Akdeniz University
Institute of Social Sciences

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Aysu ELVERİCİ

CIVIL SERVANTS UNIONISM AND THE ANALYZING OF TRADE UNION RIGHTS OF CIVIL SERVANTS IN THE LIGHT OF ARTICLE 11 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN TURKEY

Joint Master's Programme European Studies Master Thesis

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Civil Servants Unionism and the Analyzing of Trade Union Rights of Civil Servants in the Light of Article 11 of The European Convention on Human Rights in Turkey

Onay : Yukarıdaki imzaların, adı geçen öğretim üyelerine ait olduğunu onaylarım.

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LIST OF ABBREVIATIONS

ECHR: European Convention on Human Rights

ECtHR: European Court of Justice

EU: European Union

KISK: Kamu Emekcileri Sendikaları Konfederasyonu

MISK: Milliyetci İsci Sendikaları Konfederasyonu

ILO: International Labour Organization

TISK: Turkiye Isveren Sendikaları Konfederasyonu

UDHR: Universal Decleration of Human Rights

SUMMARY

CIVIL SERVANTS UNIONISM AND THE ANALYZING OF TRADE UNION RIGHTS OF CIVIL SERVANTS IN THE LIGHT OF ARTICLE 11 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN TURKEY

Union rights, which have undergone many evolutions during the history, are precondition of an active and autonomous social dialogue of European Union institutions and one of the eight elements of International Labor Organization (ILO) as well. What is more important is that union rights take part in many agreements and in particular, these rights are given to everyone as an human right according to the article 11 of European Convention on Human Rights (ECHR).

Although public unionization, which constitutes the subject of the research, has received an affirmative consensus in international arena, association of civil servants and the rights stemming from this association have been disputable in many domains due to a privileged status they have. The state has been cautious while constituting a structure that will question its own dominance.

Authorities in Turkey have cautiously approached unionization of the civil servants and union rights with for years and the civil servants was able to reach their collective contract right only in 2012 whereas they were given the right to strike.

Turkey, which agrees with many international agreements such as European Convention on Human Rights that give the right to organize to everyone, has restricted the civil servants' union rights, violating one of the human rights. Turkey was convicted many times as it violated the article 11 of the ECHR. The country should immediately end this violation with the necessary regulations and laws.

ÖZET

TÜRKİYE'DE MEMUR SENDİKACILIĞI VE MEMURLARIN SENDİKAL HAKLARININ AVRUPA İNSAN HAKLARI SÖZLEŞMESİ'NİN 11. MADDESİ IŞIĞINDA İNCELENMESİ

Tarih boyunca bir çok evrimden geçen sendikal haklar günümüzde, Türkiye'nin 2005 yılından beri tam üyelik müzakerelerine başladığı AB kurumlarının etkin ve özerk bir sosyal diyaloğun ön şartı olduğu gibi, Uluslararası Çalışma Örgütü'nün (UÇÖ) 8 temel elementlerinden birisidir. En önemlisi de, sendikal haklar, bir çok sözleşmede kendine yer edindiği gibi, tezin konusunu oluşturan Avrupa İnsan Hakları Sözleşmesi'nin (AİHS) 11. maddesinde bir insan hakkı olarak herkese tanınmıştır.

Tezin konusunu oluşturan kamu sendikacılığı ile ilgili uluslar arası arenada olumlu bir görüş birliği sağlanmış olsa da, devletin asli ve sürekli kamu hizmetlerini yerine getiren memurların örgütlenmeleri ve örgütlenmeleri neticesinde doğan hakları, sahip oldukları ayrıcalıklı statü sebebiyle birçok alanda tartışmaya konu olmuştur. Devlet, kendi egemenliğini sorgulayıcı yapı oluşturmaya temkinli yaklaşmıştır.

Türkiye'de de memurların sendikalaşmasına ve sendikal haklarına yıllar boyu temkinli yaklaşılmış olup, memurlar sendikal hakların olmazsa olmazı olan toplu sözleşme hakkına ancak 2012 yılında kavuşmuş, grev hakkına ise henüz kavuşamamıştır.

Başta Avrupa İnsan Hakları Sözleşmesi olmak üzere örgütlenme hakkını herkese tanıyan bir çok uluslararası antlaşmaya taraf olan Türkiye, memurların sendikal haklarını yasalarıyla kısıtlayarak insan haklarından birini ihlal etmektedir. Türkiye, Avrupa İnsan Hakları Mahkemesi'nce (AİHM) Sözleşme'nin 11. maddesini ihlali sebebiyle bir çok kez mahkum edilmiştir. Türkiye, yapacağı gerekli düzenlemeler ve yasal çerçeve ile bir an önce bu ihlale son vermelidir.

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Aysu ELVERİCİ

Antalya, 2014

INTRODUCTION

The most important factor which gives birth to unionization is doubtlessly is the process of Industrial revolution. In addition, the proletariat, the founder of unionization, appeared following the revolution as well. Migration of rural section to industrial centers towards the end of 18th century constituted factories, which are products of the revolution, and the working class, which is the leading actor of industrial relations. Unionization firstly confronted oppression and prohibition with the impact of financial liberalism. Then it was given as a right to workers in 19th century after a determined struggle.

Today, union rights and freedoms are among International Labour Organization's 8 elements in addition to the fact that they are preconditions for an active and autonomous social dialogue of European Union institutes. In addition, they also take part in article 11 of European Convention on Human Rights as a human right, which is also a subject of this thesis.

Civil servants, who compose the subject of the thesis as well, do not have a past in terms of unionization in Turkey as workers have. However, rights of public officers gained a speed both in Turkey and the world from the year of 1960. As a result, regulations that advocate and support the union rights of the civil servants began to take place in international arena.

Turkey has approached to unionization of the officers with concern and hesitation for long years. It was the constitution 1961 of the country that first gave the right to organize to civil servants. They had to wait till 1965 in order to use their right to organize. All workers were given the right to organize with this constitution and this right was regulated with state personnel's union right law to 624 no in 1965. However, as this law did not give right of collective bargaining and striking, unionization rights and freedoms were restricted in this period. In fact, when we talk about union rights, collective bargaining and strike come to the mind. If one misses, impact of the other one will lessen (Çevikbaş, 2010, p. 7). When we look at the amendments in 1971, the right to organize was restricted only to workers in the constitution 1982. The last constitution, which is of 1982, does not include any provision that prohibit union rights of civil servants, which is left open-ended, whereas it also gives the rights only to workers.

The civil servants gained the right of collective contract, which does not include strike, by a referendum in 2010 that launched some amendments in some articles of the constitution. There is still not a clear legislation in Turkey which gives the right to strike civil servants.

Turkey has signed many contracts concerning union rights in international domain except from the national ones. The most important ones of them are as follows: European Convention on Human Rights, Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, European Social Charter and ILO's conventions no 87, 98 and 151. Turkey prefers all international contracts to the national ones as it is stated in the 90th article of the constitution.

Despite the resolutions given from the Case of Tüm Haber-Sen v. Çınar, the Case of Demir and Baykara v. Turkey, the Case of Erhan Karaçay v. Turkey, the Case of Satılmış and Others v. Turkey, the Case of Çerikçi v. Turkey of Strasbourg court, the union rights of the officers were restricted in Turkey. That the civil servants have gained the right of collective contract late via the national legislation and do not have the right to strike is a kind of violation for human rights. Purpose of this thesis is to examine the missing union rights of civil servants- especially collective contract and strike- under the light of 11th article of European Convention on Human Rights and show this violation of human rights with the decisions given by European courts of human rights. While doing it, it is essential to discuss basis of industrial relations, the factors that affect these relations and the actors of these relations as well. It is also appropriate to discuss the trend of public unionization in international arena and historical process of Turkish civil servants' union rights in the legislation.

Many efforts were conducted regarding union rights of the civil servants in Turkey in various periods. Among them are two Turkish prominent professors, Mesut Gulmez and Banu Uçkan, who have prepared inclusive efforts that enabled discussion of the issue in many academic domains. This thesis primarily makes use of the academic studies of Gulmez and Uçkan. The method of this research is secondary analysis of the documents.

This thesis consists of three chapters. At the first chapter, field of industrial relations and structure of industrial relations in Turkey are discussed before moving to public unionization. Definition of industrial relations in narrow and wide senses, economic-social and political factors that affect the relations and actors of industrial relations will be emphasized. Purpose

of all sciences is to develop theories that bear aim of explanation and can explain the incidents in their fields. As in other fields, to understand the field of industrial relations entails a theorization. Industrial relations, which are under impact of economy, society and policy, have a field that shows different developments depending on place and time. That's why, researchers developed different theories in various periods and countries that will explain the facts of industrial relations depending on economic, social and political system in which they involve. Eight theories will be discussed at the second section of the first chapter, which are as follows: System Theory, Classical Theory, Marxist Theory, Pluralistic Theory, Singularity Theory, Sociological Theory, Neo Corporist Theory and Feminist Theory. After mentioning about these theories, the economic, social, political and legal factors that affect the industrial structure in Turkey will be discussed, too. Because, every country an economy system that constitutes their economic order, a political system that regulates their political life and a legal system that regulates their laws as well as a social system that regulates its social structure. In addition, every country has an industrial relations system that regulates their working conditions and the factors that affect these conditions as well. It is essential to observe these factors in order to understand the industrial relations system in public and private sectors of a country.

The starting point of the oppressions on the civil servants' union rights stems from a special connection existing between the civil servants and the state. This connection will be discussed in terms of the concept of sovereignty, and the trend in international arena at the second chapter. In addition, historical process of the civil servants' unionization in Turkey will be discussed under four titles as follows: Period between 1961-1980, Period between 1980-1995, Period between 1995-2001 and Period Till Now Beginning from 2001. The reason of discussing the period between 1961-1980 as the first section is that the civil servants in Turkey were given the right to organize for the first time with the constitution 1961.

At the last chapter, primarily European Convention on Human Rights and specially the article 11 of the convention, which protects union rights and freedoms, will be discussed in addition to article 90 of the Turkish constitution 1982 and the bindingness of the Convention with its last clause on the country that was added in 2004. While the article 11 of the convention constitutes the subject of the thesis, four major cases of European Court of Human Rights, which sentenced Turkey due to its breach of the article 11, will be examined as well. The cases are as follows: *The Case of Tüm Haber-Sen v. Çınar, The Case of Demir and Baykara v. Turkey, The Case of Erhan Karaçay v. Turkey, The Case of Satılmış and Others v.*

Turkey, The Case of Çerikçi v. Turkey. Case of National Union of Belgian Police v. Belgium, Case of Swedish Engine Drivers' Union v. Sweden, Case of Schimdt and Dahlström v. Sweden, The Case of Gustafsson v. Sweden, The Case of Wilson, National Union of Journalists and Others v. the United Kingdom will also be discussed at the last chapters.

CHAPTER 1
THE FIELD OF INDUSTRIAL RELATIONS AND THE STRUCTURE OF INDUSTRIAL RELATIONS IN TURKEY

1.1 The Concept of Industrial Relations

The most important factor which gives birth to trade unionism is doubtlessly is the Industrial Revolution period. However, the proletariat, which is the founder of the unionism, appeared in the aftermath of Industrial revolution. The working class became co-star in industrial relations with the migration from rural section to industrial centers towards the end of 18th century.

A wide employee and employer section arose within Industrial Revolution and labor power that appeared in Western European countries in 18th century and working relations turned gradually into social relations between the two sections (Makal, 1997, p. 31).

In various countries many authors used different terms defining relations between labor and capital, industrial relations stemming from collaborate working, addressees and negative and positive communication between them as well as their actions (Uçkan, 2012, p. 3). As industrial relations are affected by many factors such as economic, social and political ones in every period, there have been different definitions in each country (Salamon, 1992, p. 29). Variety and abundance of theories and systems concerning industrial relations cause arguments and debates while putting forward the concept of industrial relations with clear and exact lines.

It can be said that varieties in arguments and approaches of the concept stem from the word of 'industry'. According to Hyman, this definition constitutes a narrow research (1995, p.18). According to this approach, industrial relations are the relations of the workers in industry sector with their employers and organizations. This concept defines industrial relations in narrow sense (Tokol, 2001, p. 1, Koray, 1992, p. 25).

