in academic writings and started to influence politics by the power of the basis it created not only among members but also the general public. Bispinck & Schulten (2011) argue that the public has been supporting the trade union agenda and the target of halting the precarization has been relatively successful.

2.2.3 Baltic Countries: Unilateral Actions or Common Solutions?

Comparing the post-Soviet Baltic States of Poland, Slovenia, and Estonia, Mrozowicki et al. (2013) argue that in the retail sector, labor markets in these countries have been going through serious retrenchments in terms of employment security. The trend of precarization in the Baltic labor markets has been speeding up since the economic crisis of 2008 due to intensified global competition. Taking the scheme from Gumbrell-McCormick (2011), the authors develop three possible scenarios for trade unions: staying passive and to some degree ignoring the growing group of precarious workers, taking unilateral action to counter the process, and trying to activate other partners for possible common solutions.

In all three select countries (Poland, Slovenia, and Estonia) in the Baltic, trade unions have rejected to participate in the precarization and flexibility reform processes. They also did not respond to the growing numbers of precarious work and workers in the following years after the reform. However, when the outcomes of the reform impacted their membership bases, the trade unions started to develop post-reform responses.

Only in Slovenia, which culminated in a neo-corporatist legacy after the dismantling of the Soviet Union, trade unions have been able to activate the third

scenario, using tripartite social dialogue mechanisms for reaching common solutions. For example, the low minimum wage for the retail sector, which was an ongoing issue for all three countries has been resolved in Slovenia via sector-level collective agreement (Mrozowicki et al., 2013). Moreover, the rest of the salaries in the retail sector has been raised following the minimum wage in the following years via the same strategy. In Slovenia, the trade union response was to participate in the post-reform institutions to mitigate the effects of the reform by using their institutional power in the social dialogue. On the other hand, in Poland and Estonia, the sector level collective bargaining does not exist due to lack of employer representation, and the tripartite social dialogue mechanisms are deemed illusionary (Ost, 2011). For the minimum wage problem in the retail sector, trade unions in Estonia and Poland have taken unilateral actions with demonstrations, awareness campaigns, and strikes. It means that the trade unions in Estonia and Poland responded by demanding new reforms that would invalidate the initial reform. These unilateral responses were determined by the lack of tripartite social dialogue mechanisms and the lack of power resources to conclude collective agreements. Only Slovenia has culminated in some solid success with awareness campaigns during the referendum for laws that will make temporary work legal. The Slovenian public voted the bill down (Mrozowicki et al., 2013).

In the absence of tripartite and/or bipartite mechanisms, Estonia and Poland's trade unions resorted to unilateral actions like the recruitment of precarious retail workers as members. By changing their statues to cover single-employee firms that were hit hard in the crisis, they managed to expand their membership basis (Mrozowicki et al., 2013). The trade unions with an enlarged membership basis have started to organize protests against the policies making the workforce more

precarious. In Estonia, the demands of the protests were focusing on the low-wages, while in Poland the issue was the contractual status of the precarious workers. Even though the protests in both of the countries dominated the media and to some extent drew public attention, there was no significant change in the legal status or policies towards precarization (Mrozowicki et al., 2013). The most important commonalities among trade union strategies in Baltic states was the use of social media and other media outlets to inform the public about the contested issues.

Comparing the three Baltic States, Mrozowicki et al. (2013) conclude that trade unions are more devoted to monitoring tripartite and bipartite agreements application in Slovenia, to raise the coverage of collective agreements in Poland, and to take unilateral actions in Estonia. It can be inferred that trade unions in Slovenia responded to the post-reform situation by participating in the post-reform processes and institutions to mitigate the effects of the reforms aiming at limiting the extent of reforms. In Poland and Estonia, the responses were to enhance the power resources of individual unions to gain leverage in collective agreements and altering the reforms, respectively.

2.2.4 Southern Europe: How Power Resources Determine Responses

Pulignano et al. (2016) compare Italian and Spanish trade unions according to their responses to the precarization and in-work risk of poverty, which affects those countries the most compared to other EU members. The case for Italy is not a distinctive one, starting from the mid-1980s, Italy experienced new forms of flexibility such as work-and-training contracts, which officially allows employers to employ people under training contracts paying lower wages and are more flexible in working hours. Self-employment for a single or limited number of firms started to

emerge and became common, and strict contractual provisions were weakened. Temporary agency work was established and even though the efforts of Italian trade unions' initial efforts to prevent the enactment of those policies, all the above-listed atypical working conditions have spread through Italy (Pulignano et al., 2016) in the name of competitiveness due to globalization.

Contrary to the Baltic States, trade unions in Italy have responded to the reforms before they were enacted. They participated in the process to alter the reforms without completely rejecting them. However, the four biggest trade unions were split into two, the largest one rejected the final reform while the other three voted in favor to combat unemployment while accepting more flexible and precarious working conditions. With the extensive efforts in the tripartite social dialogue mechanisms, they managed to add social security provisions to the reform bill. However, flexible and precarious work has proliferated in the upcoming decades to the point of threatening the core union members, pushing the trade unions to develop new responses.

In Italy, trade unions responded to the precarization by enhancing their power resources by expanding their representation. Main confederations have created institutions to be able to represent the precarious workers. They also tried to either absorb the self-organized precarious workers' institutions or cooperated with them heavily (Pulignano et al., 2016). To be able to expand their membership base, they launched awareness campaigns among precarious groups and the public while pushing for the reorganization of the workforce on multiple levels. Two major confederations followed different paths, while one was advocating for the limitation of temporary work by law, the other chose the servicing model which targets the special needs of precarious employees and assists them (Pulignano et al., 2016).

Aside from those, precarious employee organizations in Italy pushed trade unions to add articles on social protection and wages into collective agreements with employers. The organizations also report misconduct by taking advantage of their decentralized structure. These organizations, whether they were absorbed by trade unions or not, created awareness-raising campaigns starting from trade union members to the general public. However, the clash between the organizations and unions occurs because the former tries to establish itself as an institution to foster the rights of precarious workers while the latter strives to diminish the number of precarious workers through more strict rules on contracts (Pulignano et al., 2016).

Trade unions in Italy in the post-reform era could not effectively use social dialogue mechanisms (Pulignano et al., 2016). It was partially because the divergence in opinions between the two largest trade union confederations weakened the labor side in the tripartite social dialogue. This divergence was stemming from the responses of those trade unions after the reform. One of them was participating in the post-reform institutions by switching the servicing model. The other was demanding further reforms to layer out the initial ones for mitigating the effects by decreasing the number of precarious works created by the market.

The commonality among trade unions in Italy was their focus on the collective agreements (Pulignano et al., 2016). They have tried to mitigate the effects of the reform via sector and enterprise-level collective agreements, which include social protection provisions for precarious workers that trade unions were heavily interested in. By this method, trade unions also enhanced their power basis concerning membership base and collective agreement coverage. However, the enhanced power resources failed to bring cease to the progress of precarization

nationwide due to divergent situations of labor in national tripartite social dialogue mechanisms.

In the case of Spain, the unemployment rate was high during the early 1980s, and the government's reaction to the situation was to reform the labor market via deregulation to ease the way of job creation needed in rigid markets (Pulignano et al., 2016). Temporary employment was legislated by the new democratic regime regardless of the trade unions' rejection. The reform was not successful at creating new jobs but resulted in contractual dumping. Contractual dumping refers to an act of employers changing already permanent contracts to temporary ones in the workplace (Pulignano et al., 2016). Moreover, the situation was the same for the civil servants.

In the pre-reform era, trade unions in Spain participated the newly democratized social dialogue mechanisms to reject the reforms that make workers precarious. However, the efforts were partly successful. Even though trade unions managed to change the law to retrench temporary contract usage in the late 1990s, the civil servants remained virtually untouched, the very limited effect was seen in the private sector (Pulignano et al., 2016).

In Spain, the trade unions have chosen to deal with precarization through political lobbying at the high level of political and economic institutions using their party ties. This strategy was used as the overall rates of unionization and collective bargaining were low (Ortiz, 1999). At first, the precarious workers were not on the agenda of trade unions and the trade unions were defending the rights of their core members. They were trying to influence the enactment of laws that would diminish the risks for their members. However, in the late 1980s, the prevalence of precarious workers started to threaten the core group as the precarious workers were used by

employees as a bargaining tool (Pulignano et al., 2016). The trade unions, newly adapting the precarious employees, had called for a strike in 1988 against the plans of the government to extend the use of temporary contracts for young employees as a measure to prevent youth unemployment. Such plans have passed the parliament with few alterations from the original bill.

Just like in Italy, the major trade union confederations in Spain have differed in their strategies during the mid-1990s. One major trade union confederation started to battle with the dualization of the workforce between core and peripheral and negotiated with the government. The negotiations ended up with reducing the cost of permanent contracts, the cost which employers abstain from, and make them inclined to hire more temporary employees (Pulignano et al., 2016). The other confederation, following the Italian trend, has tried to expand its membership base to precarious workers, targeting mainly the youth. However, this effort received criticism from the core workforce and started to lose momentum over time (Pulignano et al., 2016). Later, the youth organizations, especially the ones in industrially developed Catalonia, have gained their momentum back with the support of trade unions which aim at expanding their bases and represent workers.

Even though the trade unions in Spain have responded to the reforms negatively both in the pre and post-reform periods, they could achieve little success. Given the low rates of membership and collective coverage rates, the Spanish trade unions relied on social dialogue mechanisms to mitigate the effects of the reforms. However, due to divergent strategies between two major trade unions, failure to coordinate the demands in the dual labor markets, and the politically divergent structure of the country, the responses diminished the power of labor in those mechanisms.

The main difference between Italian and Spanish unions is their power resources which heavily influence their responses (Pulignano et al., 2016). While Italian ones, which historically enjoy larger membership and coverage rates, leaned on expanding their basis, the Spanish ones relied on their party ties and social dialogue mechanisms. Even though trade unions of both countries have developed responses for pre and post-reform the Italian ones were more effective because of their more deeply settled power resources in both collective agreement-level and tripartite mechanisms.

2.2.5 Ghana: Building Social Dialogue from Scratch under Authoritarian State

The precarization is not a phenomenon that affects the developed countries this thesis has listed until now. Since the first quarter of the 1980s Ghanaian government were trying to reform its economy to make it more competitive in the global market. The reforms included the privatization, lifting the bans on free import and export, liberalization of the Cedi (Ghana's currency), and more thorough structural adjustment programs (Anyemedu, 2000). Even though some significant success in terms of economic growth has been achieved during the first years, the reforms resulted in serious job losses in both public and private sectors, depreciation of Cedi's purchasing power, and flexibility in the labor market.

The response of Ghana's Trade Unions Conference (GTUC) to the reforms can be viewed in two phases: attempts to change the policy and reforms, and adjusting to the post-reform economy (Anyemedu, 2000). The initial responses can be classified into two. First was awareness-raising among the public, members, and intelligentsia through conferences, workshops, and seminars to create a power base for the second step which focuses on political lobbying. The political lobbying phase

included the sending of representatives to the bodies charged with carrying out the reforms to be able to voice GTUC's concerns and affect the outcomes in the application and creating a liaison structure for the parliament to be able to change the course of reform laws before they are enacted (Anyemedu, 2000). The latter strategy was criticized by inner chambers for becoming a part of what GTUC had stood against during the reforms.

In the pre-reform period in Ghana, the GTUC has tried to enhance its power resources for its next step, which is to participate in the process of shaping the reforms. This response was aiming at changing the content of the reform which would affect both its core members and the peripheral ones. The trade union has participated in the social dialogue mechanisms created for the reforms to limit the precarization content of the reform.

Even though the significant efforts of the GTUC, the neoliberal reforms were generally implemented and there was little success from GTUC's side due to the authoritarian structure of the state and government. After the perceived failure to restrain the realization of the reforms, GTUC started to adjust itself to the post-reform conditions (Anyemedu, 2000). GTUC started to expand its membership base both by including new trade unions under the Congress and organizing membership campaigns from micro to macro scale. GTUC's main focuses during the campaigns were the people in the informal sector, women, and the people becoming precarious after the reforms. In the post-reform era, GTUC has started to develop responses to mitigate the effects of the reform by strengthening its power resources. GTUC started to recruit new members as well as forming alliances with the already existing ones and aligned itself to the regional and continental confederations. In parallel, GTUC

continued to participate in the post-reform institutions and processes to gain institutional power resources.

Even though GTUC was successful at recruiting new members, it was not able to transform its enlarged membership base into a power resource to curb the phase of reforms. Thus, GTUC started to make financial investments with the membership dues to be able to be financially less dependent. The gain over these financial investments was a tool for job creation in the areas of investment and was a way to create alliances in those sectors. The struggles of GTUC has been moderately successful and Anyemedu (2000) argues that the tide generated by the GTUC is more of a contribution to the global counter-movement against the inequalities created by globalization than a strong response to the government.

The GTUC lacked the power resources to tackle the reforms that the authoritarian government had wanted to realize. Thus, the response of the GTUC is shaped as to invest its resources by expanding its membership and investing in sectors struggling more under precarization. In that way, it can be deduced that GTUC has tried to mitigate the effects of the reforms both for its core members and the peripheral workforce. It is of importance that the GTUC also has tried to enhance its institutional power by participating in the newly established social dialogue mechanisms to have a say in both the reforms and, more importantly, the mechanisms themselves.

2.2.6 Zambia: Change of Organizational Strategy in the Aftermath of Structural Adjustment in the Public Sector

Precarization is not only specific to the private sector but also valid for the public sector which is often defined by more stable, government-backed security and

relatively well-paid occupations. Under the name of New Public Management reforms, the government of Zambia has started to implement neoliberal policies such as privatization, decentralization, and cost-saving measures in the early 1980s (Madimutsa & Leon, 2017). The reforms were originated by IMF and World Bank's policy prescriptions oriented to the developing and underdeveloped countries. Since the reforms have been initiated by the external actors, during the 1980s Zambia has experienced many protests and strikes which resulted in halting the process of reforms in the public sector. In the early 1990s, the Zambian government continued the process of privatization, outsourcing, performance management, and partnerships with private enterprises. The structural reform has caused job losses in the public sector. Almost half of the public servants were dismissed, more than half of state-owned enterprises were privatized and many public sector-delivered services were left to the private sector like education and health (Madimutsa & Leon, 2017). Also, the decentralization of public services has fragmented the civil servant workforce.

The trade union membership among civil servants in Zambia has dropped down almost by 45% due to dismissals and structural changes in employment as they were no longer civil servants (Madimutsa & Leon, 2017). This situation has swiped off the financing of the Civil Servants Union of Zambia (CSUZ) which in return made the trade union unable to perform its main goals like protecting the members and upgrading their standards of living. On top of that, by losing the funds and trust of their members, CSUZ started to lose its influence over the government (Madimutsa & Leon, 2017), in this case also the employer. Having failed to halt the reforms, even lost the litigation on severance pays after unfair dismissal, CSUZ started to make efforts on mitigating the negative effects of the reforms.

CSUZ started to actively participate in the reform process to be able to soften the hazardous implications of the reforms at national and institutional levels. For example, CSUZ managed to pull the focus from “reduction of the workforce” to “appropriate level of employment” under which GSUZ was effective in identifying the appropriate level of employment in key sectors (Madimutsa & Leon, 2017). Besides, CSUZ also changed its structure to expand its membership base from only focusing on civil servants to private-sector workers. CSUZ changed its name to Civil Servants and Allied Workers Union of Zambia (CSAWUZ) and developed strategies to attract female employees. However, the membership rates continued to decline as CSAWUZ was organizing itself in sectors that were in rapid decline (Madimutsa & Leon, 2017).

CSAWUZ changed its institutional structure for the sake of raising collective bargaining coverage and created a department consisting of experts that will scrutinize the global trends in the area to strengthen their hands on the table (Madimutsa & Leon, 2017). Rather than having one department dedicated to collective bargaining, the department was split into two sections focusing on the specific needs of different groups of employees. However, this strategy created dualism among the members of the CSAWUZ as two sections had different rates of successful collective agreements as well as different benefits they culminated (Madimutsa & Leon, 2017).

From the beginning, CSUZ/CSAWUZ was responsive to the reforms that were initiated by the government which was supported by international financial institutions. These active and spread out responses were given because the reforms were aiming the civil servants which was the sector that CSUZ/CSAWUZ’s power resources were vested. In the post-reform period, CSUZ/CSAWUZ has tried to

mitigate the effects by participating in the process from the beginning, to enhance its severely harmed membership base, and has done so by both renewing its internal structure and by advocating its agenda in the social dialogue mechanisms.

2.3 Conclusion

To conclude, this literature survey demonstrates that trade union responses to precarization vary across countries depending on the power resources of trade unions, the content of the reforms, trade union perceptions of the reform, the political regime of the country, and the inherited labor regime. While the literature on trade union responses to precarization reforms does not lead to theory building, it still presents how particular variables shape trade union responses. In the case of the Netherlands, the content of the reform, its framing, and trade union perceptions of the reform were the main determinants of the favorable trade union response. However, the trade union expectations were proven wrong, which led them to change their responses later. As another example, power resources were the main determinant that differentiates trade union responses in Italy and Spain. Italian trade unions' larger membership basis which was converted successfully into collective agreements and stronger representation in social dialogue mechanisms made them more successful than their Spanish counterparts. The authoritarian regime in both Ghana and Zambia forced trade unions to align themselves with other actors in the industrial relations to have a stronger hand in the social dialogue mechanisms which they had to build from the beginning. The labor regime at the time of and after the reforms were the determinants of Slovenian trade unions' ability to activate their power resources using the social dialogue mechanisms.