Another approach says the definition of industry should not be used as including only industry sector. It is a fact that industrial relations are a result of industrialization and have a close relationship with the industrialization as well. However, this is not only related to industrial section of economy, but also for other sections. That's why, rules and methods

which arrange industrial relations and issues in an industry section in a country are generally applied in sectors of agriculture, trade and service as well as industry section and also in working problems and relations in public and private sections and this states industrial relations in wide sense, on the other hand (Çetik and Akkaya, 1999, pp.14-15).

Generally, industrial relations define corporate relations between labor and capital organizations which depend on collective bargaining that the state rarely intervenes in which share and working conditions take place and these relations are also outputs of industrialization which emerge from relations of organized groups between workers and employers (Uçkan, 2012, p. 4). ‘‘This definition includes five elements which will ease explanation of industrial relations:

• Existence of a relation which emerges from work between employees and employers,
• Inclusion of increase as fee and profit share as a result of production between the parties,
• Inclusion of mutual determination of working conditions and rules,
• Institutionalization of all these relations,
• Solution methods' including debatable and peaceful processes’’ (Çetik and Akkaya, 1999, p. 13-15).

Moreover, Marshall says that ‘‘to avoid confusion some writers to prefer the term employment relations’’ (2003, p. 1).

1.2 The Factors Affecting Industrial Relations

Every country has an economy system that constitutes their economic order, a political system that regulates their political life and a legal system that regulates their laws as well as a social system that regulates its social structure. As economic, social and political structure of a country has influence in occurrence of its industrial relations system, the industrial relations also affect the economic, social and cultural systems. Thus, industrial relations of each country have different characteristics, activities, actors and the factors that affect them. The factors which influence the industrial relations can be examined as economic and social factors and political factors (Salamon, 1998, p. 37)

1.2.1 Economic and Social Factors

Economic conditions are among the most important factors that affect the industrial relations. Elements taking place in economic environment such as market and employment

conditions in macro and micro level, income distribution, sectoral distribution and economic policies of a state specially affect course of industrial relations' systems.

Uçkan illustrates that, when employment level is getting better, in economic development periods, trade unions are strengthening and the gains obtained by collective bargaining are increasing as well. A reverse development also occurs in periods when economic recession prevails. In countries whose economic growth slows down, social policies are restricted, role of the state in economic and social life decreases and restrictions in public spending and services occur. In a period in which fees are lowered and unemployment is on rise, disputes start to escalate by weakening role and efficacy of trade unions within industrial relations systems (2012, p. 10).

Uçkan exemplified as follows; the best example to be given as the impacts of economic developments on industrial relations is the recent economic crisis -affecting the whole world- whose impacts dominated the industrial relations system of the EU countries. Budget deficiencies and economic recessions following the crisis caused unemployment in EU countries and brought new taxes as well as cuts in public payments. Especially in countries such as Greece and Portuguese where the crisis strongly dominated, associations which advocated the precautions stated above would not rescue the country from the crisis, in contrast would cause poverty and more unemployment, tried to inform public opinion in this issue with protests and strikes, causing a clash environment (2012, p. 11).

Besides, technological developments and varieties in employment and production structure depending on economic factors also affect structure of industrial relations' systems. Increase in use of technology changes structure and quality of labor force, and accordingly new production and management techniques appear as well (Uçkan, p. 11). To illustrate, unemployment which will erupt due to use of advanced technology may weaken the unions (Uçkan, 2012, p. 12).

Active population and working sector also affect industrial relations as parallel to economic development. In developed countries, a great amount of active population comprises of workers in industry and service sectors while the most of the population in developing ones involve in agriculture. Such factors significantly affect the trade unions, structure of collective bargaining and working conditions as well (Uçkan, 2012, p. 12). In many developed countries, the most of the active population consist of the wage earners that

work in industry and service sector, which brings problems of them and their expectations from the society to fore front. Increase in number of wage workers makes them a strong power in terms of economy, policy and society. In political aspect, they arise as a key voter section in democracy. Being a key element of production in economy, this group is also the most important consumer group in the society. The wage earners also constitute a key weigh in the society, which makes them a key oppression group on the state and the public opinion via unions (Koray, 2000, pp. 43-44). Unlike developed countries, in many developing ones, such an institutionalization and development are too far from them. As conflict of interest has not become evident in these countries yet, the political, ideological and organizational conditions, which are necessary for institutionalization of this conflict, are not adequate. Perspective of the parties to one another is hostile more than accepting one another as social party (Koray, 1992, pp. 48-49).

Economic factors are main determiners of the functions of industrial relations and differences in social structure also affect system of industrial relations. Demircioğlu exempflies as follows: Nearly whole of American population consists of inhabitants who migrated from other countries. Trade unions in the United State of America have difficulty in actualizing a unionization movement which depends on class solidarity among workers who come from different nationalities. In addition, there is a clear structure of society in the US. Those who work and increase their income level accordingly have a social status. This situation prompts people to work and does not let ideological organizations such as trade unions (Uçkan, 2012, p. 15). The tolerance and value given to human beings, the most important characteristic of Japanese society, are reflected on Industrial Relations System. Harmony and cooperation among Japanese employees and employers have restricted the interest in trade unions. In the meantime, it has constituted a collective bargaining structure in which trade unions look after benefits of workers and managements. In European Union (EU) countries, struggle of working class to reach union rights and acceptance of the trade unions as a social party have created a strong unionism tradition (Uçkan, 2012, p. 14).

According to Uçkan, another instance which puts forward impact of social structure into industrial relations is varieties that emerge in terms of social dialogue among countries. For example, social dialogue constitutes one of the main elements of European Social Model for EU and a harmony is tried to be created in this sense among EU countries in terms of corporate mechanisms (2012, p. 15). However, social dialogue process cannot be operated by social parties even how it is arranged legally in countries which do not have tradition of

agreement. For example, social dialogue issue is one of the issues which Turkey has difficulty and is mostly criticized in terms of Turkey's adaptation into EU (Koray and Çelik, 2007, p. 12-13).

1.2.2 Political Factors

Quality of a political regime in a country, the view of a ruling government and its policies about different subjects are key elements in formation and change of industrial relations in that country.

Uçkan says that ‘‘purposes of trade unions and managements in single-party state systems are ascertained by central authority and main functions of these institutions are to carry out the purposes determined by the central authority’’ (2012, p. 14).

Guaranteeing of individual rights and freedoms by laws is in question while political systems of pluralistic states cause appearance of a group structure and a political administration which depends on multiparty system and changes with election has created financial oppression groups and a complex pluralistic social structure. As a result of this fact, in pluralistic countries, trade unions have played a key role in balancing power of employers and representing benefits of employees (Ekin, 1994. p. 53).

In developing countries, on the other hand, political structure is highly different. In a major section of developed countries, while regimes are in power, the rest are in a minority situation restricted by other parties in which single-party governments are dominant. In single-party regimes, unions cannot operate independently and become a tool of state's authoritarian structure. In socialist countries the unions have a major role, but these organizations operate as elements of a socialist system unlike other unions which provide benefit for their members by conducting collective bargaining and struggling for disputes (Ekin, 1994, p. 56-57).

1.3 Actors of Industrial Relations

Actors of the industrial relations can be divided as workers, civil servants and unions, employers and unions, and the state.

1.3.1 Workers, Civil Servants and Unions

Workers are the key actors of industrial relations who are mostly represented by trade unions within the industrial relations system. The trade unions have a voice while determining

working conditions with employers and state by collective bargaining and legal rights as a representative of labor power they organized. In addition, civil servants can also be considered as actors of industrial relations. However, although it is common view that civil servants form unions and use their rights, these rights still face serious objections (Ünal, 2012, p. 40). This issue will be given in 2nd and 3rd sections in detail.

1.3.2 Employers and Unions

Uçkan defines that employer as a person who employs a worker and has to pay a fee (2012, p. 6). Employer, as an actor of industrial relations, is a person who bargains with trade unions in improving working conditions and tries to realize his/her benefit by oppressing state to prepare a legal regulation for working life. In other words, employers are in both a struggle and cooperation with workers' unions and state in various corporate mechanisms within industrial relations regulation. Employers can play a role in the system in addition to the fact that they can be a party of industrial relations on their own. (Uçkan, 2012, p. 6).

1.3.3 State

State is the third actor, besides employee and employer. It can be said that the basic role of the state is to prepare a legal frame to arrange working life. In addition, state plays a bilateral role as employer in public managements. On the other hand, state increases employment opportunities with its investments as an employer while affecting collective bargaining in private sector with its collective agreements in public sector and the working conditions given by these agreements (Uçkan, 2012, p. 7). Koray states that another role undertaken by state in working relations is the role of being a mediator in collective labor disputes and it endeavors to solve labor disputes in peaceful ways while playing a balancing role between parties according to economic and social requirements (2000, pp. 67-68).

1.4 Theory of Industrial Relations

Purpose of each science is to develop theories that can explain events occurring within its field. As in other fields, theorizing is required to understand the field of industrial relations.

Industrial relation is a disciplined field which takes place under economy, society and policy and shows differences according to time and place. That's why, researchers have developed different theories in different times and countries to explain facts of industrial relations depending on economic, social and political system in which they involve.

When investigating theories of industrial relations from past to now, it is possible to understand changes of working life that also reflect transformation process of industrial relations discipline. Primary theories will be discussed and their relations with one another will be revealed below.

1.4.1 System Theory

John Dunlop was the first person to suggest that industrial relations were a system (Çetik and Akkaya, 1999, p. 19).[1] This approach was developed in his book called "Industrial Relations Systems" which was published in the USA in 1958 (Uçkan, 2012, p. 27). Dunlop's aim, who is influenced by Talcott Parsons's Social Systems study, is to suggest a general theory which includes analysis tools that will explain facts of industrial relations (Eldridge, 2003, p. 325).

Dunlop sees industrial relations as a piece of society's economic system, but in the meantime, suggests it is distinctive system on its own (Dunlop, 1993, p. 47). There are four basic elements in this system: actors, environment, ideology and the rules. (Çetik and Akkaya, 1999, p. 19). Actors of the system compose the rules which arrange course of the system by using various mechanisms such as collective bargaining and agreement depending on environment and ideology in which they involve. Formation of rules, which is the basic aim of industrial relations system, is carried out by three actors. These are sorted as a hierarchy which is composed of administrators and representatives of the administrators, a hierarchy which is composed of employees and representatives of the employees (trade unions), and public-private institutions which are expert in relation of employees and employers. Dunlop specified environments that affect and restrict the actors as *"technological characteristics of* workplace and labor society, product market or market and budget limitations and distribution of power in society" (1993, p. 43).

According to Dunlop's approach, stability is more essential than dispute, because the occurrence of agreement requires the concept of system. Dunlop tried to suggest how rules are determined in industrial relations system and in other ones, and why and how they change according to the development of the system (Çetik and Akkaya, 1999, p. 21).

[1] For more information, please look at: Dunlop J., (1958), "*Industrial Relations System*", Holt, New York; see also, Yıldırım E., (1997), "*Endustri Iliskileri Teorileri*", Degisim Publication, Sakarya.

System Theory has been the most adopted approach concerning industrial relations since 1960. The key reason is that this approach discussed industrial relations as a whole (Makal, 1997, p. 77, Çetik and Akkaya, 1999, p. 21). However, the system is highly criticized as well. One of the criticisms was developed by Hyman. He questioned how a an industrial dispute broke out in such a well integrated system (Yıldırım, 1997, p. 171). These critics constituted an infrastructure for appearance of new theories concerning industrial relations. Other theories about the relations are in general developed from System Theory (Bamber, 1987, p. 13).

1.4.2 Classical Theory

Concept of trade union is defined for the first time by pioneers of "Fabian Ecole" Sidney and Beatrice Webb as "a continuous community which is formed by workers to improve and protect working conditions." (Mahiroğulları, 2011, p. 2). The two British scientists provided significant contributions into the field of industrial relations with their researches in the last decade of 19th century. Webbs, who pioneered the scientists researching history and activities of unions, firstly focused on functions of worker unions and suggested that basic aim of the unions was to improve and protect working conditions of their members (Uçkan, 2012, p. 31).

Sidney and Beatrice Webb placed their theories on three main concepts: *union rights of employees and employers, collective bargaining right and the right of applying to go on a strike and lockout.* According to them, except for small restrictions caused by laws, employees and employers can make use of these rights thanks to power and independence given them by being organized. State should abstain from launching legal obstacles that can prevent employees and employers from the right of unionization, collective bargaining, strike and lockout. Moreover, it should ease collective bargaining by carrying out some duties such as compiling statistical information and providing agreement. Roles of the unions and employers are supplementary and economical within such an industrial relations system (Çetik and Akkaya, 1999, pp. 17-18).

The Classical Model, which had been in effect for a long while, were under impact of economic, social and technological developments which emerged after World War II. In this period, state put emphasis on matters which the classical industrial relations system could not solve and its influential intervention was in question. As a result, new views and debates were put forward concerning roles of employers, working class and the state. In a new formation called Neo-corporatism, cooperation of state-employee-employer was prioritized and decisions were made together and tried to be carried out (Çetik and Akkaya, 1999, p. 18).

1.4.3 Marxist Theory

Farnham ve Pimlott states that Marxism is a general theory of society and social change which includes implementations aiming analysis of industrial relations within the society (1990, p. 13).

According to Marxists, employees who predominate in number are in a divided situation. Employees, competing with one another against capital, a social power, and do not have anything except labor power that depends on numerical quantity, cannot draw up a contract in equal conditions. Employees formed trade unions to upgrade the conditions of a contract to outpace a status of being slave and to remove or control the competition among them (Çetik and Akkaya, 1999, pp.25-26). Being weak as an individual urges them to form a union or an organization to protect their benefits. That's why, collective bargaining and unionization cannot solve problems of industrial relations in a capitalist society and provide a basis for revolution of the proletariat. These organizations just temporarily remove the contradictions that exist in nature of production and social relations in a capitalist society (Farnham and Pimlott, 1990, p. 15). Class organizations including unions should be revolutionist in order to remove power of a bourgeois class and constitute a socialist community (Farnham and Pimlott, 1990, p. 16).

It was Hyman that enabled Marxist insights into industrial relations (Dabscheck, 1989, p. 166). Hyman says industrial relations are “the inspection of audit processes on work relations.” Employers have authority of instructing in an employment relation and employees have the obligation to abide by these instructions. Conforming and instructing have some certain limitations as well. Hyman claimed that industrial relations leaned to provision of stability and order in economy, suggesting that importance is attached to preventing causes of disputes and disagreements rather than the sources of them and criticized Dunlop as well. That's why, industrial relations should not only include collective bargaining, collective contracts and disputes, but also include causes of work disputes, according to Hyman (Hyman, 1975, pp. 13- 25).

According to Marxist perspective, industrial relations are not simple like determining working conditions on organizational level; it is also a process which has a social, political and economic dimensions. Industrial relations are adjacent to political and economic systems and are a field which is integrated with them (Salamon, 1998, p. 10).

1.4.4 Pluralistic Theory

Pluralistic theory is another theory among the most important ones. Allan Shanders, Alan Fox and Hugh Clegg continued after Webbs and developed a new theory called “Pluralism in Industrial Relations” by making use of the system theory and the pluralistic theory in political science (Uçkan, 2012, p. 35).

According to pluralistic approach in political science, no benefit group dominates on another one in society. Key reason of this issue is that the power is to be properly or closely distributed among benefit groups. State determines rules of dispute among various benefit groups (Giles, 1989, p. 159). Basic target in a pluralistic society is to provide and protect social integration without state's intervention (Koray, 1992, p. 29).

This analysis of political pluralism paves way for pluralism in industrial relations as well. If a society is perceived as a scope of benefit groups that are kept in balance by state, it is also same for managements to be considered as an organization which is kept in balance by an administration (Farnham and Pimlott, 1990, p. 8). Administration endeavors to form rules which can arrange working life together with other actors.

According to this theory which is also called *Corporate Approach* also influenced by Shander, industrial relations are inspection of job engineering institutions. The major job engineering institution in industrial relations is collective bargaining which is considered as a rule-making process. According to the Pluralistic theory, the basic characteristic of industrial relations is the potential dispute between employees and employers and between the administrators and those who are administrated in a workplace. Difference between employees' desire for better fee and working conditions and their desire to maximize employers' decisions causes a dispute. In this conflict of interest, collective bargaining becomes a mediator between the parties. It is claimed that collective bargaining prevents appearance of dispute and plays an integrating role in industrial relations (Uçkan, 2012, p. 36, Çetik ve Akkaya, 1999, p. 23).

The most important critic made against pluralists is that state has a low-role and economic, social situation and industrial relations institutions are completely considered as a problem-free pluralistic structure (Uçkan, 2012, p. 37). According to the pluralists, available economic and social structure can only change in an extraordinary situation. Therefore, the pluralistic theory is claimed to be highly conservative. This theory aims to integrate labor force into

industry and economic and social structure of the society as well as sustaining continuity of capitalist system rather than producing alternatives and new adaptations (Farnham and Pimlott, 1990, p. 9).

1.4.5 Singularity Theory

This theory, emerging in the end of 1970s when trade unions became weak, is the first one that tried to put the unions and collective bargaining out of industrial relations system (Uçkan, 2012, p. 37).

According to this theory, dispute in industrial relations is not structural, which more stems from small conflicts in a management and major reasons of these conflicts are stated as personality differences in the organization, communication deficiency concerning management plans and decisions, employees' misunderstanding of administration's decisions and their not understanding importance of common benefit (Salamon, 1998, p. 6; Farnham and Pimlott, 1990, p. 5). It is claimed that this results from mistakes of those who are administrated rather than mistakes of administrators (Yıldırım, 1997, p. 122). The theory suggests that the emerging dispute can be solved with administration's one-sided intervention (Salamon, 1998, p. 6).

According to this approach, each work organization is constituted for a common purpose and is also a whole and a singularity understanding says that unions were necessary during 19th century, but today application of modern management policies rendered the unions unnecessary. Trade unions are no longer needed as administrators consider interests of employees regarding decisions with management.

According to singularist theoreticians, the unions aim to spoil political, economic and social structure which are available and considered legitimate in the society. That's why, trade unions and collective bargaining are seen as associations which are to be kept away as long as conditions are suitable (Salamon, 1998, p. 6).

There are various critics against this theory which advocates existence of one authority in organizations and tries to put workplace unions' representatives and unions out of organizations (Abbott, 2006, p. 191). In particular, the pluralistic theoreticians criticize the singularity theory as it does not accept dispute and legitimacy of the unions (Uçkan, 2012, p. 38).

In addition, Neo Singularist approach emerged out as a softer form of this theory during 1980s, whose basic purpose is to provide loyalty of employees, customer satisfaction and efficiency in a competitive market by integrating people with the management where they work and this new administration ideology, which emerged as the singularity theory has become employee or worker oriented by slightly standing away from administration center, has specifically brought a new perspective into concepts of industrial relations such as trade unions, collective bargaining, cooperation, dispute and harmony in last decade (Uçkan, 2012, p. 39).

It will be essential to mention about the management of human resources at this point. Main objective of human resources management is to create a well-selected, motivated manpower and to benefit human source at best (Senkal, 1999, p. 24). The management is evaluated as an approach which can weaken unionism (Selamoğlu, 1995, p, 39). Because, "Human Resources Management" is tried to undertake functions of trade unions by being brought into front fore in recent times. Roles of managements and administrations in workplace grew stronger while roles of the unions in industrial relations decreased (Isik, 2009, p. 63).

1.4.6 Sociological Theory

Sociological approach or social movement theory appeared as sociologists involved in theoretical arguments in the field of industrial relations and a gradually increasing number of sociologists began to approach industrial relations as sociologically and even to form industrial relations sociology as a sub-discipline (Çetik and Akkaya, 1999, p. 24).

According to the Sociological approach, people involving in industrial relations are playing a key role in determination of these relations (Uçkan, 2012, p. 39). However, other approaches do not attach importance to human and human behaviors and only investigate institutions (Koray, 1992, p. 30). This approach also advocates that disputes and conflicts are specific facts of industrial society, claiming these disputes should be settled with rules and methods which will be accepted by the parties (Çetik and Akkaya, pp. 24-25).

Sociological approach, however, received criticisms although it emerged as a critic itself against some industrial relations theories. To illustrate, according to the Marxists, this approach neglects how the industrial relations system affect the actors (Uçkan, 2012, p. 40). According to Thurley and Hill, as long as all investigations concerning industrial relations do

not adequately consider sociocultural elements, they will not have any value (Çetik and Akkaya, p. 25)

1.4.7 Neo Corporatist Theory

In countries that targeted economic growth and complete employment during World War II, the state enabled both social and economic developments to go ahead together by actively taking part in economy. In this model called Corporatism, the state accepted trade unions as important part of national development and growth programs and historical roles and functions that the state undertook as an actor within the system aimed to support the unions till the middle of 1970s (Selamoğlu, 1995, p. 31).

New formations were claimed to have appeared except from the corporatist model in state-society relations of industrialized western countries beginning from middle of 1970s. Public policies are no longer composed as a result of a oppression on state by organizations which depend on equal power and volunteer membership (Uçkan, 2012, p. 41).

In this news system called Neocorporatism, organizations of employees and employers, that is, trade unions, are getting stronger and stronger politically and economically and in addition, this cooperation in which state is also involved is getting moderate in terms of ideology (Dabscheck, 1989, p. 169).

According to neocorporatist theoreticians, changes occurred in structures, functions and activities of the organizations of employees and employers due to the state's intervention in economy. As a result of this change, these organizations monopolized by cooperating among themselves and with the state and they were officially registered by the state and had legal privileges. They also reached their compulsory membership rights and became stronger by gathering at one center (Çetik and Akkaya, 1999, p. 30).

As a result of neo-corporatist implementations, the state took an active role in both determining representation fields of the organizations regarding formation of public policies and ascertaining the interests and demands (Uçkan, 2012, p. 41).

1.4.8 Feminist Theory

Economic, social and political developments which affected the whole world beginning from 1990 created a transformation in field of industrial relations and influenced basements of

theories that had been put forward until this period. By the restriction of collective bargaining concept and recession in number of unions' members and strikes, these mechanisms began to lose their position in the center of industrial relations and efforts aiming at industrial relations began to focus on working relations in a wide scope rather than solution of disputes (Uçkan, 2012, p. 43).

This change and transformation have diversified the actors and subjects which are researched in the field of industrial relations. There is not one actor under the title of "employee" which also includes women, youngsters, white-collar and golden-collar workers, full time workers and homeworkers. The most important development which occurred due to this transformation is that working conditions bring gender character to the front fore.

Female researchers began to reshape social sciences with the increasing education rate of women and their involvement in working life, which raised interest in woman's works in the field of industrial relations (Wajcman, 2000, p. 184-185).

While this theory questions participation of women into working life and their position in this life, it draws attention to the separation between gender and social gender, targeting to provide equality between male and female, to end public policies that take gender as basis and to remove all bariers which women may face in all economic, social and political domains of the life (Uçkan, 2012, p.44). It also advocates presence of women in all domains of the social life by also supporting reforms that lessen gender-based biases and create new opportunities for them. Equivalent of this approach in terms of industrial relations is equality of opportunity, equal fee to equal work, equality in career opportunities, equality in unions, collective bargaining and support of management policies (Abbott, 2006, p. 195).

1.5 Structure of Industrial Relations in Turkey

Unionization in Turkey appeared with a distinctive structuring under the impact of different social, economic and political developments in a period of late industrialization and modernization.

There are many factors that affect structure of industrial relations in Turkey. Socioeconomic, political and legal factors are the most important ones.

1.5.1 Economic and Social Factors

Economic and social structure of countries is doubtlessly a factor which has impact on unionization. Firstly, unionization movement gains meaning with adequate modern factories and thereby with their adequate employees. ‘‘On the contrary, a real employee model does not rise in societies dependent on conventional agriculture economy and a noteworthy unionization inclination cannot be seen even if other conditions are available’’ (Mahiroğulları, 2001, p. 164). In this sense, it can be said that dimensions of unionization in a country are closely related to presence of employees and industrialization level of the country.

When economic indications of Turkish economy in this period are observed, the country is still seen as an agricultural country in spite of support of private enterprise, execution of industrial plans beginning from 1934 and release of Simulation Law of Industry in 1927. However, data of “sectoral distribution of employment”, one of the most important indications concerning whether a country is an industrial or agricultural society or not, confirm this situation exists in Turkey (Mahiroglulları, 2012, p. 165) In 1950, 85.7% of active population involved in agriculture, 7.4% in industry and 6.9% in service sector. Towards the end of the period, it is seen that there has not been a great change in data of 1960. Rate of agriculture sector is 74.9%, industry is 9.6%, services 10.3% and 5.2% is unknown (Şahin, 1993, p. 108).