Despite the variety, there are commonalities in trade union responses to precarization. It can be deducted from the examples that the trade unions' first responses to the reforms that bring about flexibility and precarization are generally participating in the reforms to tailor the content of the reform, with a few examples of outright rejection. In post-reform periods, however, all trade unions demand new reforms to revert the negative outcomes of the original reform or trying to mitigate its adverse effects.

The effectiveness of these responses to precarization depends on the power resources available to the trade unions. If the trade union has institutional power, they opt for using social dialogue mechanisms. The institutional power depends on the existence and effectiveness of the social dialogue mechanisms as well as the number of trade unions represented in those mechanisms. If trade unions have the organizational power, they tend to use it through collective agreements to mitigate the effects in sectoral or enterprise-levels. Organizational power generally stems from the number of members of a trade union and how well the trade union can activate the members. It also hinges on the rivalry among trade unions in the same sector of the economy. In all country examples discussed in this chapter, it is evident that the trade unions use a variety of their power resources they can activate to mitigate the adverse effects of the reforms. They do not lean on a single strategy and develop responses at various levels. However, if they fail to get their desired results with their power already in hand, the trade unions tend to invest in their power resources, thus their power, either by recruiting new members or creating alignments with other trade unions and/or other actors. The ones that lack some of the power resources even try to create them. These efforts bring about union revitalization (Frege & Kelly, 2003). Generally, the newly recruited members are either the

individuals who had been most affected by the reform or who had already been in precarious employment even before the reforms.

Precarization has been an ongoing global phenomenon that undermines employment security and poses a significant challenge to trade unions. Trade unions develop strategies to overcome the negative effects of the precarization in various ways throughout the world mostly by re-investing their power resources as political actors in the current industrial relations. The next chapter introduces the launch of mandatory ADR in individual labor disputes in 2018 as a precarization process and presents the harsh environment of industrial relations in Turkey. In the context that will be explained in the next chapter, this thesis explores the following questions: How do Turkish trade unions perceive and respond to the introduction of mandatory ADR in individual labor disputes? What power resources have shaped their response? I believe studying the Turkish trade union perceptions of and responses to the introduction of mandatory ADR in individual labor disputes will contribute to the literature in two ways. First, by shedding light on trade union responses to precarization in an understudied developing country case. Second, by expanding the scope of this literature to trade union responses to precarization in a dualized labor market context with significant informality.

CHAPTER 3

MAIN FEATURES OF INDUSTRIAL RELATIONS SYSTEM OF TURKEY

This chapter will lay out the main features of the industrial relations system of Turkey with the use of labor statistics and define key labor actors in the area. The aim is to shed light on the current labor relations and give the context of the country to understand the content of the reform and its possible outcomes. Later this chapter will include the ADR and its development in individual labor disputes. Lastly, the chapter will touch upon the academic studies done in Turkey related to the ADR in individual labor disputes.

3.1 Features of Turkish Labor Market

In Turkey, the annual unemployment rate between 2014 and 2019 had been 13,18% on average with no decrease between consecutive years, and in the same period, the employment rate was 50,7% on average (TUIK, n.d.). One of the main characteristics of the Turkish labor force is the extent of informal employment, which means the person is not covered by the social policy provisions entitled to his/her job because s/he simply is not registered as in work. The yearly average rate of informal employment has dropped from 52,14% in 2002 to 33,42% in 2018 (SGK, 2019) while in January 2020, it is recorded as 31.0% and 20.9% when agricultural employment is taken out (TUIK, 2020). The prerequisite for being a member of a union is to be a registered worker, thus almost one-third of employees in Turkey cannot be members of unions because of their informal employment status.

The average unionization rate of Turkey for formally employed between January 2013 and January 2019 has been slightly over 12% with the tendency to

increase over those years with a few decreases recorded in 6-months periods (DISK-AR, 2019). However, it is argued that the increase in the unionization rate is debatable because the government in 2014 has eased the way for sub-contracted workers to become union members and make collective agreements, respectively, (DISK-AR, 2019). These data do not include the civil servants which usually have better averages than the workers. The data is deemed debatable because even it represents a real increase in membership, the increase is due to the proliferation of workers who can be members and it shows government's tendency to support its ideologically closer trade unions and confederations. This tendency will be scrunitizied in the following section in more detail.

In the DISK-AR (2019) report, which processes the data from the archive of the Ministry of Family, Labor, and Social Services; it is also argued that the rates do not reflect the reality as the rates do not take into account the informal employment. When it is included, the average rate drops down to 9.5% showing the same tendencies as the official rate. The Ministry publishes the official rates twice a year and two more bulletins have been published since the DISK-AR report. The rates were 13.76 and 13.84 (Ministry of Family Labor and Social Services, 2019, 2020). The latest reflects 1,917,893 unionized workers within a total of 13,856,801 employees.

To benefit from a collective agreement, an employee must be a member of the union which signed the agreement. For a trade union to have the authorization to make collective bargaining the number of members should exceed thresholds put into order in sectoral (1%), workplace (simple majority), and enterprise (40% +1) levels. Upon the authorization given by the Ministry of Family, Labor and Social Services, the bargaining begins with the employer. During the process of obtaining the

authorization, the employer may object to the Ministry forcing them for recounting, and during this time the employer may attempt unwelcoming behaviors like dismissing workers to diminish unionized workers' number and applying for re-registry to a different sector (Bakır & Akdogan, 2009).

The bargaining unfolds as follows: If partners agree on every article brought to the negotiation, they sign the agreement which can last at least one and a maximum of three years. The collective agreement cannot be changed, amended, or replaced in this period. Also, during the bargaining, if both partners agree, they may apply to a special referee (özel hakem) whose decision is final. A special referee is a person or a board-like formation that is agreed upon by both partners. However, most of the time, collective bargaining processes do not smoothly lead to collective agreements; they tend to end up in collective labor disputes which may lead to a strike and/or lockout.

In the case of a dispute, the partners must first consult a mediator whose duty is to find the spots of disputes and come up with solutions to convince both partners. If the mediator fails to resolve the dispute, s/he writes a report on disputes with his/her solutions and submits the report to the ministry. After the mediator submits the report, the trade union gains the legal right to carry out industrial action.

For a strike to be a legal strike, one-fourth of the total workers in the workplace must demand a plebiscite for a strike by applying to the ministry. If the plebiscite ends up in favor of no strike, a trade union can apply to the High Board of Mediation (Yüksek Hakem Kurulu), whose decisions are final and has the force of the collective agreement. The Board consists of three state- elected, two government-selected officials, and two members from each side of the dispute. As it can be

deemed from its membership structure, the state is the dominant party in the High Board of Mediation.

The plebiscite ends up in favor of a strike if half of the voters approve the strike. By informing the employer six days before, the workers can start a strike in 60 days. When a strike begins, the employer also gains the right to carry out a lockout provided that the employer informs workers six days in advance. In the case of a strike, the minister can him/herself act as a mediator or authorize someone to be the mediator.

The government has the right to postpone a strike for 60 days for reasons including threats to general health, national security, and the economic or financial stability of the country. If the decision for postponing was made by the government, after 60 days, one of the partners can apply to the High Board of Mediation whose decision is final. If none of the partners apply to the High Board of Mediation, the authorization of workers' union becomes invalid. This legal arrangement leaves no room for a strike if the government decides to postpone a strike and it is not exceptional that the governments do so (Celik, 2008).

The legal process of collective bargaining explained above and technical difficulties (Ulucan, 2014) hinder the right to the collective agreement. Only 8,4% of formally employed workers are benefiting from collective agreements while the rate drops to 7% when the informally employed workers are included as of January 2019 (DISK-AR, 2019). Thus almost 40% of the workers are not covered under the collective agreements even though they are unionized.

3.2 Characteristics and structure of Trade Unions and Confederations

Other significant problems of Turkish labor relations are the characteristics and structure of trade unions in Turkey. Unionism was legalized in Turkey in the mid-1940s as parallel to Turkey's democratization process which acknowledges the necessity of labor organization in developing industry (Koray, 1994). The beginning of union formation was put under the tutelage of the state, which made unions a device controlling the workers till the early 1960s(A. Çelik, 2010). The first confederate organization was the Confederation of Turkish Trade Unions (Türkiye İşçi Sendikaları Konfederasyonu - TURK-IS) which was found in 1952. TURK-IS managed to organize a considerable number of workers under its domain in a mostly agrarian country at that time and still is the largest confederation in Turkey. Till the 1960 coup d'état, TURK-IS was affected by the dispute between the People's Republican Party (Cumhuriyet Halk Partisi – CHP) and its split Democratic Party (Demokrat Parti – DP) over capturing the administration of the Confederation. In this period, TURK-IS opted for a more accommodating role swinging between the two largest political parties (A. Çelik, 2010).

The 1961 Constitution, which was often described as union-friendly, led to the proliferation of the number of unions and confederations. The 1960s witnessed the foundation of two more major confederations, which still are significant actors in the labor relations of Turkey, namely the Confederation of Progressive Trade Unions (Devrimci İşçi Sendikaları Konfederasyonu – DISK) and the HAK-IS Trade Union Confederation (Hak İşçi Sendikaları Konfederasyonu – HAK-IS). The former had revolutionary leftist tendencies, while the latter was in line with political Islam.

These new confederations differed from TURK-IS by having strong non-mainstream political identities and by aligning themselves to political parties of their

respective political ideologies. At the time, TURK-IS had officially formed a strategy of being supra-political, meaning TURK-IS would not align itself to a single party while fostering the rights and lives of workers and blamed the other confederations for operating under the mandate of political parties. However, TURK-IS was still swinging between center-left and center-right parties, which took place in consecutive governments. The period between the 1960s and the late 1980s was the era that the trade unions and confederations emancipated themselves from the state's tutelage, formed their ideological lines, and became significant political actors (Mahiroğulları, 2003).

In the 1980s, Turkey's labor relations have suffered from two major phenomena; authoritarianism and neoliberalism. Both of those phenomena were products of the 1982 coup d'état and later, continued in the post-coup period when democratically elected governments ruled under the tutor of the junta (A. Çelik, 2015; Mahiroğulları, 2003). Authoritarianism emphasized the role of the state in society's way of organizing, including the trade unions whose activities were extremely limited and their role in politics was diminished. This situation forced trade unions to simply advocate the economic interests of their respective members while giving up their role as broader pressure groups (Mahiroğulları, 2003).

The only significant confederation that was not closed during the coup was the TURK-IS, which continued its supra-political approach during the military rule. DISK and HAK-IS were closed along with their aligned political parties and lost their power significantly. HAK-IS was able to restore itself in 5 years following the junta regime, while it took DISK till 1991 to reorganize itself under the same name. However, both confederations avoided forming alliances with any political parties while informally supporting different parties that are in line with their ideologies.

Neoliberalism brought about a shift from an import-subsidizing, protected economy to an export-oriented, highly competitive, and unprotected economy in Turkey. This shift resulted in the flexibilization of labor in line with international trends that emphasize competitiveness. All of the confederations and their trade union members suffered from proliferation and legalization of atypical working, informal employment, and precarization of the labor force which stemmed from the shift of economic development strategy (E. Çelik & Güney, 2017; Mahiroğulları, 2003). Even though the authoritarian effects of the coup was gradually diminishing from the mid-1980s through the mid-1990s, all confederations experienced shrinkage in their constituencies and losses in their political power against the governments, which implemented the neoliberal agenda and often prioritized the interests of employers (A. Çelik & Özkızıltan, 2018).

Moreover, during the first decade of the new millennium, the government committed itself to neoliberal policies even more than the previous two decades and Turkey has experienced its peak precarization levels. The union density and collective agreement rates had dropped down significantly, while the state was getting more and more authoritarian concerning labor relations (A. Çelik, 2015). However, starting from the early 2010s trade unions seem to enjoy growing numbers of members which brought about union revitalization.

The revitalization was not evenly experienced by all confederations in Turkey (DISK-AR, 2019). According to the DISK-AR report (2019), from 2013 to 2019, the total rise of membership to trade unions under confederations was 86% but while HAK-IS has seen a 311% rise in their membership base, growth for DISK and TURK-IS were 71%, and 38% respectively. Currently, TURK-IS still represents the largest number of workers with a rate of 52,5%, while HAK-IS is closing the gap

rapidly with a representation rate of 36,8% and DISK is conserving its almost 10% rate (DISK-AR, 2019).

Çelik (2022) argues that the divergent and skyrocketing expansion of HAK-IS is due to its symbiotic relationship with the ruling party. The governing party enables the organization of ideologically aligned trade unions and confederations while suppressing the rest in an authoritarian fashion. The last two decades in Turkish labor relations is described as the era of authoritarian flexibilization, which combines flexibilization for disciplining and weakening the labor and suppression of labor regime by making reaching the rights like collective agreement harder and eliminating how trade unions may voice their concerns, along with the ruling party's ideological lines (A. Çelik, 2015).

Also, over the course of the Justice and Development Party era, the government has shifted its position from cooperating with TURK-IS to supporting HAK-IS which is ideologically closer to the ruling party (Ozkiziltan, 2019). Ozkiziltan (2019) also finds that the traditionally embedded trend of diminishing the confrontational style unionism has been extensively used during the last two decades especially by the current ruling party. This trend is intensified during the state of emergency following the failed coup attempt in 2016 which ended only when Turkey's political system has become presidential replacing the previous parliamentary democracy.

This trend towards authoritarian flexibilization shows itself in social dialogue mechanisms in Turkey. Social dialogue, in its broadest definition, refers to any type of negotiation, consultation, and/or information sharing between or among government representatives, employers, and workers on social and economic issues of common interest (ILO, n.d.). Social dialogue emphasizes democratic negotiations

among government, employers, and employees to achieve social peace and coherence. Even though Turkey has numerous tripartite social dialogue mechanisms, the success of those mechanisms has been deemed insignificant (Atasayar, 2011). In an atmosphere where the government had established itself as dominant and the trade unions are weak, the social dialogue becomes vain (Görmüş, 2007).

Currently, with the neoliberal policies, the authoritarian regime in labor relations (A. Çelik, 2013), emphasizes the role of the state, which generally sides with the employers while actively undermining the trade unions. Thus, social dialogue mechanisms lose their effectiveness or are far away from producing balanced outcomes. Moreover, the ideologically fragmented structure of the confederations makes it harder for them to have a common voice, impoverishing the already weak position of workers in industrial relations.

It can be inferred that the current Turkish labor relations are defined by low levels of unionization, even lower levels of collective agreement coverage, fragmented union landscape, and ineffective social dialogue mechanisms. On top of that, the government, which mostly supports the employers, is the dominant actor in labor relations and it pushes neoliberal agenda through its authoritarian position. Under these conditions, labor regulations, as well as the labor courts, emerge as critical sites where authoritarian flexibilization tendency can be explored.

Given the main features of the labor force, the trade unions in Turkey and the industrial relations context above, Adaman et al. (2009) states that the trade unions are in a precarious situation in which they mainly protect their membership base while ignoring the rest. This situation brings about the legitimacy problem for the trade unions as their claim to represent the working class is limited to their relatively small membership base. On the other hand, the trade unions and the confederations

are large enough not to be taken down by neither the government nor the enterprises and their precarious existence under the political and the industrial relations system will depend on the strategies they develop against the two (Adaman et al., 2009).

3.3 The Development of ADR in Individual Labor Disputes in Turkey

In Turkey, given the problems in collective solutions due to low rates of unionization and collective agreements, the number of individual labor disputes carried to the labor courts has been rising. The number of labor cases has increased more than 70% from 2010 to 2017 making the annual average of 424,884 cases, while the average duration of trial jumping from 466 days in 2010 to 530 days in 2017 (Republic of Turkey Ministry ofJustice, 2018). In 2017, 376 judges were working in 320 labor courts and 514 civil courts of the first instance were compensating labor courts in places where there is no labor court (The Republic of Turkey, 2017a). The labor disputes constitute 15 percent of all cases brought to the first level courts.

Labor disputes are under the domain of private law in Turkey. In 2012, ADR in individual private disputes has been legalized in Turkey, which virtually includes the labor disputes (The Republic of Turkey, 2012b) and the same law acknowledges its scope as applicable to the disputes that the sides can freely appropriate upon. For example, domestic violence cases are explicitly out of scope. After defining the main features of arbitration in Turkey, the 2012 law sets the minimum criteria to become an arbitrator, how they will be trained, and explains the procedures for applying to arbitrator posts. The law also establishes the Board of Arbitration and the overall organization of arbitration-related institutions at local and national levels.

The Board of Arbitration is formed to bring together representatives of governmental and semi-governmental institutions related to arbitration. The Board

meets semiannually for determining the minimum fees for the arbitration, setting the standards of occupation, and auditing purposes. The other institution that the 2012 law found is the Department for Arbitration under the Ministry of Justice, which is charged to supervise the overall administration of practices and operating field of arbitration. Other areas of operation for the department are managing the process of arbitration services, registering the arbitrators to logging system, making collaborations with other actors in the field for promoting arbitration, and drafting legislation pieces to present them to the Board of Administration.

The official legislative intent of the 2012 law is introducing optional arbitration to allow individuals to settle their disputes outside of courts for the aim of contributing to social peace, enabling easier and simpler solutions to disputes without harming the absolute sovereignty of jurisdiction, and decreasing the workload of the courts (The Republic of Turkey, 2012a). Applications to optional arbitration have been low in numbers until 2016 with only 3,336 disputes admitted to arbitration (Çakır, 2016). among those arbitration cases, some 89% were labor disputes and 93% of those labor disputes were resolved through arbitration (The Republic of Turkey, 2017a).

In 2017, with amendments to the 2012 law, the labor disputes are explicitly classified under disputes that can be solved via ADR (The Republic of Turkey, 2012b). Later, starting from the beginning of 2018, the ADR has become a prerequisite for labor litigation in labor courts if the dispute is about dues or indemnity that stems from private law, individual or collective agreements (The Republic of Turkey, 2017b). According to the law, an employee or employer must go through arbitration, before they can apply to a labor court for litigation.

With the 2017 law, labor courts have been commissioned to hear the cases that had not been resolved in the ADR process and to make procedural examinations, which means that the courts will only examine whether the ADR process has been done following procedures foreseen by the law or not (The Republic of Turkey, 2017b). Thus, the labor courts cannot examine the ADR cases concerning their substance as the ADR process is legally kept private and confidential. The main opposition political party has brought the bill to the Constitutional Court of Turkey because the party believed that the mandatory arbitration is against the nature of ADR due to principles of voluntarism and balance of power, and it is unconstitutional because it harms the right to legal remedies. Nevertheless, the Court has decided that the bill does not harm those principles and is constitutional (Constitutional Court of Turkey, 2018).

It is stated in the official legislative intent of the law that arbitration is an easier, simpler, and cheaper way for dispute resolution, and it produces win-win solutions instead of court rulings which result in the loss of one litigant (The Republic of Turkey, 2017a). The official legislative intent of the 2017 Law states that the nature of individual labor conflicts is compatible with ADR, social partners of working life had stressed the necessity of ADR, the principle of trial in a reasonable time will be restated and, ADR will contribute to social peace by solving the problem from its beginning and restrict disputes from recurring.

Starting from the launch of mandatory arbitration from the beginning of 2018 until the end of 2019, 739,255 labor cases were brought to arbitration and 65% of them were concluded through arbitration processes leaving 246,797 cases open for labor courts (Arabuluculuk Daire Başkanlığı, n.d.). In 2018 alone, 162,339 cases were brought to labor courts while the average duration of trial jumped to 629 days

(Adli İstatistikler 2018, 2019). It is uncertain how many of the cases that were not resolved during arbitration was carried to labor courts from the available statistics because some disputes are not subject to mandatory arbitration, i.e. disputes stemming from work accidents and occupational illnesses (The Republic of Turkey, 2017b).

3.4 The Review of the Literature on ADR in Individual Labor Disputes in Turkey

With a few exceptions, the literature on mandatory arbitration in Turkey is limited to legal scholarship and the majority is generally descriptive(Korkmaz & Kıyak, 2018; Lokmanoğlu, 2017; O. Özdemir, 2016; S. S. Özdemir, 2012; Ozmumcu, 2016; Yıldırım, 2016; Yılmaz, 2012). This literature states that the advocates of ADR deem arbitration as a faster and cheaper way of settling disputes which will eventually diminish the high caseload of labor courts.

The literature also points out the criticisms. Karacabey (2016), for example, argues that arbitration would postpone the already long duration of labor cases as Turkey lacks the reconciliation culture. Mandatory arbitration is criticized because it harms the constitutional principle of the right to legal remedies as it obstructs the way of litigation by obligating claimants to submit to arbitration. It would also layer the labor code, which was built on imperative provisions that protect the weak side; because if a dispute is resolved through arbitration at the expense of the weak side, it cannot be brought to labor courts in the future (Albayrak, 2018). In other words, mandating arbitration on labor disputes, which occur between unequal parties, would weaken the already weak side of workers.

In the literature, to my best knowledge, there is only one academic study on mandatory arbitration, which includes a field study. In their recent work, Peksan et

al. (2020) have examined the opinions of arbitrators about the ADR practices in Turkey and nearly 60% of them stated that the ADR in Turkey is more beneficial for the employers than the employees. It is also stated by the arbitrators that the ADR process can reach a common solution only if the employees settle for much less than they would gain through litigation. This situation occurs because the sides in a labor dispute do not have equal power against each other but on the contrary, the employer has the upper hand (Albayrak, 2018) especially if the employee does not have an attorney. The imbalance occurs because the worker will gain his/her dues and indemnities after years and years of court litigation processes and generally s/he needs those dues and indemnities as soon as possible (Asci, 2019; Peksan et al., 2020). The mandatory ADR creates a trade-off between settling for much less money which will be paid in a short time or gaining the whole dues but in the distant future.

Many disputes that the law dictates to be settled in ADR before the litigation consists of dues and indemnities after the termination of labor contracts (Ozekes, 2018). Therefore, it can be argued that the mandatory ADR eases the way of dismissing an employee because s/he will settle for less through the arbitration process. In other words, it will be less costly for an employer to dismiss an employee since the ADR is mandatory, and in practice, the employee will settle for less.

The labor code does not necessarily apply in the ADR process as arbitrators cannot explain their statutory rights to parties involved and courts cannot make substance examination for the settled cases which are fallen into disuse of the sides. It can be inferred that mandatory ADR harms the employment security and connected securities that were mentioned before. Stemming from the findings of Asci (2019), Peksan et al. (2020), and Ozekes (2018), and the theorization of Standing (2011, 2014), the obligation of ADR mechanisms in Turkey should be

considered as a precarization process where the traditional, worker-friendly labor code is layered by the ADR, which gives the employer an upper hand during the process.

The literature lacks an organized study on how the trade unions/confederations responded to the introduction of ADR, its transformation into a prerequisite, and its implementation. This thesis will aim to fill that void in the literature.

CHAPTER 4

ANALYSIS OF THE TRADE UNION PERCEPTIONS

This chapter offers the analysis of trade union perceptions of the introduction of ADR in individual labor disputes in Turkey. Turkey is a country context where the rate of unionization and collective bargaining coverage is low. On the one hand, the Turkish labor code includes significant statutory principles to guarantee employment security for workers. On the other, the judiciary has been slow to enforce these statutory principles in the cases of individual labor disputes. In this context, ADR was introduced as a voluntary mechanism for resolving individual labor disputes in 2012, which was later made compulsory in 2017. The official governmental rationale for these changes was stated to accelerate and facilitate the resolution of individual labor disputes without resorting to contentious litigation.

In the interviews and written responses, the representatives of three major trade union confederations and their affiliate trade unions were asked to respond to how their organizations perceive these changes, to what extent their primary perception has changed throughout the shift from voluntary to mandatory ADR, and what implications that ADR generated for employment security. The questions are developed to refer to three different phases of ADR in individual labor disputes: the voluntary arbitration period covering from 2012 to 2018, the transition period refers to the a few months at the end of 2017, before the enactment of mandatory arbitration when the draft bill to enact mandatory arbitration was being discussed. The mandatory period starts at the first day of 2018 when the arbitration has become mandatory and its implementation could be observed.

Given that trade union confederations organize alongside political divisions in the Turkish context, the analysis seeks to explore whether these political differences hold in their responses to the introduction of ADR in individual labor disputes. Also, given the dual labor market structure, trade unions face a dilemma in determining their political strategies against precarization trends such as the introduction of mandatory ADR. The analysis here also investigates how and to what extent Turkish trade unions consider the implications of the use of ADR in individual labor disputes for non-unionized workers in developing their perspective towards ADR.

4.1 The Voluntary Period

The voluntary arbitration in individual labor disputes began in 2012 when the 6325 Law of Arbitration in Legal Disputes was enacted. The law was not specifically brought into practice for labor disputes but as the labor disputes fell under the category of the legal dispute, with this change, a labor dispute could be processed in arbitration before or during the litigation. This period ended at the beginning of the mandatory practice in 2018.

Confederation 3 expresses that they did not observe any issues originating from the implementation of voluntary ADR:

> The existing mechanism was the 'Arbitration in Legal Disputes', which was not functional. It was a general law, and labor law was not specifically thought about. It was mostly aiming at commercial disputes. It had no application in the labor law. Thus, neither workers nor our member trade unions notified us about an incident.[1]
>
> (Confederation 3)

Most participants stated that the voluntary arbitration was a functional equivalent of the acquittance document. This is a document that states there is no

unclaimed right or due that worker has after the end of the labor contract. After the signing of the acquittance, in most cases, there will be no litigation, as the document itself is used as proof that all rights and dues are paid by the employer. Thus, the acquittance document was providing the employer with a tool to block further litigation. Confederation 1 notes that the Court of Cassation started to scrutinize the conditions under which workers sign acquittance documents:

> …the employer used to make the worker sign the acquittance, stating 'I have received all my rights and dues, there is no rights and dues to be taken'. However, departments of the Court of Cassation delegated for the labor disputes were standing aloof from the acquittance. It was the matter of whether there is a defective will, whether all the rights and dues are taken, or did the employer forced the worker to sign, benefitting from the worker's difficult situation.[2]
>
> (Confederation 1)

Later, the Court of Cassation started to make the acquittance processes more complicated by specifying additional steps and determining time quotas. Thus, the use of acquittance document was virtually eliminated:

> The Court of Cassation realized its (acquittance's) misuses and comes an amendment in 2012. For acquittance to be valid, it should be completed after a minimum of one month from the contract end date considering the work relation between them, and all the rights and dues should be transferred via banks as proof. Only and only when those requirements are met, the employer clears the debts and responsibilities. When those rules change, the employers started to demand and then use voluntary arbitration.[3]
>
> (Trade Union 2/1)

Therefore, the representative of Trade Union 2/1 suggests that voluntary ADR served the employers' interests which were under pressure due to the increased complexities of using the acquittance. Employers started to use voluntary ADR to finalize the employment contract in a way to block contentious litigation.

All confederations and trade unions agreed that "…members of the unions rarely applied to the voluntary arbitration" (Trade Union ¾). In cases where they use voluntary ADR, the dispute is solved between the trade union and the employer,

which was then codified in an agreement because employers wish to legally protect themselves from further litigation:

> We, with the disputing employee, were having talks with the employer to solve the dispute before starting the legal process. There are a few cases where we can make a deal that caters to the demands of our members, and if the employer wants, voluntary arbitration is realized. These situations happened because of the employer's will to protect himself legally and we respected that.[4]
>
> (Trade Union 3/1)

The Trade Union 3/2 and 3/3 noted that they never directed their members to voluntary arbitration as they deemed arbitration as a "bargaining table", and they think that labor rights and dues should not be regarded as a "matter of negotiation".

Also, numerous misuses of voluntary ADR were reported by trade unions and confederations. The misuses of voluntary arbitration cluster around two topics. The first is when the employers want to dismiss the workers collectively and the second is when the arbitrator is allegedly working for the employer. These two cases generally occur at the same time:

> I mean there are stories that the company tells that they have their own arbitrator. 'Our own arbitrator' is against the principles of arbitration. …the company spares a room for their arbitrator and when they are dismissing a group of workers… without any arbitration ceremony, they make the workers sign the pre-prepared, trite forms of arbitration. This was the actual reason why the statistics show success in the voluntary period.[5]
>
> (Confederation 1)

However, not all confederations expressed negative opinions about the voluntary ADR. For example, Confederation 2 sees no harm or misuse in the voluntary arbitration process and because:

> …actually, when put to good use, voluntary arbitration is a system that yields good results. The parties' agreement without filing a lawsuit was positive both in terms of speeding up the labor trials and obtaining results faster. The important thing here is that the worker applies to arbitration with his/her own consent.[6]
>
> (Confederation 2)

Confederation 2 also added that arbitration is a culturally compatible way of resolving labor disputes for Turkey, and expressed concern that trials could turn into serious frictions between the litigants which were deemed very negative:

> During the trials when someone is the defendant and the other is the plaintiff, it is as if they are like enemies… there is a mutual agreement in arbitration, thus both sides can be happy. It does not matter whether the plaintiff or the defendant is right, that confrontation makes people uncomfortable.[7]
>
> (Confederation 2)

The analysis demonstrates that all the trade unions and Confederation 1 held negative views of the voluntary arbitration mainly because they perceived it as a replacement of the acquittance, which was being misused as a way to secure legal protection of misdoings of the employers. Confederation 3 did not significantly respond to the voluntary arbitration as it observed that this mechanism was rarely used. Only Confederation 2 was supportive of voluntary arbitration as it perceived voluntary ADR as a better, quicker, and more peaceful way of solving disputes. Confederation 2's approach was mainly in line with the legislative intent. However, I observed a discrepancy between the views of Confederation 2 and its member trade union, as the Trade Union 2/1 was against the voluntary arbitration. The same discrepancy was also visible between Confederation 3 and its member trade unions. Although Confederation 3 claimed that they were not notified of an incident due to the implementation of the voluntary ADR, the representatives of its four affiliated trade union members stated that they observed some misuses.

In the period when ADR was introduced and implemented as a voluntary mechanism for resolving individual labor disputes, the analysis here indicates divergence of opinions among the confederations themselves and between the confederations and their member trade unions. Confederation 1 was strongly against voluntary arbitration as it was perceived as a way of covering up the misuses of

employers and a way to shield them from litigation. Also, the representatives of this confederation and its member trade unions expressed concern about the defective will of employees. Confederation 3 was neutral in its position as it had not received any complaint neither from the workers nor their trade unions. However, the representatives of its four, member trade unions expressed that they were against voluntary arbitration because of the misuses they observed and as it opened the door for bargaining on the rights and dues of workers. On the other hand, Confederation 2 was in favor of voluntary arbitration and its position was in line with the governmental reasoning of the enactment. Voluntary arbitration for Confederation 2 was an option to litigation that might end up in better results and could serve to social cohesion. However, their member trade union held negative views. Only Confederation 1 did not have a discrepancy with its member unions. Confederation 2 and 3 held less negative views on voluntary arbitration compared to their trade unions.

4.2 The Transition Period

This section examines how trade unions and confederations perceived the transition from voluntary to mandatory arbitration in individual labor disputes that took place in 2017. The official legislative intent of the law-making ADR compulsory in individual labor disputes states the following reasons (The Republic of Turkey, 2017a): the length of litigation cases, the burden of the jurisdiction, the request of the social partners, and the costliness of litigation compared to ADR. It also states that this legislative act does not harm the right to litigate, thus it is compatible with the Constitution. Besides, it states that most cases that were brought into arbitration were labor cases during the voluntary era and most of them were resolved successfully.

The legislative intent also refers to other country examples where ADR is in effect, suggests that the increasing use of ADR in resolving individual labor disputes is a global trend.

When the transition was on the agenda, in late 2017, most confederations and trade unions were against this amendment for various reasons. The responses of the confederations can be examined under three categories. The first one is the total rejection of this amendment and the use of ADR in individual labor disputes including its voluntary version. The second is the opposition to this specific amendment because arbitration should remain voluntary. The last one is staying neutral while expressing commitment to closely observe its implementation.