Following of 1961, structural negations such as inefficient level of industrialization and agricultural sector's being over 60% in employment's sectoral distribution continued in this period as well, which negatively affected structure of industrial relations (Mahiroğulları, 2012, p. 170).

When considering how economic factors have affected structure of trade unions since 1983, it can be said that unregistered employment is on the front fore as one of the factors that impacted unionization. Formal employment rate is 61% within the total employment in the country and unregistered employment rate is 39%; this rate is estimated to correspond to 2.457.000 people beginning from 2000 (TISK, 2000, p. 42). A 39% unregistered employment, which is a high rate, deprived trade unions in Turkey of a potential unionization source member.

Unemployment, like unregistered employment, is one of the obstacles which prevent unionization (Çelik, 1991, p. 98) and restrict member number of the unions (Koray, 1994, 80). Unemployment is one of the economic problems which already exist in Turkey. Worker

unions take their power from their members. On the other hand, it is known that unions' bargaining power has decreased, thereby losing power in periods when unemployment increased and became widespread (Kutal, 1997, p. 253). Another negativity of unemployment on unionization is that some employers dismiss their employees, especially unqualified union members, due to various reasons. As there is not adequate work guarantee in Turkey which encourages some employers, it is seen that employers dismiss unqualified senior union member and employ new workers on a minimum wage provided that they are not union members, as reflected sometimes in media (Çelik, 1991, p. 98). That employers apply such an action in employment shows that there is not adequate guarantee of job. In Turkey, there are a great number of workers who are ready for every condition and can work for a minimum wage instead of those dismissed from their works, which is another important issue.

1.5.2 Political Factors

Quality of a political regime in a country and its policies concerning various subjects are the factors that play an important role in formation or change of corporate structuring.

Transition to pluralistic democracy in Turkey actualized 'in form' towards the end of 1945 and transition period continued for a long while till 1961; “authoritarian character” of single-party period, restriction of freedoms when necessary or habits of “restricted freedom” had been sustained. Therefore, ruling parties of the period could not reveal a libertarian behavior about the unions (Tuna, 1966, p. 18) and unionization movement was shaped state-controlled (Demir, 1992, p. 342).

Convenience of political conjuncture is doubtlessly a factor which had favorable impact on unionization. It can be said that the period in which the political conjuncture was the most suitable is the one which started with Turkish Constitution of 1961 that guaranteed basic rights and freedoms. Firstly, the constitution of 1961 prevented danger of establishment of single-party dictate by launching democratic institutions in the country. The mentalities, which looked at unionization with suspicious, repressed or directed unionization movement, gave their place to an understanding which believed that libertarian democracy should be processed with all institutions and rules (Mahiroğulları, 2001, p. 170). Therefore, it can be said that this insight initiated a new period in Turkish unionization and provided new opportunities for the unionization. However, political unrest and gradually increasing student and employee demonstrations affected the whole sections of the society in the aftermath of 1970; and an “interim period” occurred with 1970 Military coup d'etat. The political

conjuncture suitable for unionization started to reverse and a state of emergency prevailed the period with the Military coup d'etat of September 12.

Turkish Armed Forces (TSK) seized the government on Sep. 12, 1980, and laws with number of 274 and 275 were suspended till the new ones were prepared. With the 7th notification of National Security Council (MGK), activities of the unions such as DISK, MISK, Hak-Is and some other dependent ones were suspended for a while. Thus, unionization in Turkey was negatively affected.

MGK felt the need of launching radical changes and new regulations in some laws into effect, notably into the constitution, in order to prevent re-occurrence of a social chaos in the country as before Sep. 12. That's why, regarding experiences which appeared before 1980, rather inclusive restrictions were brought into union-political party relations in the Law on Trade Unions – numbered with 2821-- which was put into effect on June 5, 1983 (Mahiroğulları, 2000, p. 127). In the period after 1980, a significant transformation occurred when compared to the previous period.

Both neo-liberal economic policies which were adopted after 1980 in the country and new union legislation which entered into force in 1983 affected unionization in many aspects. Firstly, in this period, the new legal frame drawn for unionism brought significant restriction to political activities of the trade unions till 1997 when a change appeared concerning the legislation. Therefore, with the changing economic and political conjuncture both in Turkey and the world, trade unions tried to influence ruling parties with the aim of providing social and economic benefit for their members within the frame of negations brought with new union legislation; and they formed neither a permanent cooperation nor an ideology-based relation with political parties (Mahiroğulları, 2001, p. 172).

After 2002, the AKP governments, which consistently continued the neo-liberal approaches of the previous governments in terms of financial policies, created a strong hegemony in various fields of social and political life within this period. It is possible to say that this hegemony is also valid for working life and trade unions. A major section of unionization movement was influenced by the ruling party as they were in 1940 and 1950.[2]

[2] Çelik, A., (2012), ‘‘Akp’nin On Yilinda Sendikalar ve Sendikasizlastirma’’, from: http://www.tr.boell.org/web/103-1539.html (Accessed date: 02.01.2014)

1.5.3 Legal Factors

Right for association in Turkey has become a field which is cautiously prepared by lawmakers. After transition to the multi-party order (1946), unionism moved into a legal frame with the Law on Trade Unions in the country in 1947. Rights of collective bargaining were arranged and strike was forbidden (Kutal, 2005, p. 14, law with no of 3008, art.72). Giving rights of forming a union and being member of it with the constitution of 1961, guaranteeing rights of collective bargaining and strike in the constitution, laws of 1963 (Law on Trade Unions with number of 274 and Law on Collective Labor Contract, Strike and Lockout with number of 275) and approval of a law which enabled organization of public officers in a certain field (Law with number of 624) provided unionism in Turkey with a fast development (Kutal, 2005, p. 14). Therefore, it can be said that a speedy development occurred between 1963 and 1970 in Turkish unionism. To illustrate, Kutal states that regulations such as cutting membership fee from salary, unions' representation rights of employees, protection of professional administration and freely determination of membership amount have financially strengthened the unions in a short time (2005, p. 17).

This period was interrupted with the intervention of March 12, 1971. In the aftermath of this intervention, public sector unionism was dissolved with the changes in the constitution. Then, a number of employees were deprived of the right to organize with laws numbered 2821 and 2822 (2821, art.21), and restrictions were put into effect into the activities of the unions and the unions were kept under of state's administrative and financial control (art. 52). (Kutal, 2005, p. 14).

Labor Act with number of 4587 which entered into force in 2003 is a law that increased flexibility in working life. Entry of the Labor Act into effect meant readjustment of industrial relations with neo-liberal approaches and policies. These adjustments were actualized regarding conformity to the contracts of European Union (EU) acquis and ILO. That is, neo-liberal program and international minimum legal norms necessitated change in rules of working life (Şafak, 2006, p. 44). Provisions of job security, which are added into Labor Act with number of 1475 by the Job Security Law with number of 4773, were transmitted into the Labor Act with number of 4857 although there were changes in the provisions (Şafak, 2006, p. 44).

In recent period, an 83-article law was prepared instead of the Law on Trade Unions with number of 2821 which entered into force on November 11, 2012, having a total of 152 articles

and of the Law on Collective Labor Contract, Strike and Lockout with number of 2822. According to this law, employees will decide to be or not to be a member of a union on their own, and according to the law on trade unions and collective labor contract with number of 6356, employers will not make a distinction between a union member and non-member employee in terms of working conditions and termination of work. Employees will not be dismissed from their jobs when they involve and attend in union activities apart from working hours and will not have any processes, which are important articles.[3] However, when looking into limitations of the law, the restriction of rights of strike and lockout with vital basic public services according to this law appears as a factor which limits union rights of civil servants.

It can be said that legal factors have highly shaped the unionism in Turkey when observing these developments.

1.5.4 Other Factors

Issue of Job Guarantee

Issue of job guarantee can be defined as ‘‘protection of a worker against a random dismissal from job and restriction of the work by employer in the event that reasons are stated in law”4 and it has been one of the deficiencies which are continuously debated till the year of 2000. Job guarantee, which takes place in documents of many international institutions and has application fields in many countries, has also been regulated by International Labor Organization (ILO) with the Contract numbered 158 and Advisory Jurisdiction numbered with 166 in 1982. Turkey ratified the contract numbered with 158 in 1994 and later the law of Job Guarantee with number of 4773 which was launched in 2002 within this frame was approved. Then this issue was regulated in a law numbered with 4857 that was launched in 2003. The law of Job Guarantee firstly brought guarantee for workplaces that had ten or more employees and then this limit was raised to 30 employees in 2003 with a law numbered 4857. Nearly half of employees who are registered at Social Security Institution (SGK) in Turkey were excluded out of the scope with this change (Makal, 2007, pp. 536-537).

Risk of being dismissed from a job for Turkish employees in the event of being a union member has become more important than the benefits which will be provided by the unions (Dereli, 2003, pp. 6-7). Gersil and Aracı emphasises that high and still increasing rate of

[3] Official Journal, Number: 28460, Published date: 18.10.2012, from: http://www.resmigazete.gov.tr/eskiler/2012/11/20121107-1.htm, (Accessed date: 15.01.2013).
[4] Aksoy, S, *‘’Is Sozlesmesinin Gecersiz Nedenle Feshinin Sonuclari”,* from: http://www.turkhukuksitesi.com/makale_1550.htm, (Accessed date: 16.01.2013).

unemployment cause people to work in every condition and therefore employers will incline to replace employees receiving high fee with those who will accept to work without job guarantee and this situation has been a key obstacle for the trade unions while registering members in the country. The only positive sector in terms of job guarantee is public sector, but privatizations of state institutions in recent years in the country also disturb civil servants concerning the job guarantee. (2007, pp. 161-162). Thus, it can be said that membership base of the unions will be narrowed and power of representation and organization will weaken.

Factors Resulting from Privatization Policies

Employees' unions are known to raise some reactions to privatization policies in each country where public enterprises are privatized. Common ground of unions' reaction to privatization is negations which cause dismissal from job after the privatization. In this sense, Turkish employees' unions consider privatization as an attempt which will weaken unionization movement and harm interests of employees (Dereli, 1993, 24).

In previous years, institutions such as Citosan, Sumerbank, Teletas, Aktas Electricity and Havas were privatized (Petrol-Is, 1996, p. 263). They dismissed a number of their employees and later replaced them with new ones who were non-member of a union and received lower wages, which created a common point for criticisms and concerns from the unions about privatization (Turk-Metal, 1995, p. 100).

Subcontractor Applications

That some works require expertise and cause technical and economic hardships for the primary employer in a workplace brought into question the subcontractor applications, whose frames were drawn at the last clause of the first article of Labor Act numbered 1475, and the problems resulting from them (Kutal, 1992, p. 220).

As the provisions of the law numbered with 1475 are extremely inadequate concerning the issue in Turkey, subcontracting practice has been abused. This practice has been used as a tool to lower fees and remove the unions that have been making collective bargaining for years. It is also a frequent that many employers immediately involve subcontractors into the system in order to prevent unionization (Ucar, 2010, p. 137).

A new Labor Act numbered with 4857[5] which entered into force on June 10, 2003 launched a regulation in order to prevent malicious implementations concerning this issue. It can be said that according to article 2 of this act employees of a subcontractor will have the right to organize and the authorized union will have the right of collective bargaining and strike in the workplace of the subcontractor with this regulations as well (Kutal, 2005, p. 16).

However, applications of subcontractor can be said to have turned into trick against the law in Turkey, prevented use of collective bargaining, made use of lower waged workers and accelerated non-unionization as well (Sarı and Aracı, 2007, p. 161).

Employing apprentices and trainees and flexible working hours

According to Article 3 of Social Insurance Law numbered 506[6] regarding social security of apprentices, it is ensured that insurances of maternity, disability, retirement and survivors cannot be applied to the apprentices whose definition and attributions are stated with a special law. On the other hand, article 25 of the law numbered with 3308 enables employers to pay a fee up to 30% of the minimum wage to both trainees and apprentices they employ. That's why, some employers pay lower fees by employing apprentices and trainees in their workplaces, evade paying several insurance funds and severance payments and deactivate the unions in the workplaces (Mahiroğulları, 2001, p. 185).

Part-time and flexible workings, which have gradually reached implementation fields in all industrialized countries after 1980, have been applied in several sectors in Turkey especially after 1990.