Confederation 1 was totally against this amendment because it perceived mandatory arbitration as an act of privatization of justice. Confederation based its perception on the following issues: arbitrators rather than courts will conclude the cases of disputes and disputes will be resolved not through a public verdict but a private deal:

> Arbitration is the privatization of justice... It takes away the judicial authority from the state and gives it to someone else… Especially in Anatolia, the neighborhood pressure involves; tribe relations, cults, sects, fellowships of town, etc. They say 'Give each other your blessings, what a beautiful thing to give blessings'. Blessing is a religious motive, but even in blessings, there are rights. Only when you give them their rights, people give their blessings.[8]
>
> (Confederation 1)

The representative of the same confederation also stated that dispute resolution through litigation was a system that was very detailed about whether the worker has accessed his/her rights and dues. On the other hand, in arbitration the process is just a matter of a deal done between sides which cannot be associated with justice:

> The law is an institution to establish justice with its all courts, even higher courts. You know we have the Courts of Second Instance, the Court of

> Cassation, and between them the Court of Appeal… It takes a long time but the whole system splits hairs for justice. Then the government says 'give each other your blessings' instead of the system that the constitutional state created. Then it is a blessing, not justice.[9]
>
> (Confederation 1)

Another stance was the opposition to making ADR compulsory, meaning it should remain voluntary. In its written response, Confederation 3 expressed:

> We were informed during the preparation period of the will about the transition to mandatory arbitration and we had attended a few meetings. In those meetings, we expressed that the arbitration should be voluntary in labor regulations and it should not be classified as a clause of action, thus mandatory.[10]
>
> (Confederation 3)

Additionally, the same confederation had prepared a report on the draft that obligates the arbitration and presented it to related government authorities which were commissioned to draft the bill and enact it. The report, which was shared with me, states that the proposed amendment harms the principle of interpretation in favor of the employee, it does not seek to strike a balance between two sides to establish justice. It is claimed that the bill is unconstitutional because the Constitutional Court ruling, which the legislative intent cites, refers to voluntary rather than compulsory ADR:

> The Constitutional Court, in its detailed ruling, defines arbitration as an 'amicable dispute resolution relying on voluntariness', deems it as a method that 'take part with jurisdictional ways and becomes functional when the sides of the dispute wish' and rejects making it obligatory. Thus, as can be clearly understood, the legislative intent of the bill is not compatible with the Constitutional Court's ruling.[11]
>
> (Confederation 3)

In contrast, Confederation 2 was hesitant to respond to the enactment of the bill and the transition from voluntary to mandatory arbitration. Confederation 2 stated that they wanted to see the results of the bill first. They said that it would be

unwise to talk early as there is no practice yet and it would be vain to predict the future:

> Our priority was voluntary arbitration, not the mandatory one but this regulation somehow passed. Actually, we had needed to test the process for a while. While mandatory arbitration was put into practice, we did not directly respond. We thought that it would be better to examine the process in the course of time and experience, then respond accordingly.[12]
>
> (Confederation 2)

Yet, Confederation 2's member trade union stated that they were against the obligation of the arbitration as they could assess the situation of the country, thus foresee its potential implications. They based their assessment of the amendment on the existing imbalances of power between the employer and the employee both in terms of financial resources and access to legal consultation. Thus, they suggested that the mandatory arbitration would harm the employee:

> We objected to the obligation. As the reality of our country is known, we were able to foresee its negative outcomes, give and take, antagonizing the employees. In the end, we live in this country, we have some views on the country.[13]
>
> (Trade Union 2/1)

At the level of trade unions, all but Trade Union 3/4 were against the enactment of mandatory arbitration. The Trade Union 3/4, taking a contrary view compared to its confederation, stated that they were "positive at the beginning" (Trade Union 3/4) when the law was enacted. However, the representative of this trade union noted that they changed their position immediately after they could observe the implications: "It became apparent that it is not a healthy way due to the faults in its application"[14] (Trade Union 3/4).

The objections of confederations and trade unions to the amendment making ADR compulsory for individual labor disputes clusters around two main topics. One of the clusters consists of the objections that are made for Legislative Intent and the

second cluster consists of objections that are made for the foreseen practical implications of this amendment.

The majority of trade unions and confederations included in this study suggested that the reason for the high volume of litigation about individual labor disputes, which was cited as a problem that requires this amendment, was due to the employer practices contrary to the labor code. In addition, all trade unions and confederations counted informal employment, double paycheck, and other forms of employer practices contrary to the labor code as the main reasons why the workers litigate the employers that many. For trade unions and confederations, the reason why the litigation take so long was the employers' strategies to lengthen the judicial process. It is stated that employers intentionally reject the expert opinions and hinder the proceeding to gain extra time. In the litigation system, the extra time spent in the courts is benefitting the employer, and if they declare bankruptcy, their debts to the workers are de facto erased as it is almost impossible to hold the employers accountable:

> They do whatever they can do to prolong the hearings. The later they give the money the better for them because as time passes their debt gets smaller and smaller. We need to consider the inflation, the interest that employer makes if they do not pay their debts… also one more thing they think is what if the company goes bankrupt, so they do not have to pay.[15]
>
> (Trade Union 3/1)

Many of the trade unions agree that mandatory arbitration was demanded as per the legislative intent claimed. However, they stated that this demand was from the employers and their organizations, not the employees, or the trade unions and confederations:

> The obligation of arbitration in labor disputes enacted because of the employers, because they will pay way less in terms of dues than what they would pay after the litigation. The low amounts, that are even below the minimum the law sets – which cannot be a verdict in litigation-, are totally acceptable in arbitration regulation.[16]
>
> (Trade Union 1/2)

Most participants agreed that the ADR's scope of application is expanding globally however, Trade Union 1/2 noted that the practice of the ADR is different in various parts of the world and Turkey is a standout compared to Continental Europe:

> ADR is expanding in Continental Europe. However, if we examine the practice of ADR, not only the legal texts but the practice, we will see that the practice there is more compatible with arbitration's principles. Meaning, it is an institution seeking parity of representation between two parties and to which parties apply on their free will. It is not the same here.[17]
>
> (Trade Union 1/2)

The second cluster of stated reasons for the objection of trade unions to mandatory ADR is its foreseen practical implications. Trade Union 1/2, referring to the practice of the law and the guiding principles in the labor code that are imposed on the judges, stated that the mandatory arbitration would curtail the labor code. As employees are on the vulnerable side of industrial relations, the labor codes are designed to protect the employee. However, during arbitration sessions, the employee does not have direct access to this kind of protection and this situation worsens the already existing power imbalance between the sides. The concern about the bargaining over the rights and dues of a worker through voluntary arbitration was again mentioned by several trade unions. They stated that through mandatory arbitration, the situation worsens:

> In labor law, there is a principle called the interpretation in favor of the employee and the reason behind this is that the worker and the employer are not equals, neither financial-wise nor ability-wise to access the legal aid. Due to this inequality, the law dictates to the judges that if they are indecisive between the worker and the employer, they should interpret the case in support of the worker. We know that this inequality arises more when there is

> a bargain around the table and the dues and rights are paid as a result of the bargain.[18]
>
> (Trade Union 3/2)

Similarly, after stating that the individual labor codes are not adequate to protect the worker as well as the collective labor codes and agreements, Trade Union 1/1 mentioned that they were against the enactment. It was because the individual labor codes are essential to enforcing minimum standards and the mandatory arbitration would layer out the labor code:

> The liberalization of the labor code is something else, it can get liberalized… I am definitely not against its liberalization. To some point, the liberalization of the code can be bearable, a fight against it can be put up. However, it is a calamity to enact an institution that will rule out the entire labor code and presenting it as if it is for the benefit of the worker. This is unacceptable.[19]
>
> (Trade Union 1/1)

All trade union representatives participated in this research except one were against the amendment that makes ADR compulsory for individual labor disputes. It is evident that most of the trade unions were vocal about their concerns and they were rejecting the transition. All of them expressed that they tried to raise awareness of their members, form a public opinion by organizing conferences with the intelligentsia and meetings with their workers, and they send reports to their confederations. Similarly, the confederations also made the abovementioned efforts and on top of that, they extended their efforts to reach out to the state officials, members of the parliament, and government.

In the second period, the analysis here suggests that most confederations and trade unions were against the transition from voluntary to mandatory ADR. Despite this convergence of opinions with a few exceptions, the positions varied from the total rejection of ADR including its voluntary version to opposing its compulsory version. These clusters of opinions were mostly valid within confederations and their

member unions. Both trade unions that are under Confederation 1 were totally rejecting the transition and were against any type of ADR in labor disputes as per their umbrella organization. One of four trade unions under Confederation 3 was also rejecting the mandatory ADR and its applications, making them closer to Confederation 1. The rest of the four were against the obligation of ADR while they did not oppose the voluntary ADR. Again, just like the voluntary period, there was a disagreement between Confederation 2 and its member union. While Confederation 2 chose not to respond to this amendment immediately and preferred to observe its implications first, the Trade Union 2/1 was against the transition to compulsory ADR.

It should be noted that there is a divergence in approach and response in the transition period among the confederations while the trade unions were converging around a rejection of some sort, except for one trade union under Confederation 3. Comparing the voluntary period with the transition period, the analysis shows that most trade unions and Confederation 1 were still holding their position of strong opposition to ADR which can be deemed logical given that they were also strongly negative about the voluntary arbitration.

4.3 The Mandatory Period

The mandatory period covers the time period from the beginning of 2018, when mandatory arbitration started as a practice, to the completion of this study at the end of 2020. In almost 3 years, trade unions and confederations have observed the practice of ADR in individual labor disputes. This section examines the perception of trade unions and confederations to the current practice of mandatory ADR. The section will first present the analysis of the perceptions of confederations. The

section then offers an analysis of the problems that the mandatory ADR has generated in the eyes of the representatives of confederations and trade unions. Later, the section presents the actions trade unions and confederations take to tackle those problems.

4.3.1 The Introduction

The analysis here suggests that overall opposition to mandatory arbitration has increased in the third period. Confederation 1, just like during the voluntary and the transition era expressed that the mandatory arbitration should be repelled, and they were also concerned about whether it should be replaced by the voluntary practice:

> Our confederation wants it gone. This implementation is only benefitting the employer, no one else… The voluntary arbitration may stay if it will be heavily monitored to the point that any retrenchment in workers' rights and dues will be prohibited, However, it is extremely hard.[20]
>
> (Confederation 1)

The Confederation 3, in the third period, keeps the position it took in the second period: "There is no change in our views expressed in the report we sent to you as an attachment."[21] (Confederation 3). Meaning that they were strongly against the obligation of ADR in labor disputes but not so much against the voluntary version. When asked about whether the mandatory arbitration model should be repealed, they stated that it is their priority to repeal the obligation:

> Mandatory arbitration which is implemented as one of the ways of 'alternative dispute resolution' has already become a 'source of dispute'. Thus, mandatory arbitration should be abandoned before things get worse. If there will be an insistence on arbitration, the process should be voluntary.[22]
>
> (Confederation 3)

On similar lines, Confederation 2 stated that they had been observing the implementation of mandatory arbitration and they changed their position from being

neutral to being against. They prioritized repealing the obligation and they expressed sympathy to the idea of voluntary arbitration.

> We are in a position that we had observed mandatory arbitration causes harm to the workers. Thus, we want mandatory arbitration to be repealed as it induces the retrenchment of workers' rights. Voluntary arbitration that we always favored could come back… We think that it is not correct to implement this in its current, pure form. At least, the experiences we had solidified our concerns."[23]
>
> (Confederation 2)

It can be inferred from the quotes above that the views of confederations have converged on the idea that arbitration should not be mandatory. This convergence occurs as Confederation 2 had spent enough time to observe the vices of mandatory arbitration and turned against the obligation of arbitration. Thus far, Confederation 1 has kept a straight opposition, both for voluntary and mandatory arbitration. Confederation 3 as mentioned above, was indifferent during the voluntary era as voluntary arbitration was really rare and they had not been notified of an incident. During the transition, they explained that the obligation of ADR, especially in labor disputes is unacceptable for them for various reasons. They also deemed the bill unconstitutional. Finally, Confederation 2 was in favor of voluntary arbitration in the first period. During the transition period, they did not respond immediately to be able to see the implementation. In the mandatory period, they were against the obligation of arbitration, and still in favor of the voluntary version.

4.3.2 The Reasons for Convergence on Opposition against the Mandatory ADR

In the third period, it is evident that the view of all three confederations have converged as they became all against the mandatory ADR in labor disputes. This convergence is especially interesting as confederations are organized alongside political affiliations in Turkey, and the divergence of positions among confederations

in the earlier periods was mostly in line with these political divisions. Nevertheless, in the third period, confederations seem to go beyond these divisions and have taken similar positions against the implementation of mandatory ADR. It can be inferred that through time, the cumulative opposition to ADR in individual labor disputes is on the rise. This convergence is cumulating around the fact that mandatory arbitration causes damages to the workers.

The reasons for this change in positions can be understood when the implication of mandatory arbitration for workers is examined in detail. The reasons why trade unions and confederations object the mandatory arbitration are categorized under two clusters. The first one is that trade unions and confederations believe that the workers are pressured by several reasons to sign the arbitration deals and it results in retrenchment in worker rights and dues. The second one is the layering impact of the mandatory ADR practices on the labor-protective laws.

4.3.2.1 Pressures on the worker

Trade unions and confederations imply that the workers are pressured to sign the arbitration documents which in turn causes loss in terms of rights and dues. It constitutes the first reason why there is convergence in opposition among trade unions and confederations. The trade unions mentioned three prevalent pressures on the worker during the arbitration sessions, namely, the pressure stemming from the power imbalance between the parties, the pressure coming from the arbitrators, and pressures the employers apply.

4.3.2.1.1 Pressures Stemming from Power Imbalance between Employers and Workers

One of the most prevalent concerns of trade unions and confederations was that the worker and the employer are not equal in power in the arbitration sessions. As mentioned during the voluntary period, all trade unions and confederations mentioned that the workers are generally less knowledgeable about their legal rights and the sum of the dues they deserved. On the other hand, the employer is much powerful in terms of utilizing financial and legal means to achieve his desired outcomes. The lack of finances and legal support creates the first pressure on the worker during arbitration sessions:

> Even I live through this kind of experience myself with my client. When I calculate the dues, it is 60 thousand, but he accepts 20 thousand in arbitration sessions. He crosses out the 40 thousand. This is because of financial pressures. It is very obvious that the rights and dues will be retrenched when the worker sits at the table with financial pressures.[24]
>
> (Trade Union 1/2)

> In the mandatory arbitration system, it is wanted that the worker participates in the sessions without completely knowing his/her rights and without calculating his/her dues. This situation causes the worker to settle in less than what s/he deserves.[25]
>
> (Trade Union 3/3)

> In arbitration sessions, the worker is not in a position to calculate his/her rights and dues. S/he does not know the jurisdictional mechanisms, which I do not expect them to do. S/he does not have the money to bring home after a while or to pay the rent of the home... With this psychology, when s/he goes to the session, it would not be realistic for him/her to leave the session with a healthy decision, to demand her right in full, and to insist on this demand.[26]
>
> (Trade union 2/1)

Because of the financial hardship workers face and the lack of legal support for workers, trade unions expressed that mandatory arbitration leads to the retrenchment of rights and duties for workers. The worker in arbitration sessions had to choose between a less sum of dues which will be paid in a shorter period or almost

full dues but after years of the litigation process. Given the financial situation of the workers, interviewees observed that most workers accept the cuts in their dues and give up on their rights:

> When we ask the worker about how the arbitration went, whose severance pay was calculated as 80.000, and who was warned about key issues in advance, she/he says: 'What can I do? The employer said he will not give more than 20 and I could not take the risk of litigation as it takes a long time. I have so much debt, I agreed'. We hear those.[27]
>
> (Trade Union 1/2)

> The employer says 'OK, this can be your right but agree today to this amount. You may go to litigation, but it will take ten years. You may take the 2 Liras today'. You know the saying either forty cleavers or forty mules, just like that.[28]
>
> (Trade Union 2/1)

4.3.2.1.2 Pressures Stemming from Arbitrators

The second common pressure on the workers during mandatory arbitration comes from the arbitrators themselves. Although it is prohibited by law that arbitrators cannot put pressure on workers to sign an agreement, the incentive mechanisms built into the remuneration for arbitrators seem to motivate them to conclude an agreement. If the session ends with non-agreement, the arbitrator gets a flat rate fee from the ministry. However, if the session ends with an agreement, the arbitrator gets a percentage of the agreed amount as the fee. Thus, interviewees noted that some arbitrators pressure the worker to take the employer's offer:

> The arbitrators who are not knowledgeable about the labor law put moral pressure on the worker by saying the litigations last so long while trying to convince him that making the deal by waiving some of his dues is natural, it is what it ought to be… If the worker is not unionized or does not have a lawyer, the arbitrators manage the process in a way that they make more money.[29]
>
> (Trade Union 3/1)

Moreover, informants noted that the Department of Arbitration under the Ministry of Justice puts pressure on the arbitrators to solve the labor disputes in arbitration sessions. This pressure from the Department potentially turns into pressure on the worker.

> I am saying this because it was discussed in several forums. First of all, it is said that the Department has put great pressure on the mediators to make an extraordinary effort to end their disputes with an agreement.[30]
>
> (Confederation 1)

> Because the lawyers defend the workers in arbitration sessions effectively, the Head of Department told the arbitrator to bring the representees to the meetings in the future. Normally, if a lawyer is representing the worker or employer, they do not have to attend the session. But when the worker and the employer face-off, they want more pressure. Let it be resolved, no matter what.[31]
>
> (Trade Union 3/1)

4.3.2.1.3 Pressures Stemming from The Employers

The last source of pressure is the employer's pressure on the worker. The employers, knowing the financial hardships that workers face, try to convince them to abdicate a sizable amount of their dues. The employers do so by using jurisdictional caveats like long litigation processes and social benefits like unemployment benefits to convince the workers to settle for less. Also, they put emotional pressure on the workers who deem their employers as "…the benefactor, the man giving him the bread"[32] (Trade Union 1/1) in these sessions.

> One thing that is always brought to the table is that the litigation is so long and costly. When employers say: 'You will both spend your money on lawyers and for litigation and the process takes two years. Instead of having ten thousand after two years, I offer you two thousand now', the workers cannot risk the duration of litigation because his/her life is more practical, s/he has to settle for the fast money.[33]
>
> (Trade Union 3/1)

> Legibility for the unemployment benefit depends on the code the employer reports to the Turkish Employment Agency. The code states the reason for the dismissal. If the code is for valid reasons, the worker's unemployment benefit is not deposited. The employers say that they will give less severance, but they will change the code they send to the agency. Thus, with side mechanisms, they try to convince the worker.[34]
>
> (Trade Union 2/1)

Stemming from the above-mentioned pressures, trade unions expressed that the workers have to settle for less than what they had earned and/or deserved during mandatory arbitration sessions. As there are no limits to the terms of the agreement between the employee and employer, and given the power imbalance between them, the sessions generally end in workers getting less than they would get through litigation. This situation is seen as the retrenchment of the worker rights and dues by the trade unions.

4.3.2.2 Layering of the Labor Code

The pressures on the worker in the arbitration processes which result in the retrenchment of rights and duties are not the only reason the trade unions and confederations were against the obligation of ADR in labor disputes. The second reason why there is convergence in opposition is the layering of the Labor Code. The abovementioned pressures could be arbitrarily imposed on the workers during arbitration sessions because of the fact the worker does not have the protection of the Labor Code as she could if she would resort to litigation. Therefore, the trade unions also expressed that the mandatory arbitration layers the labor code which is developed throughout the years to protect the worker:

> Mandatory arbitration eliminated all the gains of the workers that had been achieved over the years. In fact, serious gains have been made in labor rights since the industrial revolution. Whether it is overtime wage, annual leaves, minimum wage... In other words, all the gains of the worker have been almost eliminated with a single arrangement, with this arbitration institution.[35]
>
> (Confederation 2)

The abovementioned labor rights are codified in the Labor Code and the protection this code provides to the workers is essentially realized through the litigation process. The Code contains the mandatory provisions which the judges have to use in rendering their verdicts. Those mandatory provisions constitute the basic rights of the worker in an employment relation and determine the responsibilities of parties in such relation. However, the trade unions mentioned that no mandatory provisions apply to arbitration:

> In the Labor Code, there are mandatory provisions enacted to protect the worker… In the arbitration process, since the important thing is the negotiation and the "win-win" principle is applied; it is applied as a system that is completely contrary to the purpose of existence of the Labor Code, without considering the mandatory rules, even with the view that the mandatory provisions prevent the parties to agree.[36]
>
> (Trade Union 3/1)

When the law is layered as such, all the misdoings and illegal activities of the employer gains legality and legitimacy. For example, many workers have a double paycheck, which means there is a discrepancy between the worker's real salary and his/her salary that is reported to SGK. Generally, in those situations, the employer reports the salary of the worker less than what s/he earns to pay less tax. Even though this is illegal, trade unions state that it can be legitimized through litigation:

> For example, the worker actually earns four thousand, but his/her salary reported to the Social Security Institution is the minimum wage. S/he is forced to make the deal on the minimum. When s/he agrees and later tries to litigate the case stating his/her salary was misreported, the arbitration record causes the case to be dropped in the court. Thus, illegal situations are made legal through arbitration.[37]
>
> (Trade Union 1/2)

Another mandatory provision that the trade unions mentioned is the minimum wage application, which is protected under the Labor Code meaning it is legally impossible to recruit a worker without providing the minimum wage as salary. However, during the arbitration sessions, the worker can be pressured to agree on an amount that is below the minimum wage. This situation is again illegal according to the Labor Code but legalized through arbitration:

> Today, the minimum wage is around 2.300… Let's say the worker worked for three months without getting paid and wants to litigate this. When calculated, 2300 times three is almost seven thousand. However, he needs to agree to the offered four thousand as he was not paid for three months. What happens then? What happens is that you are making a worker work for less than the minimum wage.[38]
>
> (Trade Union 3/2)

The same is valid for overtime, too. Even though there are certain rules and regulations on the maximum permitted working hours in the Labor Code, if the dispute related to overtime is solved through arbitration, this rule does not apply:

> The parties cannot decide to work over 45 hours per week, less is possible. Working hours cannot exceed 11 hours per day, including overtime. These are not interpretations, but very clear, mandatory regulations. In arbitration, you describe the rights and dues of the worker as what the parties agree on, in a complete liberal understanding. This is not possible.[39]
>
> (Trade union 1/1)

One other reason why the trade unions object to mandatory arbitration is the clauses that hinder the right to litigate. In current practice and regulation, the disputes solved in arbitration cannot be litigated later. Moreover, the employers add specific and extra clauses that legally disable the worker to litigate even though the clause prohibits litigation of dispute which cannot be processed through arbitration. For example, service determination disputes which stem from the difference in real salary and the salary reported to the Social Security Institution cannot be solved

through arbitration by law, but the employers sometimes put clauses to block further litigation on service determination:

> Service determination cases due to an employer's not paying correct insurance premiums to the Social Security Institution are not suitable for mediation, but when the employer accepts to give all their dues with a low cut, they say that they will pay the employee only if the employee will not file a service determination case. The worker says okay…[40]
>
> (Trade Union 1/2)

In those kinds of situations, mandatory arbitration also hinders workers' right to litigate even in issues that the arbitration cannot be applied. The analysis here indicates that trade unions and confederations oppose the ADR in labor disputes because the implication of mandatory arbitration results in the retrenchment of worker rights and dues and the layering of labor-protective laws. These two points explain the convergence of opinions among trade unions and confederations in the third period.

4.3.3 Current Suggestions and Actions

All trade unions that participated in this study converge on the idea that mandatory arbitration in labor disputes should be abandoned due to the reasons explained above. None of the trade unions give an example from their experiences that the workers get their rights and dues in full during arbitration sessions and this statement is valid also for the unionized workers. Although trade unions were in favor of repealing the mandatory ADR, they also came up with some suggestions to improve its practice if their original suggestion would not be realized.

4.3.3.1 The Suggestions

The suggestions converge around three main clusters. The trade unions want reforms to enable the worker to have a lawyer as representative during sessions, to subject

arbitration deals to controls by authorities, and/or reorganize the whole industrial relations system. The first two reform demands are shared by all of the trade unions and confederations except Trade Union 1/1 while the last is demanded by a few.

As the trade unions argued the lack of legal support is one of the causes of the power imbalance between workers and employers during the arbitration sessions, which ends up in a loss on the worker side, all of them except one expressed that the workers should be represented by a lawyer during sessions. It should either be done by the ministry or the existing legal aid mechanism should be expanded to cover arbitration sessions in individual labor disputes.

> We suggested the assignment of lawyers from the ministry. The ministry should pay the fees of these lawyers just like they pay for the arbitrators' minimum fee. The lawyer at least will inform the worker. May the lawyer say: "…look the offered due is way under what your real due is, you will get much more through litigation… there are ignorant workers, they think the arbitrator is like a judge.[41]
>
> (Confederation 1)

> It is very unlikely that the worker will hire a lawyer and go to the mediator together. In practice, the earnings of the worker are not even enough for him/herself and his/her family… Therefore, by adding an article to the draft, it is important to make a regulation that will ensure that legal aid is also applied to the lawyer with whom the worker will agree.[42]
>
> (Confederation 2)

All trade unions and confederations except one mentioned the legal representation as a must and should be provided without any financial burden on the worker.

The other all-encompassing demand is the legal review of the agreements concluded in arbitration. As trade unions expressed above, the main point of objection to mandatory arbitration is the layering of labor-protective laws. Trade unions and confederations thus demand a legal review of the agreements, which is not practiced due to the confidentiality principle of arbitration. They demand

agreements to be audited to check whether the deal is fair, meaning, the offer is not extremely low than what is deserved, and the deal is done concerning the minimums and the mandatory provisions of the law.

> These deals are not audited at all due to confidentiality. Only when a worker litigates a case, the judge looks at the deal to see whether it was dealt with during arbitration to cancel the litigation procedurally. They should check whether there is a defective will, meaning whether the worker settles less than s/he deserved.[43]
>
> (Trade Union 3/3)

> The judges should check the arbitration papers… For example, even if the worker and the employer agreed to pay less than the minimum wage or the employer will pay less for the overtime, the judge should be able to cancel it contrary to current practice.[44]
>
> (Trade Union 3/1)

The last suggestion was more fundamental and expressed by only two trade unions which are both under Confederation 1. Those trade unions expressed that incremental reforms would not eliminate the inherent power imbalance between the workers and employers. Trade Union 1/2 expressed that incremental reforms would only alleviate these problems if the industrial relations landscape would change fundamentally.

> …there need to be some serious changes for the model to be better. In this frame, the main problem is the imbalance between the worker and the employer… reforms in the arbitration model will not be able to solve this. For this imbalance to be eliminated, the root of this whole system should be altered.[45]
>
> (Trade Union 1/2)

Trade Union 1/1 suggested that without a significant change in the main parameters of the industrial relations, the arbitration would not lead to just outcomes:

> You need the adjust the foundation first, then you will bring them step by step. Without them, the arbitration will be useless except for legitimation of the unlawful wills of the employer.[46]
>
> (Trade Union 1/2)

It is determined that all trade unions demand the repeal of mandatory arbitration and most suggested some reforms if it cannot be repealed.

4.3.3.2 The Actions

Given the negative implications of the mandatory ADR in individual labor disputes, trade unions and confederations started to take actions to reduce the harm and oppose the bill. The actions that trade unions and confederations have taken are twofold. They consist of the actions to protect the members of the trade unions and actions to protect non-unionized workers.

4.3.3.2.1 Actions to Protect the Members

The practice of mandatory ADR especially affects non-unionized workers. The unionized workers often go through arbitration sessions under different conditions. In fact, the disputes that would have been resolved through arbitration or litigation happen less frequently in unionized workplaces, to begin with:

> There is a collective agreement order, so the disputes are less in number. The trade union and the employers sit down and determine the rules. There are workplace boards, disciplinary boards. There are mechanisms, there are worker's representatives. There are no big disputes…[47]
>
> (Confederation 1)

> If there is a union in a workplace, even it is a yellow trade union, as there is no application of double paycheck or the abuse of overtime, the arbitration might become an acceptable solution for the rights and dues of the workers. However, it is not possible to deem this as positive given that the unionization rate is approximately three percent in the private sector.[48]
>
> (Trade Union 1/1)

Moreover, if the dispute cannot be solved before it is carried to the arbitration, the trade union of the worker informs him/her about dues and rights and send a lawyer with him/her in the arbitration sessions. All trade unions and

confederations stated that they assign their lawyers to workers who will go through arbitration sessions, inform them about their rights, and calculate their dues:

> To protect our workers' rights, our trade union steps in if the worker is dismissed or the employer does not pay the full amount of any right or due without facing the worker off with the employer. Thus, the process is shaped by the union. After informing the worker about the situation, our lawyers go to the meetings with our worker.[49]
>
> (Trade Union 3/2)

Moreover, trade unions and confederations noted that they could protect unionized workers from the negative impact of the mandatory ADR by providing them with a lawyer.

> …we are doing the most we can do to support our workers. Thus, there is no aggrieved worker who is a member and applied for help during the arbitration – the chances of aggravation are so low as s/he is represented by a lawyer. I had not heard any member who was aggravated.[50]
>
> (Confederation 2)

> Mandatory arbitration is less harmful for the unionized workers. Its scope of application is limited because in those situations the trade unions are the institutions the workers can easily reach out to… The lawyers of the trade unions represent the workers during the meetings. Thus, the misuse of the mandatory arbitration on unionized workers might be limited.[51]
>
> (Trade Union 2/1)

Even though all the trade unions and confederations stated that they inform, provide legal support, assign lawyers and follow up the process of the dispute resolution, they mentioned a few cases that even unionized workers had to waive their rights and dues in arbitration:

> Even though a professional helping him/her, s/he waives some of the money s/he is owned because of his/her debts. S/he says: 'I need the money. I have credit card debt. Either three or five, it won't solve my current problem if we win the case later." They can waive a significant amount to have the rest right now.[52]
>
> (Trade Union 3/1)

To sum up, trade unions and confederations agreed that the unionized workers are less harmed by the mandatory arbitration despite there are a few cases

that even unionized workers had to give up on their rights and dues significantly. It is because the organization financially supports the member by covering legal fees, assign lawyers to workers both to duly inform them and defend them against the pressures mentioned above during arbitration.

4.3.3.2.2 Actions to Protect the Non-Unionized Workers

The analysis of trade union representative accounts demonstrates that nonunionized workers are more negatively affected by the mandatory ADR. All trade unions and confederations stated that they provide legal consultancy to workers who reach out to them, calculate their dues for them, and inform them properly before they attend arbitration sessions.

> The phone of our confederation never stops; it works as if it is a call center. Both our experts and our legal department help the callers regarding their case in the meaning of protecting worker's rights. Our phones never stop. The center gives out our private phone numbers even we are on leave, but it is not a problem we believe it is our duty.[53]
>
> (Confederation 1)

> If the workers anyhow contacted us, it is generally phone nowadays, or they reach out our workplace representatives… we cannot provide them all with lawyers but we help them as much as we can whether it is a calculation, legal advice or find them lawyers who charge less than average.[54]
>
> (Trade Union 2/1)

Even though most of them want to repeal the law, on the policy level, all trade unions and confederations made some suggestions to improve the mandatory arbitration model which were discussed in the previous section. Confederation 2 stated that all of their suggestions are essentially for the non-unionized workers as they suffer the most:

> All the matters we want to be fixed is about the workers who are not our members, the majority is them. All of the precautions I have talked about are for them, most of those are for them. Of course, we also talk about we do it

> for our members, but it is clear that the non-unionized workers are facing these problems the most.[55]
>
> (Confederation 2)

It should be noted that no trade union or confederation mentioned that they are actively trying to reach out to the non-unionized workers in a planned and strategic way. However, in principle, they support the expansion of legal aid to cover all workers in arbitration sessions. Given that all trade unions and confederations support their members with lawyers in arbitration sessions, their call for legal aid for workers is especially for non-unionized workers.

4.3.4 Reasons of Lack of Strategies

Even though the negative effects of mandatory arbitration are expresses by all trade unions and the confederations, unfortunately, there are limited practical or political strategies developed by them. The first is to help out the non-unionized workers who approach them first as explained above. It is hard to deem it as a strategy as it is done by the initiatives taken by the single individuals in the trade unions and it lacks central planning among those.

The other is to keep the mandatory arbitration in the agenda via public speeches, information-sharing meetings with members and non-members in the same workplace, report publishing, and participating in the social dialogue mechanisms like the Board of Arbitration which brings all the social partners and the other institutions related to the arbitration together. However, none of the trade unions or the confederations stated that their suggestions were considered, or any other step has been taken since the enactment of the law which was in line with the demands of trade unions or confederations. On the other hand, many representatives of trade

unions stated that there is not much done by the confederations and other trade unions:

> There are very few unions that produce anything on this topic. Most of them didn't even care. Few of them explained this to their members and their confederation. Confederations did not bother anyway.[56]
>
> (Trade Union 1/2)

> Lawyers working in trade unions drew attention to how mandatory arbitration will be used through the conferences. The trade unions did not take this into account. They didn't voice concerns... The confederations just made a written statement. They thought their members will not be harmed.[57]
>
> (Trade Union 2/1)

When asked the reasons for this neglect and passive role during the transition and the current period, the responses are two-fold. The first is the practical reasons. Many trade unions and confederations mentioned that there was no emergent mobilization among the workers for several reasons and they also do not mobilize if they do not observe mobilization among workers:

> It is not seen as a close treat. The arbitration starts when the contract ends, so it is not near. The workers did not see it as a treat because they do not think their contract might end and they will find themselves at the arbitration table… Also, the government's PR was effective, they believed that they will get their rights and dues immediately…The trade unions do not get into action if the workers are not getting in action.[58]
>
> (Confederation 1)

The second reason, voiced only by the Trade Union 1/1 but shared by the others, was the systemic oppression and the role trade unions play in the industrial relations system of Turkey:

> At the macro level, we come across the relationship between unions and politics. Trade unions were prohibited from engaging in politics as elements of democratic pressure groups through 12 September. There is also an unclear ban. If you are not a reasonable union, your institutional security is at stake. Your future is in danger if you make a policy outside the boundaries determined by the government.[59]
>
> (Trade Union 1/1)

It is evident that there are not many strategies that were determined by the trade unions or the confederations to follow systematically against the mandatory arbitration. The reasons for this are both practical on the micro-level as the workers are not either aware of the situation or even if they are, they do not mobilize themselves thus their trade unions. In a situation like this, the trade unions and confederations prefer to stay passive as a survival strategy against arbitrary practices of the state and the government in the era after the 1982 coup.

4.3.5 Analysis

While trade unions were generally clustering around objection to arbitration in all three periods, there was divergence among the confederations' stances during voluntary and transitionary periods. The analysis of trade union perceptions of the introduction and implementation of ADR in individual labor disputes in Turkey shows that a consensus was reached especially after the ADR became compulsory and its negative implications could be observed in the last period. The consensus is that the confederations and the trade unions were against the mandatory ADR in labor disputes.