"Working at home", a kind of flexible working that is especially widespread in clothing and textile industry, has also negatively affected unionization in the country (Mahiroğulları, 2001, p. 186).

[5] Official Journal Number: 23134, Published date: 10.06.2003, from: http://www.resmigazete.gov.tr/eskiler/2003/06/20030610.htm, (Accessed date: 18.01.2014).
[6] Official Journal, Number: 15273, Published date: 22.6.1975, from: http://www.tbmm.gov.tr/tutanaklar/KANUNLAR_KARARLAR/kanuntbmmc058/kanuntbmmc058/kanuntbmmc05801912.pdf, (accessed date: 17.01.2014).

CHAPTER 2
CIVIL SERVANT UNIONISM AND THE HISTORICAL DEVOLOPMENT OF CIVIL SERVANT UNIONISM IN TURKEY

2.1 Civil Servant's Unionism in General

As it is stated at the first chapter, the first thing that comes to mind is struggle of proletariat when we talk about unionization and association. It is also stated that this struggle emerged in England as an offset of Industrial Revolution. The societies that newly tolerate rights which workers have gained have not completely tolerated the same demands of a worker that is charged in a public institute as well. Even though civil servants have rights concerning unionization, these rights still face serious criticisms today (Ünal, 2012, p. 40).

Lawmakers such as Duguit and Hauriou stated in their writings that the civil servants have a different status (Akbay, 2010, p. 92). Duguit suggests that a civil servant has a real negative status which shows itself with special difficulties, duties and responsibilities. Maurice Hauriou says that a public servant has to have "a duty of dependence to administrative hierarchy as a response to its well-intentioned protectiveness" as a result of the duties the servant undertakes (Akbay, 2010, p. 93). In addition, servants' loyalty to and dependence on their duties cannot clearly comply with being a member of any association and institution. It can be said that starting point of the critics against unionization rights of the civil servants is due to special structure of a bond between civil servants and state. This chapter of thesis will focus the concept of sovereignty, and tendency in the international arena. In addition, the historical process of the civil servants' unionization will be mentioned as well.

2.1.1 Civil Servant's Unionism with Regard the Sovereignty

As civil servants' rights of forming a trade union and their union rights (such as collective bargaining, going on a strike) make governments and local administrations accept some conditions, this issue has been considered as a clear intervention in sovereignty right of the state (Ünsal, 1999, p. 17). On the other hand, a civil servant has a debt of loyalty to the state, as Hauriou stated above (Akbay, 2010, p. 92).

Concept of sovereignty means setting rule, creating law and power of domination and this power is shaped by one who dominates it and can never be left or transferred. Opinions stemming from this sense see 'organizational attempts of civil servants' as intervention in the

concept of sovereignty and consider them as illegal, too (Ünsal, 1999, pp. 17-18). Mutlu summarizes some of concern about civil servants' unionization and various causes of the grounds of this concern are suggested below (2001, pp. 26-27):

" 1. It is difficult to separate a civil servant from the state. A civil servant is the person who acts on behalf of the state. S/he is both an employee and employer. It will be wrong to consider state and civil servant as two separate parties of a bargaining. That's why, the procedures and methods between an employer and employee in private sector cannot be valid for the relations between the state and a civil servant.

2. That civil servants oppose to public authority by depending on their right of association results in a situation in which state clashes with itself. Hierarchy is the basis of administration and public service system. Damage to this principle will debilitates the administration, causing disobedience as well. A civil servant in an environment where right to organize is accepted may do many acts contrary to public service. This situation will negatively affect the relations with his/her superior as well.

3. Public sector unions are formed to provide special benefits and a civil servant is generally watcher of this benefit. Giving the right of organize to the civil servants may result in preference of special benefits.

4. Civil servants are not in labor-capital clash. That's why, it is useless for them to be a member of union as workers do."

2.1.2 Civil Servant's Unionism in International Arena

International Labor Organization's Report in 1970 is the leading one among the steps that are taken in terms of unionization right of civil servants. According to the report which is about the servants' associating and determination of their employment conditions, "Governments have "many subjects" to argue with many servants whose attitudes and behaviors are too close to those of private sector employees. Because, the civil servants also want to receive a share from national prosperity, to improve their life standards and to participate in determining working conditions as other employees do (Gülmez, 1996, p. 13). In this sense, the state falls into dilemma in terms of its dominance and power of setting rules, and its role as a employer. The report says organization of the civil servants is considered as a natural right (Gülmez, 1996, p. 14).

In addition to this starting point, there are many contracts concerning the rights of civil servants for unionization. United Nation's documents, European Council's documents and

ILO contracts include regulations that advocate that the servants have the right of unionization.

2.1.2.1 Civil Servants' Union Rights in United Nations (UN) Documents

UN was formed on June 26, 1945 under the leadership of winning countries of World War II to protect world's peace after the war (Bibilik, 2008, p. 23). Its main target is to provide peace and do not generally have regulations with employment conditions (Gülmez, 1996, p. 135).

Moreover, rules of employment conditions and union rights are also mentioned in Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights.

Universal Declaration of Human Rights

It is a declaration adopted by the UN General Assembly on December 10, 1948. Turkey ratified the declaration on April 6, 1949 whose 20th article has great importance for our topic which is as follows:

Article 20

''1- Everyone has the right to freedom of peaceful assembly and association.

2- No one may be compelled to belong to an association.''[7]

Union right is regulated at the 1st and 4th clauses of 23rd article as well:

Article 23

''1- Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

2- Everyone, without any discrimination, has the right to equal pay for equal work.

3- Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4- Everyone has the right to form and to join trade unions for the protection of his interests.''[8]

[7] Universal Declaration of Human Rights, from: http://www.un.org/en/documents/udhr/ (accessed date: 20.01.2014).

[8] Universal Declaration of Human Rights, (accessed date: 20.01.2014).

As it is understood in article 20 and article 23 of the declaration, there is union right which is given to everyone. That's why, all employees regardless of their qualifications can form a union or attend a union to protect their interests.

International Covenant on Economic, Social and Cultural Rights

Turkey signed this covenant on August 15, 2000 in New York and Turkish Parliament approved it with the law to 4867 number on June 4, 2003 and it was published in the Official Gazette on June, 18 2003.[9] This contract, approved by UN General Assembly in December 16, 1966, but taking effect on January 3, 1976, gives union right to everyone (Gülmez, 1996, p. 136).

Article 8 of the Covenant, titled as "Union Right", gives the right of forming union to everyone, and states the limitations and application fields clearly as follows:

''1- The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others''.[10]

It is understood that the right is given to everyone by which anyone can attend any union with their own will. Accordingly, the party states have to recognize the civil servant's union rights.

International Covenant on Civil and Political Rights

Turkey signed this covenant on August 15, 2000 and it was approved by Turkish Parliament with law to 4868 number on June 4, 2003 and published in the Official Gazette[11] in June 18, 2003 (Bibilik, 2008, p. 27).

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[9] Official Journal Number: 25196, from: http://www.tbmm.gov.tr/komisyon/insanhaklari/pdf01/83-93.pdf, (Accessed date: 19.01.2014).

[10] International Covenant on Economic, Social and Cultural Rights, from: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx, (Accessed date: 19.01.2014).

[11] Official Journal Number: 25142, Date: 18.6.2003, From: http://www.tbmm.gov.tr/tutanaklar/KANUNLAR_KARARLAR/kanuntbmmc087/kanuntbmmc087/kanuntbmmc08704868.pdf, (Accessed date: 19.01.2014).

This covenant deals with union right under title of freedom of organization. In this sense, 22nd article of the covenant is as follows:

Article 22

''1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labor Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.''

The party countries are given responsibility of providing economic, social and cultural rights with this covenant (Gülmez, 1996, p. 139)

2.1.2.2 Civil Servants' Union Rights in European Council Documents

Status of European Council, the first political institute, was signed in London by ten member countries and entered into force on August 8, 1949. Turkey ratified this status with law to 5446 number on December 12, 1949 and attended the council (Bibilik, 2008, p. 134).

European Convention on Human Rights (ECHR)

Member governments of European Council signed this convention in Rome on March 20, 1950 by targeting the Universal Declaration of Human Rights to enable the rights to be actively recognized everywhere and to provide their implementation.[12] It entered into force on September 3, 1952 and Turkey ratified it on May 18, 1954. ECHR arranges union right and the right to form a union at 11th article that takes place under the title of "Forming Association and Freedom of Meeting". This convention will be discussed at Chapter 3 in detail.

[12] European Convention on Human Rights (ECHR**)**,From:http://www.echr.coe.int/Documents/Convention_ENG.pdf, (Accessed date: 20.01.2014)

European Social Charter

‘‘The European Social Charter is a Council of Europe treaty which guarantees social and economic human rights and it was adopted in 1961 and revised in 1996.’’[13] Turkey approved it on June 16, 1989 by being chary of its 5th and 6th articles. The charter was revised and rearranged within the frame of changing social rights (Gülmez, 2005, p. 195).

Right to organize is regulated at article 5 and collective bargaining is regulated at article 6. The content of two key articles that are revised and Turkey is cautious on the grounds of "its then socioeconomic conditions" (Gülmez, 2007, p. 31) is as follows:

Article 5

‘‘The right to organize

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organizations for the protection of their economic and social interests and to join those organizations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.’’

Article 6

‘‘The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1- to promote joint consultation between workers and employers;

2-to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

3- to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labor disputes; and recognize:

[13] European Social Charter, from: http://www.coe.int/T/DGHL/Monitoring/SocialCharter/, (Accessed date: 20.01.2014).

4- the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.''

As it is understood at the Article 5 that the right to organize is given to employees. Here there is not a separation between civil servant and worker. Neither is between actively worker and pensioner.

2.1.2.3 Civil Servants'' Union Rights in International Labor Organization (ILO) Documents

International Labor Organization was founded under the United Nations. The organization is an institute that works to improve human rights, social justice and working rights.

ILO Convention Concerning Freedom of Association and Protection of the Right to Organise (No. 87)

This Convention, approved by ILO General Conference in San Francisco on July 9, 1948, was approved by Turkey in 1993 and it was published in the Official Gazette on February 25, 1993.[14] It guarantees freedom of association against possible dangers from the state. Noting that this convention is the first and key one that ascertains frame of the freedoms, Gülmez also also determined three universal principles of the union right that the convention gives to employees: (1996, p. 144).

- discriminating on no occasion,
- not getting permission in advance,
- forming unions and being member of them.

Article 2 says that:

''Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.''[15]

It will be necessary to deal with the statement "without distinction whatsoever" in detail. This right is given to everyone regardless of their religious, language, gender, being a civil servant or an employee. In this sense, the key issue at the convention is that there is not any discrimination between public and private sector employees concerning unionization.

[14] ILO Convention No 87, from: http://www.ilo.org/public/turkish/region/eurpro/ankara/about/soz087.htm, (Accessed date:21.01.2014).
[15] ILO Convention No 87, (Accessed date:21.01.2014).

It brings limitation only to security officers and leaves the authority to determine guarantee for armed forces and police to national legislation.

As it is understood from its name, the party countries of the convention are obliged to recognize union right and undertakes protection against interference in this right. Third article of the convention sets rules in order to protect employees and organizations' free will's supremacy concerning union freedom (Gülmez, 2005, p. 146). Namely:

Article 3

1- Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs.

2 The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Moreover, this convention does not include directly or clearly any rules concerning right of going on strike, but experts accepted it gave this right in wide sense (Gülmez, 1996, p. 147)

ILO Convention Concerning the Application of the Principles of the right to Organize and to Bargain Collectively (No. 98)

This convention, approved in 1949 and entering into effect on July 18, 1951, is one of the eight conventions that are about ILO's basic rights. Turkey approved it with law to 5843 number on August 8, 1951.[16] Its aim is to protect the right of association and the collective bargaining against employers and employer organizations: That's why, it is supplementary for the convention number 87.

Gülmez defines union freedom as follows: "Union freedom entails trade unions to be accepted as authorized representatives of employees to conclude collective contracts, and it also protects right of employees to be a member of a union and take part in union activities against employers. Without providing this protection, the right of forming union they choose and being a member will be valid just on paper." (2005, p. 149). The Convention No 98 regulates on two basic issues Gülmez mentions and completes the Convention No 87 as its twin.

First article of the Convention is as follows:

[16] ILO Convention No 98, from, http://www.ilo.org/public/turkish/region/eurpro/ankara/about/soz098.htm, (Accessed date: 22.01.2014).