The majority of trade unions –rather than confederations- were always against arbitration even when it was voluntary with few exceptions. However, it took time for two major confederations to come to an agreement with their affiliate trade unions on the issue of ADR in individual labor disputes. Only the position of the Confederation 1 during all periods was in line with both their and other trade unions. Starting from a point of neutrality towards voluntary arbitration, Confederation 3 also got closer to its affiliated trade unions during the transition and mandatory periods. Confederation 2, starting with enthusiasm for voluntary arbitration and

continuing with a neutral stance, changed its position in the mandatory period and expressed opposition to the practice of mandatory arbitration. All trade unions and confederations expressed that the workers, especially the non-unionized, are pressured to sign arbitration deals by different situations and actors and are disempowered by the dire financial situation most are in and lack of access to legal advice. These factors indicate that the practice of mandatory ADR leads to retrenchment in worker rights and dues. In conclusion, the analysis here indicates that the mandatory ADR represents the institutional layering of labor legislation.

A similar consensus applies to the suggestions and strategies that trade unions develop. The priority of all trade unions and confederations was the repealing of the mandatory arbitration and most of them described similar amendments if their initial demand would not be fulfilled. All trade unions and confederations counted almost the same methods they use to protect their members and help the non-unionized workers who reach them.

The last major convergence is around the stated reasons for not taking or not being able to take effective steps against the practice of mandatory arbitration. None of the trade unions and confederations stated that their suggestions and/or actions had yielded some outcomes benefiting the workers. Many also agreed that there a few steps that are/could be taken for this end. The stated reasons include the restrictive political atmosphere and the labor regime in the country.

In sum, the divergent opinions of trade unions and confederations to ADR in individual labor disputes when a voluntary version was introduced have given way to a consensus against the practice of mandatory ADR. The consensus points are the following: the mandatory ADR results in the retrenchment of worker rights and dues because it replaces labor litigation, this practice has to be abandoned, all workers

should be provided free of charge legal support and arbitration decisions should be subjected to judicial review if the former demand could not be realized. These changes in responses is visualized in Table 2.

Table 2. Stances of the Trade Unions and Confederations Through Periods

Stances / Periods	Against	Neutral	In Favor
Voluntary Period	Trade Unions Confederation 1	Confederation 3	Confederation 2
Transition Period	Trade Unions Confederation 1 Confederation 3	Confederation 2	N/A
Mandatory Period	Trade Unions Confederation 1 Confederation 3 Confederation 2	N/A	N/A

CHAPTER 5

CONCLUSION

This chapter discusses the main findings of this study in the light of the theoretical background and the review of the literature presented in Chapters 1 and 2. The chapter starts with a short discussion of the precarization trend alongside the labor market insecurities Standing (2011) theorized and trade union responses to this trend in the form of revitalization. The chapter then proceeds into the interpretation of the main findings of this study composed of Turkish trade union perceptions of the introduction of mandatory ADR in individual labor disputes in Turkey, which the thesis characterizes as contributing to the precarization trend.

The contemporary world of work is marked by the precarization as both the forms of employment and the social benefits for workers are retrenching, which manifests itself in increased labor market insecurities (Standing, 2011, 2014). Based on the analysis of trade union perceptions, this thesis considers the introduction of mandatory ADR in individual labor disputes as a form of institutional layering of the labor code and its judicial mechanisms as it enables the conclusion of private deals between workers and employers. In the case of Turkey, the rules and regulations in the Labor Code are still the same but the code and its judicial mechanisms are subjected to institutional layering with the mandatory arbitration. Given that mandatory arbitration is not legally bound by the provisions of the Labor Code, the solutions it produces do not resemble those of the litigation. Both voluntary and mandatory arbitration reforms presented ADR as a dispute solving mechanism. In Turkey, workers often do not resort to legal remedies while their employment relation with their employers continues due to the fear of dismissal. Thus, the

arbitration, both voluntary and mandatory are mechanisms that the sides apply only after the employment relation ends.

This thesis pursued the following question: How do the trade unions and confederations perceive and respond to the introduction of ADR in individual labor disputes? This question is asked in a trade union landscape that is characterized by political divisions in the case of Turkey. The thesis examined trade union perceptions of the introduction of ADR in individual labor disputes in 3 phases: the voluntary period, the transitionary period, and the mandatory period. A qualitative study was conducted with seven trade unions and the three largest confederations. As one of the main political actors, the trade unions were chosen as the subject. Later, the data is scrutinized through time and convergence/divergence axes.

The analysis of trade union perceptions shows that mandatory arbitration in Turkey reduces the cost of dismissing an employee as it becomes evident that the employer will pay less in arbitration than the litigation. In doing so, the mandatory ADR serves to make the rights and protections that the Labor Code of Turkey endows the workers with a matter of negotiation. Negotiations taking place in ADR sessions include a wide range of rights and protections such as maximum working hours and minimum wage. The analysis here indicates that workers, and especially non-unionized workers, are at a disadvantageous position vis-à-vis the employers, which often implies the retrenchment in employment security. Therefore, it is inferred in this thesis that the introduction of mandatory ADR in individual labor disputes aggravates the precarization of employment and deepens the dualism in the labor market. Based on this initial finding corroborating with the preliminary assumption of the author, the thesis examined the responses of trade unions and the

confederations towards the precarization of the workforce and to what extent these responses would bring about revitalization.

It is evident from the data that the trade unions and the confederation perceptions of ADR in individual labor disputes vary across the abovementioned three phases. Trade union perceptions are categorized using the classification of Madimutsa & Leon (2017) which includes three forms of perception: total rejection, altering the course of reform by participating in the process, and fully participating in the process by supporting the reform. For the voluntary period, all trade unions and Confederation 1 was rejecting the reform, and Confederation 3 was not involved in the process, while Confederation 2 was fully participating in the process by supporting the reform. In addition, it should be noted here that no trade unions and confederations fit into the category of altering the course of reform as formal participation of these actors was not possible in all three phases. Given the key importance of this change for trade unions, this situation implies that the social dialogue mechanisms of Turkey are not functional.

During the transition phase, which includes the period when the reform from the voluntary practice to the mandatory one was being discussed, all trade unions, Confederation 1 and 3 were totally rejecting the reform. On the other hand, Confederation 2 was hesitant to respond immediately as they wanted to observe its implementation. In the mandatory period, when this study was conducted, the perceptions of all trade unions and confederations have become negative. In other words, three major confederations and their affiliate trade unions that participated in this study were holding a common view of total rejection and were calling for the repeal of mandatory ADR in individual labor disputes. Given the fragmented structure of trade unions and confederations and the prevalent political divisions

between three major confederations in Turkey, this thesis concludes that the practice of mandatory ADR in individual labor disputes has led to the achievement of a rare consensus among trade unions based on common interests of the workers.

The thesis finds that varied trade union perceptions of the ADR in individual labor disputes have yielded to a shared and negative perception in time, especially after the implementation of mandatory ADR. As mentioned in Chapter 2 and exemplified through country cases, the content of the reform is one of the main determinants of the responses that trade unions and confederations develop, because it presents the change that will affect the industrial relations system and the actors in it. As political actors, the trade unions and confederations shape their responses by examining the content of the reform based on their assessment of whether they will be able to benefit from it or get harmed by it.

Starting as a voluntary mechanism, arbitration today is a mandatory practice as a prerequisite for litigation in individual labor disputes. The shared opposition of trade unions and confederations to mandatory arbitration in individual labor disputes has not been there during the voluntary and transition periods. During the voluntary period, while all trade unions and Confederation 1 were against the practice, the other confederations were either neutral or in favor. The neutrality of the Confederation 3 was due to its limited scope of application. On the other hand, Confederation 2, taking a favorable side, perceived voluntary arbitration as a peaceful way of solving disputes, which is also culturally appropriate. This perception was in line with that of the government, as it was presented in the legislative intent. While Confederation 3 changed its position from neutral to objecting in the transition period, Confederation 2 switched from being in favor to being neutral. What changed the perception of Confederation 3's was the content of

the second reform that replaced voluntary ADR with mandatory ADR. Therefore, the change of the content of the reform in the first two phases appears the main determinant of the change in the perception of Confederation 3. It was only when negative implications of the practice of mandatory ADR was evident, Confederation 1 shifted its position from being neutral to objecting.

The consensus over objecting to the practice of mandatory ADR in individual labor disputes is especially noteworthy in the Turkish case, as the trade union landscape in the country has been characterized by fragmentation along the political lines. This consensus might have created momentum for trade union revitalization. Nevertheless, while confederations and trade unions have shared strategies in the post-reform period, they have not yet developed a common strategy to mobilize the grievances of workers resulting from the practice of ADR.

Madimutsa & Leon's (2017) classification of the post-reform strategies includes mitigating the effects of reform, requesting new reforms to layer the initial one, and participating in the post-reform process and institutions. The analysis here suggests that all confederations and trade unions work to mitigate the negative effects of the reform by assigning lawyers to their members and helping out the non-unionized workers in different ways. In addition, all confederations and trade unions (except one) demand significant reforms such as the mandatory and free of charge assignment of lawyers to non-unionized workers for arbitration sessions or legal reviews of the agreements done in arbitration sessions. The confederations participate in the post-reform institutions like the Board of Arbitration, which is formed as a social dialogue mechanism, but they were not optimistic about their ability to push towards amendments that they perceive essential.

Despite the shared negative sentiment about the practice of mandatory ADR, the unwillingness and inability of confederations and trade unions to effectively work towards the abandonment of this practice might be explained in reference to their limited power resources in the Turkish context. Korpi (2006) suggests that the power resources of the trade unions and confederations are one of the main determinants of their responses. One of the most important power resources is the membership base, which is limited in Turkish trade unions. While the mandatory ADR affects their limited membership base, trade unions could protect their members from the negative implications of this practice. Therefore, the practice does not directly threaten their membership base. In fact, the data suggests that there is no significant change in the membership base and the rate of the collective agreement (DISK-AR, 2019) throughout the three phases. The only exception was the tripling of Confederation 2's membership base (DISK-AR, 2019). This could explain the favorable and neutral stances of Confederation 2 in the first two phases.

The restrictive political environment and inherited labor regime also determine the power resources of trade unions and confederations. A. Çelik (2015) characterizes the contemporary political regime of Turkey as a neoliberal authoritarian one that restricts the activities of trade unions and the confederations in an attempt to pursue a neoliberal agenda. This intervention seems to work twofold: limiting the activities of confederations and the trade unions that are opposing the reforms while rewarding the confederations and trade unions that support the regime. The analysis here suggests that Confederation 2, which is alleged to be in a symbiotic relationship with the Justice and Development Party government, had always been hesitant to oppose the reforms. During the voluntary period, Confederation 2 supported the introduction of ADR in individual labor disputes, while in transition

they expressed that they prefer to observe after the law passes. In simple terms, they avoided opposing the bill, which would make arbitration mandatory. The confederation's stance even differed from its affiliate trade union, which was aware of the possible negative consequences. In the first two phases, Confederation 2 seems to define its interest in keeping good relations with the government, in the context of an increase in its membership base.

The consistency of trade union opposition to the practice of ADR in all three phases is also noteworthy. Unlike confederations as umbrella organizations mainly dealing with policymaking rather than daily problems of the workers, trade unions have closer ties with their membership base. This distinction might lead trade unions to put more emphasis on the membership base, as their main power resource, in developing a response to reforms. In fact, it is the trade unions that would be affected the most by this reform. Confederation 1 also follows the same path with trade unions, possibly due to its overall political stance.

In the mandatory period, all of the trade unions and the confederations have reached a consensus, and this convergence is realized with Confederation 2's decision to alter their responses. Two explanations could be developed for this change in response. Either Confederation 2 started to value their membership base more than they value the support of the government or the negative consequences of the practice of mandatory ADR became evident that it could not deny anymore. The other change in position was observed in Confederation 3's decision to reject the transition from voluntary to mandatory arbitration. During the voluntary area, Confederation 3 stated that the scope of the application was limited, and its impact on their membership base was negligible. While Confederation 3 is also able to protect its members from the practice of mandatory ADR, it possibly changed its

stance because negative consequences of the practice of mandatory ADR became evident for non-unionized workers that it could not deny anymore.

Corroborating with the findings of Frege & Kelly (2003), the analysis here shows that whether the precarization reforms will lead to trade union revitalization depends on the responses of the trade unions and the confederations. The revitalization refers to the trend in trade unions in the last two decades in which trade unions started to deal with demands and wellbeing of the peripheral workforce in parallel with their traditional core members. This brings us to the auxiliary question of this thesis: How and to what extent do the trade union perceptions of the ADR in individual labor disputes consider the potential and actual pitfalls of this model for non-unionized workers? The analysis here suggests that the trade unions and confederations consider the non-unionized workers while forming their responses. This is because trade unions reached a consensus against the practice of mandatory ADR while they could effectively protect their members from its negative consequences. In other words, even though unionized workers also suffer from the pitfalls of the model, are more protected against the ADR in individual labor disputes compared to their non-unionized counterparts. The trade unions and the confederations try to mitigate the effects of ADR on their members at their best capabilities and stated that the strategy generally works except for a few cases. Therefore, their common demand to repeal the law or amendments to this law aim at empowering the non-unionized workers.

On the other hand, data suggests that there are no cohesive and concrete strategies to reach out to the most vulnerable workers; trade unions help the non-unionized workers only when those workers reach out to them. No systematic actions are taken by the confederations and the trade unions. Compared to the case countries

mentioned before, it is seen that there is no pre-discussion of reforms like the Netherlands example and it shows the lack of social dialogue mechanisms but the confederations do not reveal any concrete strategies to develop those mechanisms like in Ghana. Moreover, it is evident that the trade unions or the confederations lack agenda-setting that was exemplified in the German case, either unilateral or common such as Baltic countries. Also, it is not evident that there is a change in organizational strategy making to enhance the power resources like Southern European countries or Zambia. However, it should be noted that the ADR reforms this thesis scrutinizes are fairly new one compared to the case studies.

It is evident that the trade unions and the confederations approach to the issue primarily as a legal and a technical issue. This was evident because they have directed me to their legal departments even though I requested to make interviews with elected officials of unions and confederations, interviews with whom, I thought, would reveal the political aspects of the issue rather than the legal practice. Deeming the mandatory arbitration as a merely legal practice, which should be left to the lawyers and the judiciary might be another reason why a concrete organizational strategy is absent currently.

Data also reveals that the lack of cohesive and concrete strategies is not because of the trade unions' and confederations' unwillingness to do so but possibly because of the limitations of the restrictive labor regime under the authoritarian political regime.

The labor regime of Turkey is determined by the informal working, making the workers unable to be a member of a union, to begin with. On top of that, the union landscape is fragmented under three large confederations with different political ideologies separating them from each other. These ideological differences

disable them to act in a common way under the authoritarian political regime which rewards its ideological alike. This deep fragmentation presents itself as the loss of power resources, which cannot be activated singlehandedly to revert back reforms. In that context, the consensus reached over the negative implication of the practice of mandatory ADR is a promising development. Coalition building is defined as one of the strategies the trade unions follow for revitalization (Frege & Kelly, 2003) and it starts with a common ground for discussion and understanding.

The analysis of country examples in Chapter 2 suggests that the trade unions respond to the reforms generally after the reform starts to affect their core members. This thesis demonstrates that this conclusion does not explain the Turkish case in the case of trade union responses to the mandatory ADR. However, it still resonates with the inaction of confederations and trade unions despite the achievement of consensus. But still, such consensus might enable confederations and trade unions to expand their power resources and take action in the future.

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APPENDIX A

ETHICS COMMITTEE APPROVAL FORM

Evrak Tarih ve Sayısı: 09/11/2020-210

T.C.
BOĞAZİÇİ ÜNİVERSİTESİ
SOSYAL VE BEŞERİ BİLİMLER YÜKSEK LİSANS VE DOKTORA TEZLERİ ETİK İNCELEME KOMİSYONU
TOPLANTI TUTANAĞI

Toplantı Sayısı	:	8
Toplantı Tarihi	:	30/10/2020
Toplantı Saati	:	13:00
Toplantı Yeri	:	Zoom Sanal Toplantı
Bulunanlar	:	Prof. Dr. Ebru Kaya, Dr. Öğr. Üyesi Yasemin Soluk Ilkmen, Prof. Dr. Özlem Hesapçı Karaca, Prof. Dr. Fatma Nevra Seggie
Bulunmayanlar	:	

Batuğhan Yüzlak
Sosyal Politika

Sayın Araştırmacı,

"Sendikaların Güvencesizleştirmeye Tepkileri: Türkiye'de Zorunlu Arabuluculuk Örneği" başlıklı projeniz ile ilgili olarak yaptığınız SBB-EAK 2020/41 sayılı başvuru komisyonumuz tarafından 30 Ekim 2020 tarihli toplantıda incelenmiş ve uygun bulunmuştur.

Bu karar tüm üyelerin toplantıya çevrimiçi olarak katılımı ve oybirliği ile alınmıştır. COVID-19 önlemleri kapsamında kurul üyelerinden ıslak imza alınamadığı için bu onaın mektubu üye ve raportör olarak Fatma Nevra Seggie tarafından bütün üyeler adına e-imzalanmıştır.

Saygılarımızla, bilgilerinizi rica ederiz.