Article 1

''1- Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2- Such protection shall apply more particularly in respect of acts calculated to-

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.''[17]

When looking at the text of the Convention, it can not seen that the principle of "distinction on no occasion". Therefore, it can be said that the Convention no 98 is narrower in terms of application field for an individual. However, the same issue at both conventions is that the implementation is left to national legislation for armed forces and police officers (Gülmez, 1996, p. 153). Article 6 of the Convention No 98 is important in terms of implementation for an individual.

Article 6

''This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.''[18]

It will be useful to mention about the point Gülmez focuses on about this article. He says there are differences in translations of the article 6 both in English and French. The French translation uses "fonctionnaires publics" (civil servants) whereas the English one uses the statement "public servants engaged in the administration of the State" (1996, p. 153). Difference between the two translations influences application of the convention as well. Experts' Commission agreed that the convention only kept the civil servants engaged in administration of the state out of the scope (Gülmez, 1996, p. 155). Committee of Union Freedoms agree with the commission. Gülmez states that according to them, the idea that the sixth article of the Convention No 98 does not bother all the civil servants is contrary to the convention and all public service officers that do not use public power are under the scope of the Convention No 98 (Gülmez, 1996, p. 155).

[17] ILO Convention No 98, (Accessed date: 22.01.2014).
[18] ILO Convention No 98, (Accessed date: 22.01.2014).

ILO Convention Concerning Protection of the Right to Organize and Procedures For Determining Conditions of Employment in the Public Service (No. 151)

Due to presence of interpretations saying the Article 6 of Convention No 98 that determines application field for an individual does not include "civil servants", ILO dealt with the issue again and accepted the convention number 151 employment conditions (public service) on June 27, 1978.[19] Turkey approved this convention on February 25, 1993.

The first article of this convention states the application fields for individuals and which convention will be valid when it coincides with another convention at same subject. Accordingly;

Article 1

"1- This Convention applies to all persons employed by public authorities, to the extent that more favorable provisions in other international labor Conventions are not applicable to them.

2- The extent to which the guarantees provided for in this Convention shall apply to high-level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are of a highly confidential nature, shall be determined by national laws or regulations.

3- The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations."[20]

This Convention is applied to all persons that work for public officials, but the other convention which includes appropriate rules for the benefit of civil servants will primarily applied. As Gülmez said the convention no 151 is a spare one (1996. p. 225).

Article 7 of the Convention is as follows:

"Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for negotiation of terms and conditions of employment between the public authorities concerned and public employees' organizations, or of such other methods as will allow representatives of public employees to participate in the determination of these matters."[21]

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[19] ILO Convention No 151, from: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312296:NO, (Accessed date: 22.01.2014).

[20] ILO Convention No 151, (Accessed date:22.91.2014).

[21] ILO Convention No 151, (Accessed date: 22.01.2014).

This article states two methods in determination of employment conditions of those who work for public authorities (Gülmez, 2005, p. 155). First method is bargaining (collective meeting) over employment conditions among organizations of civil servants. The second one is that representatives of civil servants should participate in determination of employment conditions. The Convention no 151 offers one of the two methods, for instance, it gives chance of participation instead of collective bargaining. As Gulmez stated this convention enables participation in determination process instead of voluntary collective bargaining and limits the participation with taking opinions. Yet the Convention Number 98 guaranteed participation in determination of wages and employment conditions via voluntary and free collective bargaining. Therefore, contenting with a method that predicts participation in a decision process will be contrary to this Convention (1996, p. 161).
The convention number 151 arranges article 8 concerning settlement of disputes with peaceful ways unlike the one number 98. Namely:

Article 8

''The settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought, as may be appropriate to national conditions, through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence of the parties involved.''[22]

One of the key articles, which arranges the connection among union rights and civil and political rights, is as follows:

Article 9

''Public employees shall have, as other workers, the civil and political rights which are essential for the normal exercise of freedom of association, subject only to the obligations arising from their status and the nature of their functions''[23]

As it is understood that the key conventions of ILO are supplementary of one another. However, we can say that these developments occurring in terms of unionization and use of union rights in the international arena are affected by globalization process which is has been on agenda since the last quarter of 20th century. Erdogdu described the course of international

[22] ILO Convention No 151, (Accessed date: 22.01.2014).
[23] ILO Convention No 151, (Accessed date: 22.01.2014).

unionization during globalization process as follows: “As everything solid evaporated during globalization process, the global Keynesianism approach of international unionization in 1980s turned into a liberal reformist strategy” (2006, p. 253).

Although there is not a certain definition for globalization, we can give a definition as follows: “Developed countries aim to further make people close and to provide free trade and circulation as result of removing borders among countries and gathering people around a homogenous culture in order to form a common world market for globalization” (Tartanoğlu, 2007, p. 8).

While development of international relations, increase of competition and dependency, and weakening of national state structure during globalization process bring the supranational structures to fore front, it is understood from this process that capital gain power and the unions significantly lose power (Yorgun, 2005, p. 138). In this sense, the unions are dragged into a crisis. Some opinions exist saying technological developments spoiled the balance of labor-capital which nearly prevents mention of a proletariat. Even there are opinions that say labor will be prominent power by taking a primary role at this process.

Changing structure of the working section is discussed under the scope of developments occurring generally during production process and the reflections of this situation on labor processes.

Capital mobility and increasing competition, which gradually become free against wage workers and trade unions by the contributions of multinational companies, have created a key oppression over gained rights of wage workers and caused recessions (Gersil and Aracı, 2007, p. 158).

According to Gersil and Aracı, there have appeared negative results in employment conditions of all wage workers such as irregularity, informality and non-standardization, except from a small core labor force (information worker). In addition, concessions have also appeared in collective bargaining due to increasing unemployment and decreasing member number of unions, which obstructs to protect gained rights, either (2007, p. 158).

Although insight of unionization in international documents is taken under protection with its all elements, the crisis through which the unions experience as a result of globalization decreases, in general sense, the potential to organize across the world. Despite a progress is

recorded in improvement of civil servants' union rights in the international arena, it can be said there is a clout on consciousness of association in practice.

2.2 Historical Development Process of Civil Servants' Union Rights in Turkey

There are many economic, political and sociocultural factors that affect unionization in Turkey as it is stated at the first chapter.

When examined unionization of civil servants in the county, there appear differences in many fields unlike that of workers' unionization. Civil servants gained union rights after workers had gained. The first law that regulated workers' union rights in positive sense was approved in 1946 and civil servants' union rights were regulated with a law that was approved in 1996. Civil servants reached collective bargaining right in 2012 whereas the right of going on a strike was not completed yet.

At his part of second chapter, historical development of public unionization and the laws approved will be discussed under four periods.

2.2.1 Period Between 1961-1980

The most important stage of development of basic rights and freedoms in Turkey is the acceptance of constitution 1961. By the entry of the constitution into force, the country entered a period of a liberal democracy. The article 46 of the constitution 1961 explained the union right within the frame of basic rights under the title of "Social and Financial Rights" and regulated unionization of "all employees" (Narmanlıoğlu, 2001, p. 50). In addition, the law of Collective Labor Contract Strike and Lockout was released. Strike and lockout were guaranteed in the constitution 1961 and gained legality with a law to 275 number (Mahiroğulları, 2000, p. 97).

Another regulation of union right given to all employees, including public officers, is the State Personnel Unions Law to 624 number. However, the law prohibited right of strike, meeting and demonstration according to the constitution 1961 (Aktay, 1993, pp. 3-4).

Civil Servants' Law dated July 14, 1965 and numbered with 657[24] give union rights to the civil servants, but prohibited right to strike as the law to 624 did (Özer, 2000, p. 134). According to provisions stated in the constitution and the special law, the unions and top

[24] Civil Servants' Law, for more information please look: http://www.mevzuat.gov.tr/MevzuatMetin/1.5.657.pdf, (Accessed date: 23.01.2014).

institutes can be formed and registered as a member. The lawmaker that did not give right to strike also prohibited them to act in a way which obstructs service in workplaces with the second clause of article 26 (Taşçı, 1996, pp. 96-97).

Civil servants were prohibited to attend or attempt, to support and to encourage a strike to guarantee public order. They were also prohibited from attending or supporting a strike which is arranged by workers as well according to article 27 of the law. Moreover, the civil servants cannot leave their post together, which will also obstruct public services. That's why, a failure in public service can constitute a crime (Gülmez, 2002, p. 84).

However, the article 26 underwent a change with a law to 2670 number on May 12, 1982. The final shape in force is as follows: "It is forbidden for public officers to do an act which will hinder public services by purposely leaving their post together and even slowing services at workplaces."

Following the note of March 12, organization rights of many unions were restricted as they were claimed to operate out of their aims (Çevikbaş, 2010, p. 23). Civil servants' rights to organize was abolished with a constitutional change in 1971 and the existent unions were dissolved (Kutal, 2002, p. 135-136). The public associations were active for a very short time and activities of these associations were terminated with September 12 military coup in 1980. Struggle of the civil servants failed (Çevikbaş, 2010, p. 23).

2.2.2 Period Between 1980-1995

The constitution 1982 entered into force on November 7, 1982 (Çevikbaş, 2010, p. 23). Although this constitution clearly gives union rights to workers, it does not include any provision which prohibits or regulates rights of civil servants. Due to this legal hole in the constitution, there appeared two different views in doctrine concerning civil servants' union rights (Uçkan, 2013, p. 11). For instance, the right of "strike and lockout" is regulated at the 54th article of the constitution 1982. Accordingly, "*Workers have the right to strike if a dispute arises during the collective bargaining process, procedures and conditions governing the exercise of this right and the employer's recourse to a lockout, the scope of both actions, and any exceptions to which they are subject are regulated by law.*''[25] As it understood from

[25] Constitution of the Republic of the Turkey, from: http://www.constitution.org/cons/turkey/turk_cons.htm, (Accessed date: 24.01.2014)

this article that the civil servants are not mentioned while workers are given the right, which causes a legal hole.

In addition, one of the characteristic of this period, is that civil servants began to form unions and to register as a member beginning from 1990. Civil servants began to struggle to create union rights in this period (Uçkan, 2013, p. 12). The public unions that were formed continued their activities with the demonstrations they held. The first legal meeting of civil servants was held on January 26, 1992 and Platform of Civil Servants' Unions organized a march in Ankara on June 16-22, 1992 to obtain right of strike and collective bargaining (Koc and Koc, 2009, pp. 232-241).

2.2.3 Period Between 1995-2001

Turkish Parliament approved a Law Concerning Amendments of Preamble and Some Articles of Turkish Republic's Constitution dated November 7, 1982 and numbered with 2709 with another law on July 23, 1995 with number of 4121.[26] Constitutional change 1995 caused two amendments in the constitution 1982. The first one of the amendments concerning union rights is the removal of article 52, titled "union activity" which regulates general policy prohibition and administrative auditing.

The second amendment is the realization of additional of a new clause between the second and third clauses of 53rd article, which regulates the "Right of Collective Labor Contract" of the constitution. This clause aims to release a law that regulates both civil servants' union rights and collective meeting between unions and the administration (Gülmez, 2002, p. 174). However, the additional clause did not give authority of collective contract to the public unions, but gave collective meeting authority. The additional clause did not give the right of collective labor contract and strike to the public unions. It took the right to strike in the constitutional guarantee within the frame of constitution, but did not bring a constitutional right. According to the clause, the said civil servants can form unions and top institutes among themselves.

This regulation caused many disputes as well. It is not understood by this regulation whether the civil servants are given union rights or not, which constitutes a serious restriction

[26] Law on July 23, 1995 with number of 4121, from: http://www.tbmm.gov.tr/anayasa/anayasa_2011.pdf, (Accessed date: 24.01.2014).

for presentation of a report, which will be prepared whether any agreement is reached at the end of collective meeting, to the Ministers' Council (Kutal, 2002, p. 136).

2.2.4 Period Till Now Beginning From 2001

A clause is included into article 51 of the constitution with a law dated on October 3, 2001 and numbered 4709, saying "*the scope, exception and limits of the public officers rights who do not bear worker qualification are regulated appropriately with the service they receive*."[27] The word "workers" at the head of the article is changed into "employees" and all civil servants have the union right, which is stated in the Constitution (Tuncay, 2007, p. 163).