Prof. Dr. Fatma Nevra SEGGIE
ÜYE

e-imzalıdır
Prof. Dr.Fatma Nevra SEGGIE
Raportör

SOBETİK 8 30/10/2020

APPENDIX B

QUESTION FORM (TURKISH)

Bildiğiniz üzere bireysel iş uyuşmazlıklarında İş Mahkemesi'nden önce arabulucuya başvurmuş olmak 2018'den itibaren dava şartı sayılmaktadır. 2012 – 2018 yılları arasında ise yine bireysel iş uyuşmazlıklarında ihtiyari arabuluculuk mekanizması mevcuttu. Öncelikle arabuluculuğun ihtiyari olduğu döneme ilişkin görüşlerinizle başlayalım.

1. Daha önce yürürlükte olan bireysel iş uyuşmazlıklarında ihtiyari arabuluculuk uygulamasına nasıl yaklaşıyordunuz? Bu mekanizmayı üye işçilerinize öneriyor muydunuz? Öneriyorduysanız / Önermiyorduysanız, bu yaklaşımınızın nedenleri nelerdi?
2. İhtiyari arabuluculuğa başvurma yoluna giden üyelerinize destek sunuyor muydunuz? Sunuyorduysanız bu destekleri anlatır mısınız?
3. Sizce ihtiyari arabuluculuk uygulaması genel olarak üyelerinizin lehine mi aleyhine mi sonuçlar doğurmuştu? Sendika olarak ne tür deneyimler, gözlemler ya da değerlendirmeler sizi bu yönde bir görüş oluşturmaya itmişti?
4. İhtiyari arabuluculuk uygulamasına ilişkin sendika üyesi işçiler için yaptığınız bu değerlendirme sendikalı olmayanlar bakımından da geçerli midir? Sizce sendika üyesi olmayan işçiler ihtiyari arabuluculuk uygulamasından nasıl etkilenmişlerdi?
5. Sizce ihtiyari arabuluculuk uygulaması genel olarak sendikaların lehine mi aleyhine mi sonuçlar doğurmuştu? Neden?
6. Sendikanız bireysel iş uyuşmazlıklarında zorunlu arabuluculuk uygulamasına geçiş gündeme geldiğinde bu değişikliği nasıl karşıladı? Olumlu /olumsuz karşılandıysa, neden bu şekilde karşılandı?
7. Zorunlu arabuluculuk uygulamasına geçişi desteklemek ya da durdurmak için herhangi bir sendikal faaliyet yürüttünüz mü? Yürütmediyseniz, neden bu konuda bir faaliyet yürütmemeyi tercih ettiniz? Yürüttüyseniz, bu faaliyetleri anlatır mısınız?
8. Bireysel iş uyuşmazlıklarında arabuluculuğun zorunlu hale getirilmesini nasıl yorumluyorsunuz?
    a. Üyeleriniz açısından bu değişikliğin olumlu / olumsuz tarafları nelerdir? Bu süreçte üyelerinizin zorunlu arabuluculuk deneyimlerinden örnek verir misiniz?
    b. Sendikanız açısından bu değişikliğin olumlu / olumsuz tarafları nelerdir? Sizce bu uygulama sendikalaşma önünde bir engel midir yoksa sendikalaşma için bir fırsat mı sunar? Örnek verir misiniz?
    c. Sendika üyesi olmayan işçiler bakımından bu değişikliğin olumlu / olumsuz tarafları nelerdir? Örnek verir misiniz?
9. Zorunlu arabuluculuk uygulamasının yarattığı az önce konuştuğumuz etkilere karşı sendikanız nasıl stratejiler izlemektedir?
    a. Sendikanın gücünü koruması ve artırması amacıyla
    b. Üyelerin haklarının korunması amacıyla
    c. Üye olmayan işçilerin haklarının korunması amacıyla
10. Bireysel iş uyuşmazlıklarında zorunlu arabuluculuk uygulamasının başlamasının üzerinden yaklaşık iki yıl geçti. Zorunlu arabuluculuk uygulamasına ilişkin sendikanızın yaklaşımında bu uygulama ilk gündeme geldiğinden bu güne bir değişiklik oldu mu? Olduysa ne yönde bir değişiklik oldu? Görüşlerinizde bir değişiklik olmadıysa, bu iki yıldaki deneyimlerin ne şekilde sendikanızın önceki görüşlerini doğruladığını düşünüyorsunuz?
11. Sizce bireysel iş uyuşmazlıklarında zorunlu arabuluculuk uygulamasının işçi haklarının ve işçilik alacaklarının korunması bakımından en önemli sorunu / eksiği nedir? Bu çerçevede zorunlu arabuluculuk modelinin iyileştirilmesi mümkün müdür? Mümkünse bu nasıl yapılabilir? Yoksa sizce bu modelin terk edilmesi mi gerekir?
12. Herhangi bir sendikaya üye olmayan işçiler açısından bu sistem nasıl değerlendirilmelidir? Zorunlu arabuluculuğun sendika üyesi olmayanlar üzerindeki etkisi sizce sendika üyelerinden belirgin bir şekilde ayrışıyor mu?
    a. Sendikanız bu işçiler için bir strateji belirlemiş midir?
    b. Sendikanız bu konuda hangi adımları atmıştır?
    c. Bu adımların karşılığını nasıl almıştır?
13. Opsiyonel // Arabuluculuk Kurulu'na katılan sendika temsilcileri için:
    a. Kurul nasıl işlemektedir?
    b. Alınan kararlara sendikanızın etkisini nasıl yorumlarsınız?
    c. Alınan kararlara işçi sendikalarının genel etkisini nasıl yorumlarsınız?
    d. Bu kurulda sunduğunuz görüşler üzerine geliştirilmiş bir strateji ve/ya plan var mıdır?

APPENDIX C

CONSENT FORM (TURKISH)

T.C.
BOĞAZİÇİ ÜNİVERSİTESİ
SOSYAL VE BEŞERİ BİLİMLER İNSAN ARAŞTIRMALARI ETİK KURULU
KATILIMCI BİLGİ ve ONAM FORMU

Araştırmayı destekleyen kurum: Boğaziçi Üniversitesi

Araştırmanın adı: Sendikaların Güvencesizleştirmeye Tepkileri: Türkiye'de Zorunlu Arabuluculuk Örneği

Proje Yürütücüsü: Doç. Dr. Volkan Yılmaz

E-mail adresi: vyilmaz@boun.edu.tr

Telefonu: +90 212 359 75 63

Araştırmacının adı: Batuğhan Yüztak

E-mail adresi: batughan.yuzuak@gmail.com

Telefonu: +90 505 661 74 35

Sayın Katılımcı,

Boğaziçi Üniversitesi Sosyal Politika Anabilim Dalı öğretim üyesi Doç. Dr. Volkan Yılmaz ve Sosyal Politika Yüksek Lisans öğrencisi Batuğhan Yüztak tarafından "Sendikaların Güvencesizleştirmeye Tepkileri: Türkiye'de Zorunlu Arabuluculuk Örneği" adı altında bilimsel bir araştırma projesi yürütülmektedir. Araştırma kapsamında yıllardan beri süregelen işçilerin güvencesizleştirilmesi konusu irdelenecek ve zorunlu arabuluculuk uygulaması bir örnek olarak ele alınacaktır. Emek piyasalarının ve ülkenin makroekonomisinin önemli aktörleri olan sendika ve konfederasyonların bu konuda ürettikleri tepki ve stratejiler bu araştırmanın ana konusunu oluşturacaktır. Bu tepkilerin ölçülmesi amacıyla katılımcılara açık uçlu soruların yöneltildiği derinlemesine mülakatlar yapılacaktır. Bu çalışmada siz dahil olmak üzere toplam 12 sendika yöneticisi ve/ya kurumların yönlendireceği sendika çalışanlarıyla mülakat yapılması planlanmaktadır.

Bu araştırma bilimsel bir amaçla yapılmaktadır ve katılımcı bilgilerinin gizliliği esas alınmaktadır. Araştırmaya katılmak tamamen isteğe bağlıdır, araştırmaya katılım için herhangi bir ücret veya ödül teklif edilmeyecektir. Bu çalışmaya katılıma onay verdiğiniz takdirde çalışmanın herhangi bir aşamasında herhangi bir sebep göstermeden onayınızı çekme hakkına sahipsinizdir. Onamınızı çektiğiniz takdirde görüşleriniz çalışmaya yansıtılmayacak ve toplanan dijital veriler silinmek suretiyle, alınan fiziksel notlar ise kâğıt öğütücü kullanılarak tamamen imha edilecektir. Görüşme yaklaşık bir

saat sürecektir. Sorular katılımcılara yönelik psikolojik ya da hukuki herhangi bir risk oluşturulmamasına özen gösterilecek biçimde hazırlanmıştır. Mülakatlar yoluyla toplanacak verilere dayanan bu tez çalışmasında, görüşmecilerin kişisel bilgilerine ve bağlı bulundukları sendikaların isim ve büyüklük gibi bilgilerine herhangi bir biçimde yer verilmeyecektir. Mülakat esnasında da herhangi bir rahatsızlık yaşamamanız için azami özen gösterilecektir.

Aktardığınız deneyimlerin ve görüşlerin doğru yansıtılması için ses kaydına ihtiyaç duyulmaktadır. Ses kayıtları yazıya aktarılırken gizliliğin korunması açısından isimler ve kişisel bilgiler değiştirilecek ve anonim hale getirilerek kodlanacaktır. Ses kayıt dosyaları ve ses kayıtlarının yazıya dökülmüş halleri çalışma tamamlandıktan sonra imha edilecektir.

Bu formu imzalamadan önce, çalışmayla ilgili sorularınız varsa lütfen sorunuz. Daha sonra araştırma projesi hakkında ek bilgi almak istediğiniz takdirde sorunuz olursa, proje araştırmacısı Batuğhan Yüzüak (e-mail: batughan.yuzuak@gmail.com; telefon: +90 505 661 74 35) ve/veya proje yürütücüsü Volkan Yılmaz (e-mail: vyilmaz@boun.edu.tr; telefon: +90 212 359 75 63) ile temasa geçiniz. İlgili proje hakkında sorularınız ve şikayetleriniz için Boğaziçi Üniversitesi Sosyal ve Beşeri Bilimler Yüksek Lisans ve Doktora Tezleri Etik İnceleme Komisyonu ile iletişime geçiniz.

Katılımcının Adı-Soyadı: .....

İmzası: .....

Tarih (gün/ay/yıl): ...../...../.....

Araştırmacının Adı-Soyadı: Batuğhan Yüzüak

İmzası: .....

Tarih (gün/ay/yıl): .../...../.....

Dijital olarak imzalayan
Batughan Yuzuak
Tarih: 2020.11.24
12:58:38 +03'00'

APPENDIX D

QUOTATIONS OF PARTICIPANTS (TURKISH)

[1]Var olan mekanizma işlerliği bulunmayan "Hukuk Uyuşmazlıklarında Arabuluculuk" idi. Bu geneli kapsayan bir kanundu ve özellikle iş hukuku alanı düşünülmemişti. Daha çok ticari uyuşmazlıkları hedef almaktaydı. İş Hukukunda uygulaması yoktu. O nedenle bize ulaşan herhangi bir işçi veya sendika bildirimi de olmamıştı.

[2]İşveren eskiden ibraname imzalatıyordu işçiye: "Bütün hak ve alacaklarımı aldım, hiçbir hak ve alacağım kalmamıştır." Ancak iş uyuşmazlıklarına bakan Yargıtay daireleri bu ibra müessesesine mesafeli yaklaştılar. Orda gerçekten bir irade fesadı var mı gerçekten işçinin bütün alacakları tasfiye edildi mi a işçinin o anlamdaki bir zorluğundan mı yararlanıldı meselesi…

[3]Yargıtay bunun (ibranamenin) kötüye kullanımlarını gördü ve 2012'de bir değişiklik geldi. Aradaki iş ilişkisini düşünerek sözleşmenin bitişinden en az bir ay sonra yapılabilir ve tüm alacakların bankayla yatırılması gerekir kanıt olsun diye. Ancak bu durumda işveren tüm borç ve sorumluluğundan kurtulur dendi. Bunlar değişince aslında işverenler arabuluculuğu istemeye ve kullanmaya başladı.

[4]Sorun yaşayan üyelerimizle birlikte herhangi bir hukuki süreç başlatılmadan önce, işverenle çözüm görüşmeleri yapılmakta, üyemizin taleplerinin karşılanacağı şekilde uzlaşma sağlanması halinde işverenlerin talebi doğrultusunda ihtiyari arabuluculuk sürecinin işletildiği durumlar az da olsa yaşanmıştır. Bu durumlar işverenin kendini yasal olarak korumaya alma isteğinden dolayı olmuştu, biz de buna saygı gösterdik.

[5]Yani kimi öyküler var mesela, şirket bizim arabulucumuz var diyor. Bizim arabulucumuz kavramı arabuluculuk müessesesinin ruhuna aykırı…şirket toplu işten çıkarma yapacağı zaman bunlara bir oda ayırıyor…hiçbir arabuluculuk seremonisi olmadan, daha önceden basılmış, basmakalıp şeyler çat çat imzalattırılıyor. O istatistik de o yüzden iyi duruyor aslında.

[6]… aslında arabuluculuk iyi uygulanınca iyi sonuç verebilen bir sistem. Tarafların dava açma yoluna gitmeden arabulucuda anlaşmaları hem yargılamaların hızlandırılmasında hem de neticenin daha çabuk elde edilmesi bakımından olumluydu. Burada önemli olan şey kişinin kendi rızasıyla arabulucuya başvuruyor olması.

[7]Yargılamalarda biri davalı biri davacı olduğu zaman sanki birbirine düşmanmış gibi yaklaşıyor… Arabulucuda aslında karşılıklı anlaşma var, bu olduğu için iki taraf da mutlu oluyordu. Davacı davalı kimin haklı olup olmadığı önemli değil aslında, o karşı karşıya gelme durumu insanları rahatsız ediyor.

[8]Arabuluculuk yargının özelleştirilmesi demek…Yargı erkini devletten alıp başkasına veriyor… Özellikle Anadolu'da mahalle baskısı faktörü ortaya çıkıyor, aşiret, tarikat, hemşerilik ilişkileri falan. "Hakkınızı helal edin, bir helalleşin bakalım,

helalleşmek ne kadar güzel bir şey" diyorlar. Helalleşme dinsel bir motif, helalleşmede bile bir hak vardır. Orda insanlar hakkını teslim edersen helalleşirler.

[9]Hukuk dediğiniz şey adaleti tesis etmek üzere var olmuş bir kurum bütün mahkemeleriyle, hatta denetim mahkemeleriyle. Biliyorsun ikinci derece mahkemesi var arada istinaf var Yargıtay var. Orada kılı kırk yarıyor, uzun sürüyor tamam yani. Hukuk devletinin bu kadar titizlendiği bir şeye hükümet çıkıp da helalleşiverin dediği zaman gerçekten helalleşme oluyor, adalet değil.

[10]İş uyuşmazlıklarında zorunlu arabuluculuk noktasında kanunun hazırlık çalışmaları sırasında bilgilendirildik ve birkaç kez toplantıya katıldık. Bu toplantılarda arabuluculuğun zorunlu hale getirilmemesi (dava şartı aranmaması) gerektiğini iş hukukunda arabuluculuğun ihtiyari olması gerektiğini ifade ettik.

[11]Anayasa Mahkemesi bahsi geçen gerekçeli kararında, arabuluculuğu, "gönüllülük esasına dayanan dostane bir çözüm yolu" olarak tanımlamakta "uyuşmazlıkların çözümünde yargısal yolların yanında yer alan ve tarafların istemleri hâlinde işlerlik kazanan" bir yöntem şeklinde algılamakta, zorunluluğu reddetmektedir. Açıkça anlaşılacağı üzere tasarının gerekçesi Anayasa Mahkemesi kararına uygun değildir.

[12]Bizim önceliğimiz zorunlu değil de gönüllü olmalıydı ama tabi bu düzenleme bir şekilde geçti. Bu süreci aslında test etmek gerekiyordu bir süre. Getirildiği anda doğrudan bir tepkimiz olmadı. Bunun nasıl sonuçlar doğuracağını gözlemleyip, bunun nasıl sonuçlar doğuracağını aslında biraz da zamanla gözlemleyip, arabuluculuk süreçlerini biraz da yaşayıp ona göre bir değerlendirme yapmanın daha doğru olacağını düşünüyorduk.

[13]Biz bunun zorunlu olmasına karşı çıktık. Ülkemiz gerçekliği bilindiği için bunun uygulamada ne gibi çalışanlar aleyhine bir sonuç doğuracağı aşağı yukarı kestiriyorduk. Sonuçta bu ülkede yaşıyoruz. Ülke gerçekleri ile ilgili görüşlerimiz var.

[14]Zorunlu arabuluculuk uygulamasına geçiş gündeme geldiğinde en başta olumlu karşılanmıştır. Ancak uygulama ortaya çıkan aksaklıklar sebebiyle pek sağlıklı bir yol olmadığı ortaya çıkmıştır.

[15]Davaları uzatmak için ellerinden geleni yapıyorlar. Parayı ne kadar geç verirlerse o kadar iyi çünkü zaman geçtikçe borçlar küçülüyor, enflasyonu, para onun cebindeyken onu işletme faizini düşününce… Bir de şeyi düşünüyorlar, batarsa şirket o zamana kadar, ödemeyiz diye.