Law of Public Officers' Unions was approved on June, 25, 2001 with number of 4688.[28] As a result of this law, the public unions that reached constitutional structure took part in legal ground as well. Aim of the law is explained at the first article as follows:

"Objective of this law is to determine the establishment, organs, powers and activities of the trade unions and confederations formed for the protection and improvement of the economic and social benefits of the public servants and is to lay down the principles and procedures related to concluding collective agreements."[29]

According to the article 2 of the law, all civil servants working out of worker status have the right to form a union and to freely register as a member at public institutes and agencies and according to article 6 unions and confederations can be formed without getting permission in advance.[30]

According to this law, the civil servants have the rights of collective meeting and collective contract (by a constitutional amendment in 2013); but do not have right to strike. Moreover, article 15 of the law regulates who cannot form a union or register as a member.[31]

The law to 4688 number regulated scope and content of the civil servants' union rights and ascertained borders of activities of the previously formed unions and those which will be formed. In this respect, it can be said that the civil servants do not gain a right, but audit of public unions is aimed (Bülbül, 2009, p. 34).

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[27] Law No 4709, from: http://www.tbmm.gov.tr/kanunlar/k4709.html, (Accessed date: 24.01.2014).
[28] Official Journal, No:24460, Published date:12.7.2001.
[29] Law No. 4888, from: http://personel.istanbul.edu.tr/wp-content/uploads/2013/12/4688-Say%C4%B1l%C4%B1-Kamu-G%C3%B6revlileri-Sendikalar%C4%B1-ve-Toplu-S%C3%B6zle%C5%9Fme-Kanunu.pdf, (Accessed date: 24.01.2014).
[30] Law No: 4888, (Accessed date: 24.01.2014).
[31] Law No. 4888, (Accessed date: 24.01.2014).

Amendments appeared in the law dated 2010 and numbered 4688 due to constitutional change of 2010 in the right of collective contract given to civil servants.

Meeting of the draft bringing amendments ended on September 4, 2011 without reaching an agreement at critical articles such as collective contract and arbitration commission. The statements made during the meeting of the law are as follows:
"Metin Memis, the secretary of General Organization of Memur-Sen and chairman of Saglik-Sen, pointed out that ILO's party states are obliged to widely provide right to organize and hold collective contract and stated that public unions will have the right to hold collective contract in their business branches as the workers' union do, adding this issue should not be taken as dispute subject."[32]

On the other hand, KESK and Birlesik Kamu-Is Konfederasyonu, two key Turkish unions, said "civil servants would not accept the collective bargaining trick which is decided by the arbitration commission in the name of civil servants and does not include strike", in particular adding a collective contract without strike would not exist.[33]

The said law was approved under these disputes and entered into force. Rules of collective contract are included within the scope of the Law No 6289 concerning amendments on public officers' unions law and the principles of the implementation are stated as well.[34]

The Law No 5982 Concerning Amendments on Some Articles of Turkish Republic's Constitution was approved on September 12, 2010 with a referendum. The general ground of the law which includes amendments focused on changes to be made in the constitution.[35] The first of the amendments made in the constitution is the removal of the last clause of article 51 of the constitution titled "right to form a union", which enabled one person to register at more than one union at the same time and at various labor branches.[36] Ground of this amendment is that the existent regulation is claimed to be contrary to ILO convention no 87. (Ünal, 2012, p. 141). Thus, the fourth clause was rescinded to remove the contradiction. An important

[32] Calisma Hayati Bilgi Notları, 17-26.10.2011, from: http://www.chp.org.tr/wp-content/uploads/Calisma-Hayati-Bilgi-Notu5.pdf, (Accessed date: 25.01.2014).
[33] Calisma Hayati Bilgi Notları, 17-26.10.2011, (Accessed date: 25.01.2014).
[34] Official Journal, No: 28261, Published date: 11.04.2012.
[35] Official Journal, No: 27580, Published date: 13.5.2010.
[36] The Law No 5982 Concerning Amendments on Some Articles of Turkish Republic's Constitution, from: http://www.tbmm.gov.tr/kanunlar/k5982.html, (Accessed date: 26.01.2014).

innovation brought by the constitution 1982 with amendments in 2010 is that civil servants and other public officers were given the right of collective contract. Civil servants were given the right of collective meeting with an additional clause at article 53 by 1995 constitutional amendment. Side heading of the same article was changed into "Right of Collective Labor Contract and Collective Contract" by a new regulation and its content offers the right of collective contract to civil servants and other public officers, which is as follows:

Article 53

''Workers and employers have the right of having a collective labor contract in order to mutually regulate their economic and social rights and employment conditions. Law regulates how a collective labor contract will be had. Civil servants and public officers have the right to have collective contract.

If there occurs a dispute between parties during the collective contracting, they can apply to arbitration commission. Resolutions of the commission are certain and have the force of collective contract.

Law regulates scope, exceptions, form, procedure and entry into force of the right of collective contract in addition to those who will make use of it, reflecting its provisions on pensioners, composition, principles and operation of the public officers' arbitration commission and other issues."

The right of collective contract, an affirmative step, however does not include the right to strike and this will not enable reaching the real function of the contract, which can be defined as inadequate step as well (Hakyemez, 2010, p. 392). In addition, the ground of removing the fourth clause of the article 53 is that it did not comply with the principle of "Free and voluntary collective bargaining" which is predicted at the article 4 of ILO's convention no 98.[37]

Another article that underwent amendment in terms of union rights is the article 54 that carries the title of "Right of Strike and Lockout". Third clause and seventh clause which includes political strike and lockout, solidarity strike and lockout, general strike and lockout, occupation of workplace, slowing business, decreasing efficiency and prohibitions concerning other insurgencies are abolished from effect. It is stated that this amendment abolished clauses which are contrary to universal principles that regulate working life with international contracts in modern democratic societies and bring limitations to right of strike and lockout.

[37] The Law No 5982 Concerning Amendments on Some Articles of Turkish Republic's Constitution, (Accessed date: 26.01.2014).

Thus, a progressive step has been taken for the right of strike and lockout to be used with union rights (Ground of seventh article of the law to 5982).[38]

In addition to these amendments, according to the State Personnel Law's article 26 titled "Ban on collective action", it is forbidden for civil servants to issue a application due to their formal or informal affairs with their institutes. They cannot also collectively issue an orally and verbally application or complaint due to their chiefs or institutes' administrative actions and procedures. This regulation was abolished from force with a law dated February 2, 2011 and numbered 6111. [39]

In addition, a "workshop over civil servants' union and democratic rights" was held on February 9-10-11, 2011 in order to discuss the civil servants' right of collective bargaining and strike in detail. Professor Mesut Gülmez, whose opinions were used in the thesis, also attended the workshop. Three conclusions were announced to public opinion at the end of it: These are as follows:

1- As the public officers' rights of collective bargaining and strike are available in conventions of human rights that are approved by Turkey, officials should conduct regulations to provide the use of these rights.

2- Conducting regulations that will put the right of collective contract and strike into effect so as to provide a meaningful unity for the public officers' union rights is a requirement for a state to respect to human rights.

3- Regulations aiming to remove drawbacks in European Social Charter should be taken into effect (Kamu Görevlilerinin Sendikal ve Demokratik Hakları Calistayi, 2010, p. 436).

It can be said that association of the civil servants, one of key elements of working life, is also one of the key human rights and this right should be recognized at constitutions which regulate social structure. Course of development of the right to organize in Turkey and the world showed difference according to every society's social and political factors. Although workers' organizations took place in different times across the world, they showed development prior to the civil servants' organizations. In summary, regarding the historical process of civil servants' union rights in Turkey, it can be said that the use of union rights by the civil servants was started late and limitations were removed by time as well. However,

[38] The Law No 5982 Concerning Amendments on Some Articles of Turkish Republic's Constitution, (Accessed date: 26.01.2014).

[39] Official Journal, No: 27857, Published date: 25.02.2011. from: http://www.resmigazete.gov.tr/eskiler/2011/02/20110225M1-1.htm (Accessed date: 26.01.2014).

despite positive developments about the collective contract, the right to strike could not be completed, which is both contrary to international conventions and is a breach of human rights.

CHAPTER 3
THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND SIGNIFICANT JUDGEMENTS OF EUROPEAN COURT OF HUMAN RIGHTS REGARDING CIVIL SERVANTS' TRADE UNION RIGHTS IN TURKEY

3.1 The European Convention on Human Rights and the Article 90 of Turkey's Constitution

3.1.1 The European Convention on Human Rights (ECHR)

The European Council concluded European Convention on Human Rights on March 10, 1954 for providing political league among European nations and guarantee fundamental rights and freedoms of people in member nations.[40] ECHR was approved by Turkey on May 18, 1954, the right of individual application was entitled on January 28, 1987.[41]

ECHR is the only regular and independeny control mechanism in Europe providing member nations with respect notably civil rights and fundamental rights and freedoms (Uçkan, 2013, p. 27). The significance of ECHR is not only restricted with the profundity of the guaranteed rights. ECHR is of capital importance in terms of having jurisdiction mechanism for resolving complaints, controlling applications and executing responsibilities required by the convention.[42] ECHR fundamental rigths and freedoms of humans are not stated as general prnciples as such in UDHR, these and their limits are defined as tangibly and comprehensively as possible. The leading motive of regulation of rights comprehensively is the fact that ECHR foresees a control mechanism having judicial bindingness (Doner, 2003, p. 82).

The text of ECHR -amended by Protocol 11- is comprised of one Introduction, three sections, 59 articles and 14 additional protocols. According to Article 1: *"The Supreme contracting parties guarantee the rights and freedoms defined in 1st Section of this contract for every one within their jurisdiction*." First Section (art.2-18) following this article setting the pace for application of contract as a whole regulates rigths and freedoms guaranteed by the contract and prohibitions executed by the contract. There are provisions in 2nd Section of Contract (art. 19-51) regarding constitution, authorities, working principles of European Court

[40] The European Convention on Human Rights, from: http://www.echr.coe.int/Documents/Convention_ENG.pdf, (Accessed date: 27.01.2014).
[41] Avrupa Konseyi, from: http://www.mfa.gov.tr/insan-haklari-ve-avrupa-konseyi.tr.mfa, (Accessed date: 27.01.2014).
[42] Avrupa Konseyi, from: http://avrupakonseyi.org.tr/akih.htm (Accessed date: 01.02.2014)

of Human Rights (ECHR) and some authotiries of Committee of Ministers. In the third section of the contract including "Miscellaneous Provisions" heading (art. 52-59) there are rules regarding execution of the contract and its entry into force. In 1st section of ECHR (art. 2-18) are the regulations regarding rigths and freedoms and provision of restriction for these rigths and freedoms. The rigths guaranteed in the convention are regulated as right to life (art.2), prohibition of persecution and cruel treatment (art.3), prohibition of slavery and forced labor (art.4), personal liberty and security interest (art.5), right to due process (art.6), principle of legality of crime and punishment (art.7), right of respect the private life and family life (art.8), freedom of thought, conscience and religion (art.9), freedom of expression (art.10), right of assemblage and organization (art.11), right of marriage and founding a family (art.12), right to an effective remedy (art.13), prohibition of discrimination (art.14). 15th article of convention includes provisions of suspension regarding extraordinary regime. Article 16 is related with restriction of political activities of foreigners. Article 17 prohibits exercise of rigths and freedoms regulated in the convention in a way to prevent these rights and freedoms. Article 18 orders that the restrictions of aforementioned rights and freedoms can only be exercised for the determined objectives.[43]

ECHR has undergone from the date its approval till today. The scope of the convention has been extended and its control mechanism has been improved by 14 additional protocols approved recently.

ECHR has the characteristic of international convention in terms of legal system mechanism. As per this characteristic, it results in binding consequences in terms of international law regarding contracting nations and encumbers the parties to preserve rigths and freedoms in the convention within their own jurisdictions (Kocabaş, 2009, p. 7). The 1st article of the convention enjoins parties to guarantee rights and freedoms regulated by the convention within their own jurisdictions. The nations approved the convention enter into bilateral obligation automatically by the approval process. First one is to adapt their national laws to convention. The second one is to take precautions against breach of rights and freedoms mentioned in the convention. Article 13 of ECHR reinforces the assurance system of the convention by according a right to take effective legal actions before international authorities for everyone whose rights and freedoms regulated in the convention are breached (Özdek, 2004, p. 29).