[16]Biraz bu işverenlerin de isteğiyle geldi arabuluculuğun iş davalarında zorunlu olması. Çünkü arabuluculuk sayesinde işçilerle davada ödeyecekleri tazminatlardan çok daha düşük miktarda tazminatlar ödeyecek, davalarda karar verilemeyecek - asgari ücretin altına bir hesaplama hiçbir şekilde dava sonucu çıkmazken- arabulucuda bunların hepsi serbest ve hukuka uygun.

[17]Arabuluculuk biraz Kıta Avrupası'nda yayılan bir kurum ama oradaki uygulamalara baktığımız zaman, sadece metinlere değil uygulamaya baktığımız zaman biraz daha arabuluculuk ruhuna uygun olduğunu görüyoruz. Yani tarafların

iradi olarak başvurabildikleri, mümkün olduğu kadar eşit temsile uğraşılan bir kurum. Bizde hiç öyle değil.

[18]İşçi lehine yorum ilkesi diye bir ilke vardır ve nedeni şudur: işçiyle işveren eşit değildir, ekonomik olarak da eşit değildir. Hukuki yardıma ulaşma konusunda da eşit değillerdir. Eşit olmadıklarında, hukuk hâkime ortada kaldığın durumlarda işçi lehine düşün, çünkü ortada bir eşitsizlik vardır der. Bu eşitsizliğin masada işçi ve işverenin bulunduğu bir pazarlığın yapıldığı ve ona göre haklarının ödendiği bir durumda çok daha fazla ortaya çıktığını biliyoruz.

[19]İş hukukunun liberalleşmesi başka bir şey, liberalleşir. Ben asla liberalleşmesine karşı değilim bir yere kadar bu liberalleşmeye de katlanılabilir, buna karşı mücadele verilebilir. İş hukukunu komple ortadan kaldıracak bir kurumu işçinin lehineymiş gibi ortaya koymak ve böyle bir pratiğin geliştirilmesi inanılmaz vahim bir durum. Kabul edilemeyecek olan budur.

[20]Biz bunun gitmesini istiyoruz. Uygulamanın işverenden başka hiçbir kimseye yararı yok… İşçi hak ve alacaklarında herhangi bir geriye gidiş yaşanmayacak kadar denetlenirse gönüllü olan yeter. Fakat o da çok zor.

[21]Anket ekinde gönderdiğimiz görüşlerimizde herhangi bir değişiklik yoktur.

[22]"Alternatif uyuşmazlık çözümü" yollarından birisi olarak uygulanan zorunlu arabuluculuk şimdiden yeni bir "uyuşmazlık kaynağı" halini gelmiş durumdadır. Bu nedenle işler daha da kötüye gitmeden bir an önce zorunlu arabuluculuktan vazgeçilmesi gerekmektedir. Arabuluculukta ısrar edilecekse süreç ihtiyari olmalıdır.

[23]Geldiğimiz noktada, biz kesinlikle bunun işçilerin mağdur olmasına sebebiyet verdiğini gözlemlemiş vaziyetteyiz. Dolayısıyla zorunlu arabuluculuğun işçi haklarında çok mühim geriye gidişlere sebep olduğunu ve bu uygulamanın kaldırılmasını istiyoruz. Bizim hep dediğimiz gönüllü arabuluculuk uygulaması olabilir, geri gelebilir... Saf bu haliyle uygulamanın doğru olmadığını düşünüyoruz. En azından bu düşüncemizi karşılaşılan durumlar da pekiştirmiş oldu.

[24]Ben bile kendi müvekkilimle yaşadım bu sorunu. Alacağını hesaplıyorum müvekkilin, 60 bin ama arabuluculukta gelen 20 bini kabul ediyor. Aradaki 40 bini çizmeyi göze alabiliyor. Bu da ekonomik baskı yüzünden. Ekonomik baskıyla masaya oturan bir işçinin haklarının ve alacaklarının budanacağı çok açık.

[25]Bu sistemde işçilerin haklarını tam olarak bilmeden, alacaklarını da hesaplamadan arabuluculuğa oturması isteniyor. Böyle olunca da işçinin hak ettiğinden daha azına razı olmasıyla sonuçlanıyor.

[26]Orada işçi tek başına hakkını, hukukunu, alacağını hesaplayabilecek durumda değil. Yargı mekanizmalarının işleyişini zaten bilemiyor, bilmesini de beklemem. 3 gün sonra 5 gün sonra evine ekmek götürebilecek, evinin kirasını ödeyeceği parası yok… Bu psikolojiyle arabulucunun yanına oturduğu zaman buradan sağlıklı bir kararla kalkmasını, hakkını tam ve eksiksiz talep etmesini bunda ısrarcı olması beklemek gerçekçi olmaz.

[27]Kıdem tazminatını hesapladığımızda 80 bin çıkan, şunlara şunlara dikkat et dediğimiz işçiye sonradan ne yaptığını soruyoruz. “Avukat Hanım, ne yapayım? 20 binden daha çok vermem dedi işveren. Ben de dava sürecini göze alamadım. Çok uzun sürüyor, bir sürü de borcum var deyip anlaştım” diyor. Duyuyoruz.

[28]“Tamam bak senin hakkın olabilir ama bugün razı ol” diyor işveren. “Yargıya gidebilirsin ama on sene sürer halbuki bugün iki lirayı al”. Hani ya kırk satır ya kırk katır derler ya, o hesap.

[29]İş hukukuyla haşır neşir olmayan arabulucular oluyor. Onlar işte davalar çok uzun sürer deyip işçiyi manevi baskı altına alarak haklarından feragat ederek anlaşma yapmasının doğal olduğunu, olması gerekenin bu olduğuna ikna etmeye çalışıyorlar. Sendikanın olmadığı, işçinin avukatının olmadığı yerlerde arabulucular süreci kendilerinin en çok ücret alacağı şekilde yürütüyorlar.

[30]Bu birtakım forumlarda konuşulduğu için söylüyorum. Bir kere bu dairenin arabulucuların üstünde uyuşmazlıkları anlaşmayla sonuçlandırılması, bunun için çok çaba sarf etmeleri konusunda olağanüstü çaba sarfı noktasında epey basınçları olduğu söyleniyor.

[31]Avukatlar işçileri bu toplantılarda çok etkili savundukları için Başkan arabuluculara bundan sonra, ilerde asilleri de toplantılara çağırın dedi. Normalde eğer avukatı ya da temsilcisi varsa gelmesine gerek yok işçinin ya da işverenin ama karşı karşıya geldiklerinde, daha çok baskı olsun istiyorlar. Çözülsün de nasıl çözülürse.

[32]…Velinimeti, ona ekmek veren adamdır.

[33]Masaya hep şu getiriliyor: yargıya gidersen davan uzun sürer, pahalı olur. “Yani hem cebinden masraf yapacaksın avukat için, dava için hem de iki sene sürecek. Dava sonunda eline on bin lira geçeceğine sana 2 bin lira teklif ediyorum” deyince işveren, işçiler o dava uzunluğunu göze alamıyorlar çünkü onun hayatı daha pratik, eline hızlı geçecek paraya anlaşmak zorunda.

[34]İşsizlik ödeneğinden faydalanma işverenin İŞKUR’a yolladığı koda bağlı. Kod dediğim neden işten çıkarıldığına dair olan. Eğer kodu haklı sebeplerden yollarsa işçinin ödeneği yatırılmıyor. İşveren de “Kıdemini az veririm, oradan kısarım ama kodu değiştiririm” diyor. Yani yan mekanizmalarla işçiyi ikna etmeye çalışıyorlar.

[35]Zorunlu arabuluculuk işçilerin yıllardan beri elde edilmiş bütün kazanımlarını bir anda ortadan kaldırdı. Sanayi devriminden beri aslında işçilik haklarında çok ciddi kazanımlar elde edildi. Fazla mesai ücreti olsun, yıllık izinler olsun, asgari ücret olsun... Yani işçinin elde ettiği tüm kazanımlar tek bir düzenlemeyle, bu arabuluculuk müessesesiyle nerdeyse yok edilmiş oldu.

[36]İş hukukunda işçinin korunması amacıyla bir takım emredici kurallar vardır. Arabuluculuk sürecinde ise, önemli olan müzakere olduğundan ve “kazan-kazan” sistemi uygulandığından emredici kurallar göz önüne alınmaksızın, hatta emredici kuralların tarafların anlaşmasına engel olduğu görüşünden hareketle iş hukukunun varlık amacına tamamen aykırı bir sistem olarak uygulanmaktadır.

[37]Mesela işçi aslında dört bin kazanıyor ama SGK'sı asgariden. Asgariden anlaşmaya zorlanıyor. Anlaşmayı kabul edip sonra da SGK'm eksik yatırıldı diye dava açmaya kalkınca o anlaşma tutanağı davanın düşmesine sebep oluyor. Böylece yasadışılıkları meşrulaştırmış oluyor zorunlu arabuluculuk.

[38]Bugün asgari ücret 2300 civarı… diyelim ki işçi üç ay maaşsız çalıştı ve dava açmak istiyor buna. 2300 çarpı üçten hesaplayınca nerdeyse işte yedi bin yapıyor ama üç aydır maaş alamadığından dört binlik teklifi almak zorunda. N'oldu şimdi? Olan şey şu, bir işçiyi asgariden altına çalıştırmış oldunuz.

[39]Taraflar haftada 45 saatin üstüne çalışmaya anlaşamazlar, azı mümkündür. Fazla mesai de dahil günlük 11 saatten fazlası da olmaz. Bunlar yorum değil. Çok açık nispi emredici düzenlemeler. Arabuluculukta siz işçi hak ve alacaklarını taraflar neye anlaşırlarsa diye tarif ediyorsunuz, tam bir liberal anlayış içinde. Bu mümkün değil.

[40]SGK'ya ilişkin sigorta primlerinin yanlış yatırılmasına karşı hizmet tespit davaları arabuluculuğa uygun değil ama işçi ve işveren o masaya oturduklarında işveren bütün alacaklarını düşük bir kesintiyle kabul edince bunu işçiye ancak hizmet tespit davası açmazsan öderim gibi diyor. İşçi de "tamam" diyor.

[41]Biz Bakanlık zorunlu müdafi atasın demiştik. Bakanlık nasıl arabulucunun parasını ödüyorsa anlaşma olmazsa asgarisini ödüyorsa bunu da ödesin dedik. O müdafi işçiye bilgi verecek en azından. Kulağına "Kardeşim bu hesaba göre alacağın gerçek alacağının çok çok altında. Davada daha çok alırsın" desin… Cahil işçiler var, arabulucuyu hâkim sananlar var.

[42]İşçinin bir avukat ile anlaşarak arabulucuya birlikte gidebilme ihtimali oldukça düşüktür. Uygulamada işçinin kazancı kendisi ve ailesine yetecek seviyede dahi değildir…. Bu nedenle tasarıya bir madde ilave edilerek, adli yardımın işçinin anlaşacağı avukat için de uygulanmasını sağlayacak bir düzenleme yapılması önemli görülmektedir.

[43]Bu anlaşmalar gizlilik ilkesi yüzünden denetlenemiyor. Sadece işçi dava açarsa hâkim daha önce arabulucuda anlaşılmış mı diye bakıp davayı usulen düşürüyor. İrade fesadı var mı diye bakılması lazım, yani alacağının altında mı almış diye.

[44]Hakimlerin bu arabuluculuk kağıtlarına bakması lazım… Mesela işçiyle işveren asgariden düşüğe ya da mesela fazla mesainin az ödenmesine anlaşmış olsalar dahi hâkimin bunu iptal edebiliyor olması gerek, şimdikinin aksine.

[45]…iyileştirilmesi için çok ciddi değişiklikler yapılması gerekiyor. Bu çerçevedeki en temel sorun işçi ve işveren arasındaki eşit olmayan ilişki… Modelde değişiklikler yapılması bunu çözmez. Bu eşitsizliğin ortadan kaldırılması sistemin temeliyle oynamakla olur.

[46]Siz önce bir zemini düzenleyeceksiniz, sonra adım adım getireceksiniz. Bunlar olmadan getirince işverenin hukuka aykırı iradesini hukukileştirmenin dışında bir işe yaramaz

[47]Bir toplu sözleşme düzeni var orda, uyuşmazlıklar daha az. Sendikayla işveren oturup kurallarda anlaşıyorlar. Orda işyeri kurulları, disiplin kurulları var. Mekanizmalar var, işçi temsilcileri var. Çok büyük uyuşmazlıklar çıkmıyor.

[48]Sendikaların olduğu yerde, en kötü sendika da olsa, sarı sendika da olsa, en azından çift bordro vs. olmadığı için arabuluculuk belki haklara ve alacaklara ulaşım olarak kabul edilebilir bir şeye dönüşebiliyor ama özel sektörde örgütlülüğün yüzde üçlerde olduğu bir işgücü piyasasında bunlara olumlu örnektir demek bile mümkün değil.

[49]Eğer üyemiz işten atıldıysa ya da hak ve alacaklarını tam alamıyorsa, sendikamız işçiyi işverenle yüz yüze getirmeden, işçimizi korumak için araya girer. Süreci böylece sendika şekillendirir. İşçimize bilgilendirme yapıldıktan sonra avukatlarımız toplantılara işçimizle beraber katılır.

[50]Bir uyuşmazlığı olan, işverene dava açacak ya da arabulucuya gidecek işçilerin neredeyse tamamına yardımcı oluyoruz zaten. Dolayısıyla bize başvuru yapıp sonra mağdur olan arabulucu sürecinde yok. Avukatla temsil edildiği için mağdur olma ihtimali çok düşük zaten. Ben hiç duymadım.

[51]Örgütlü işçi kesimi açısından biraz daha az zorunlu arabuluculuğun sakıncaları. Çok fazla uygulama alanı bulamamış olabilir çünkü işçilerin böyle durumlarda en kolay ulaştıkları yerler sendikadır… Sendikanın avukatları arabuluculuk toplantılarında onları temsilen toplantıya katılıyor. Dolayısıyla bu daha az sakıncalı sonuçlar doğurabiliyor.

[52]Bir profesyonelden yardım almış olsa dahi, borcundan dolayı alacağı olan paranın bir kısmından vazgeçiyor. Şey diyor: "İhtiyacım var, kart borcum var. Üç ya da beş neyse. Sonradan kazansak bile benim şu anki sorunumu çözmüyor." Parayı şimdi alabilmek için önemli bir miktardan vazgeçebiliyorlar.

[53]Bizim konfederasyonun santrali hiç susmaz, call-center gibi çalışır. Uzmanlarımız da hukuk büromuz da arayanlara yardımcı olur işçilerin haklarını korumak manasında. Bizim telefonlar da hiç susmaz. Santral bizim kişisel numaralarımızı verir biz tatildeyken bile ama sorun olarak görmeyiz, görevimiz olduğuna inanıyoruz.

[54]Eğer işçi bir şekilde bize ulaşırsa, genelde telefonla oluyor bu ara, ya da işyeri temsilcimize ulaşıyorlar… Hepsine avukat sağlayamayız ama elimizden geldiği kadarıyla yardımcı oluyoruz. Hesaplamalar olsun, hukuki sorular olsun. Ya da piyasanın altına ücretle çalışan avukatlar buluyoruz.

[55]Bizim bu düzeltilmesini istediğimiz hususların hepsi aslında bize üye olmayan çok büyük çoğunluk kesimle alakalı. Bahsetmiş olduğum önerilerimizi onlar adına, çoğunluk onlar adına yani. Tabii ki kendi üyelerimiz adına da dile getiriyoruz ama zaten ağırlıklı olarak bu mağduriyetlerin ortaya çıktığı nokta çoğunlukla sendikaya üye olmayan işçiler bu sorunu yaşıyorlar.

[56]Bu konu hakkında bir şey üreten çok az sendika var. Çoğunun umurunda bile olmadı. Çok azı bunu üyelerine ve konfederasyonuna anlattı. Konfederasyonlar zaten hiç uğraşmadı.

[57]Sendikalarda çalışan avukatlar konfederasyonlara katılarak zorunlu arabuluculuğun nasıl kullanılacağına dikkat çekti. Sendikalar bunu dikkate almadılar. Seslerini çıkartmadılar… Konfederasyon da yazılı açıklama yaptı sadece. Bizim üyelere bir şey olmaz diye düşündüler.

[58]Yakın bir tehdit olarak görülmedi. İş akdi bitince başlıyor arabuluculuk, yakın değil yani. Yakın bir tehdit olarak görmediler çünkü kontratlarının sonlandırılacağını ve kendilerini arabuluculuk masasında bulacaklarını düşünmediler. Bir de Devletin PR çalışması iyiydi. İşçiler haklarını alacaklarını hemen alacağız diye düşündü. İşçide hareketlenme yoksa sendikada olmaz zaten.

[59]Burada makro düzeyde sendika siyaset ilişkisi karşımıza çıkıyor. Sendikaların demokratik baskı unsurları olarak siyaset yapmaları 12 eylülde yasaklanmıştır. Açık olmayan bir yasak da var. Eğer makul sendika olmazsanız kurumsal güvenceniz tehlikededir. İktidarın belirlediği sınırların dışında politika yaparsanız geleceğiniz tehlikededir.