[43] The European Convention on Human Rights, from: http://www.echr.coe.int/Documents/Convention_ENG.pdf, (Accessed date: 27.01.2014).

The characterictics to be evaluated as a contribution of ECHR to international law and not included to other international conventions can be summarized as follows:

1- The convention entitles the individual to be a holder of a right in international law. The convention paved the way for litigate ECHR against the nation which breached his/her rights. Thus, the individual has become a holder of a right in international law and subject of the international law. The individual right of petition is the backbone of the convention. Individual right of petition is the most significant part of the control system regulated by the convention. Besides individual petition, there is state petition which is a common assurance system. The state petition mechanism is one of the main characteristics of the convention (Gölcüklü and Gözübüyük, 2005, pp. 13-14).

2- The states that approved the convention undertake the liability to guarantee rights and freedoms mentioned in the convention. Not only citizens but also foreigners and stateless persons shall be able to benefit from rights and freedoms in the convention (Özdek, 2004, p. 33).

3- ECHR not only encumbered the responsibility to respect guaranteed rights and freedoms to contracting states but also envisaged a Court (Committee), that is, a control organ in terms of jurisdiction (Gölcüklü and Gözübüyük, 2005, p. 16).

4- By the execution of international preservation system, ECHR provided human rights to be conveyed to international platform from internal affairs of the states. This preservation system makes hearing of states on international platform due to breach of human rights and establishes an international judicial regulation in human rights (Özdek, 2004, p. 28). Also the states are not also heard but also they are obliged to account, pay compensation for the breach of human rights and precautions are taken for the breach not to be occurred. (Kılınç, 2004, p. 143).

When examining the position of ECHR in national laws of contracting states, there are two different theories regarding place of an international convention in the national law of a contracting state in law of nations. First one of these is dualist, the other is monist theory.

According to monist theory, international law and national law are two separate legal orders different and totally independent from each other (Pazarcı, 2007, p. 18). While the national law regulates the public and individual relations included in national level, international law largely regulates interstate relations (Pazarcı, 2007, p. 19). As both of the

legal orders are totally independent from each other, conflict among the rules is out of point. In order for a rule in a legal order to be effective in the other one, the attributions are required to be made clearly (Akkutay, 2007, p. 14). From contracting states of the convention in Denmark, Iceland, Maltha, Norway and England dual regulation is domimant. In these nations appliying dual regulation, the convention does not constitute a part of law and the state is obliged to take the necessary precautions for providing execution pf rights and freedoms guaranteed by the convention (Gölcüklü and Gözübüyük, 2005, p. 19).

According to monist theory law is a whole. International law and national law only constitute a part of this whole (Schmalz, 2004, p. 321). In this approach, a separate national process is not required for a convention to be included in national law regulation and according to monist theory, it is sufficient to conclude the convention in accordance with the constitutional form and its entry into force. Thus, the convention is executed as one of the rules of national law without any requirement of inclusion to internal law by any process of national law (Kocabaş, 2009, p. 11). ECHR party states such as Austria, Germany, Turkey, Belgium, Holland, Portugal, Spain, France, Bulgaria, Greece, and Italia adopted the monist system (Anayurt, 2004, p. 72).

3.1.2 Article 11 of European Convention of Human Rights

The article 11 of ECHR says that;

''1-Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2- No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State. ''

Although the title of the article 11 is determined as "Freedom of forming association and meeting", the regulation context of the article does not only compose of freedom of forming association and meeting as it is understood from the text of article. As a matter of fact, right to form trade unions and register as a member are also mentioned in the first clause of the article in addition these to issues. What is more important, the preservation area is not restricted by the issues mentioned in the article. Although the right to form association, to hold meetings,

to form trade unions and register as a member are regulated in the article, there is not any regulation regarding labor negotiations and the right to strike. The scope of article 11 is also determined by case laws (Uçkan, 2013, p. 28). More precisely, the court does not add these rights by its decisions, it stated by means of interpretation that these rights are included to the area preserved by the article.

The subject of rights regulated in article 11 and generally stated as right of organization is ‘‘everyone’’. In the first clause, everyone is stated as the subject of the rights and in the second clause it is stated that there may be some restrictions for some civil servants. However, the restrictions for those who are charged in armed forces, police and in administrative mechanism are not unconditional restrictions, the seond clause says. The criteria of this are not stated in the convention and are put forward by case laws (Gülmez, 1996, p. 18, Uçkan, 2013, p. 28).

3.1.3 Bindingness of ECHR for Turkey

Turkey, which applies monist theory, included regulation regarding international agreements in Constitution 1982 as in Constitution 1961. Article 90 in the Constitution 1982, regarding approval of international agreements, is directly obtained from article 65 of Constitution 1961.

While the first four clauses of article 90 of the constitution are mentioning the rules regarding approval and publication of international agreements[1], its last clause that underwent amendment in 2004 regulates constitutional inspection of international agreements. However, it can be stated that the most important clause of this article in terms of international agreements that are approved concerning union rights is the last clause. According to the last clause of article 90 of the Constitution, the international agreements which legally entered into force have the force of law and an appeal cannot be lodged with constitutional court for constitutional objection regarding these agreements. An advantage is gained over international agreements against national legislation concerning fundamental rights and freedoms by adding following sentence by means of 5170 numbered law on May 7, 2004:
‘‘In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail’’.[44]

[44]The Official Journal, No: 25469, Published date: 22.5.2004, Sentence added on May 7, 2004; Act No. 5170.

The justification of the sentence that was added to article 90 of the Constitution is as follows: this article is added to the last provision of article 90 for the purpose of removing hesitations about the issue about which will be attached priority regarding inconsistencies to emerge.(Uçkan, 2013, p. 41) By means of this article, it is intended to resolve the conflicts to occur between international law and national law regarding fundamental rigths and freedoms.

According to Uçkan, the fact that the international agreements, which legally entered into force, have the force of law does not mean that rules of international law are equivalent to rules of national law. (2013, p. 42). In other words, the international agreements which legally entered into force are not equivalent to law and do have the force of law. Thus, this provision of the constitution should be interpreted as harmonisation of approved international agreements with national legislation and a regulation requried to be followed by legislative, execution and jurisdiction organs (Gülmez, 2005, pp. 18-22).

Moreover, an appeal for constitutional court cannot be performed for international agreements that entered into force according to due process. Hereby, it can be stated that performance of all required amendments and regulations in national legislation are encouraged before the approval of an international agreement. Likewise, after an international agreement is approved, the legislative and jurisdiction organ has not authority to invalidate or replace this agreement. (Gülmez, 2005, pp. 21-23).

The regulation executed in Constitution in 2004 covers all conventions on human rights contracted by Turkey and these conventions are preferred against national law. Also it binds all legislative, execution and judiciary organs. However, despite the said constitutional amendment, the lacks of union rights of civil servants is ignored in Turkey. Yet, the union rights, especially collective bargaining and right to strike take part in fundamental rights and freedoms. According to article 90, in case of any contradiction between national legislation and international legislation regarding union rights, it will be right to apply to international provisions (Uçkan, 2013, p. 43). Accordingly, instead of contradictory provisions of the law numbered with 4866 with the international agreements, the regulations included in international agreements shoud be based on by legislative, execution and judiciary organs.

3.2 The Scope of Article 11 Under ECtHR Judgements

There are various decisions regarding freedom association in ECHR's cases (Gülmez, 2005, p. 171). The decisions of these cases form case law for union rights that are clearly not

stated in article 11. Strazburg Court is in a strict approach in while making decisions in the middle of 1970 (Gülmez, 2008, p. 146). Before the court evaluate the decision about Turkey, it will be beneficial to mention about case law. The revolution occurring in case law of court regarding this issue will better contribute comprehension of this decision.

3.2.1 Case of National Union of Belgian Police v. Belgium

In the judgment in *National Union of Belgian Police v. Belgium*[45], the Court found no violation of 11. Nevertheless, this judgment set the main principles concerning trade union freedom. According to the applicant union, the decline of the number of its members was because of the trade union consultation policy which provides that if an organization is not recognized as representative, it is forbidden from the consultation procedure. The applicant union claimed that it violated the principle of trade union freedom. In the judgment in *National Union of Belgian Police v. Belgium*, the Court concluded that the Article 11 does not guarantee any particular treatment of trade unions, or their members, by the State, such as the right to be consulted by it. Its judgment is in the following terms:

[38] The Court notes that while Article 11 para. 1 (art. 11-1) presents trade union freedom as one form or a special aspect of freedom of association, the Article (art. 11) does not guarantee any particular treatment of trade unions, or their members, by the State, such as the right to be consulted by it. Not only is this latter right not mentioned in Article 11 para. 1 (art. 11-1), but neither can it be said that all the Contracting States in general incorporate it in their national law or practice, or that it is indispensable for the effective enjoyment of trade union freedom. It is thus not an element necessarıly inherent in a right guaranteed by the Convention, which distinguishes it from the "right to a court" embodied in Article 6 (art. 6) (Golder judgment of 21 February 1975, Series A no. 18, p. 18, para. 36).[46]

In addition to this decision, the Court concluded the right to be heard as follows:

[39] In the opinion of the Court, it follows that the members of a trade union have a right, in order to protect their interests, that the trade union should be heard. Article 11 para. 1 (art. 11-1) certainly leaves each State a free choice of the means to be used towards this end. While consultation is one of these means, there are others. What the Convention requires is

[45] Case: 44/6470 *National Union of Belgian Police v. Belgium* [1975], from: http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"documentcollectionid2":["GRANDCHAMBER","CHAMBER"]}, (Accessed date: 05.05.2013).
[46] Para. 38.

that under national law trade unions should be enabled, in conditions not at variance with Article 11 (art. 11), to strive for the protection of their members' interests.[47]

3.2.2 Case of Swedish Engine Drivers' Union v. Sweden

The applicant union complains that ''the Swedish National Collective Bargaining Office concluded collective agreements on terms of employment and conditions of work only with the said federations. In the judgment in *Swedish Engine Drivers' Union*[48], the Court found no violation of 11. Moreover, it stated that Article 11 does not include right to collective bargaining as follows:

[39] The Court notes in this connection that while Article 11 para. 1 (art. 11-1) presents trade union freedom as one form or a special aspect of freedom of association, the Article (art. 11) does not secure any particular treatment of trade unions, or their members, by the State, such as the right that the State should conclude any given collective agreement with them. Not only is this latter right not mentioned in Article 11 para. 1 (art. 11-1), but neither can it be said that all the Contracting States incorporate it in their national law or practice, or that it is indispensable for the effective enjoyment of trade union freedom. It is thus not an element necessarıly inherent in a right guaranteed by the Convention.

According to Gülmez, it is not surprising to decide that union right does not include collective bargaining with collective agreement in this decision 10 months after the first one (2008, p. 148).

3.2.3 Case of Schimdt and Dahlström v. Sweden

The applicants, trade union members, complained that they had been denied certain retroactive benefits in their capacity as members of organisations which had engaged in strike action. The Court found no violation of 11 in the judgement of the case of *Schimdt and Dahlström v. Sweden* (06.02.1976).[49] The Court concluded that Article 11 does not include the right to strike as follows:

[36] The Court recalls that the Convention safeguards freedom to protect the occupational interests of trade union members by trade union action, the conduct and development of which the Contracting States must both permit and make possible (National Union of Belgian Police judgment, 27 October 1975, Series A no. 19, p. 18, para. 39). Article 11 para. 1 (art.

[47] Para. 39.
[48] Case: 5614/72 *Swedish Engine Drivers' Union v. Sweden* [1976], (Accessed date: 06.05.2013).
[49] Case: 5589/72 *Case of Schimdt and Dahlström v. Sweden* [1976], (Accessed date: 06.05.2013).

11-1) nevertheless leaves each State a free choice of the means to be used towards this end. The grant of a right to strike represents without any doubt one of the most important of these means, but there are others. Such a right, which is not expressly enshrined in Article 11 (art. 11), may be subject under national law to regulation of a kind that limits its exercise in certain instances. The Social Charter of 18 October 1961 only guarantees the right to strike subject to such regulation, as well as to "further restrictions" compatible with its Article 31, while at the same time recognising for employers too the right to resort to collective action (Article 6 para. 4 and Appendix). For its part, the 1950 Convention requires that under national law trade unionists should be enabled, in conditions not at variance with Article 11 (art. 11), to strive through the medium of their organisations for the protection of their occupational interests. Examination of the file in this case does not disclose that the applicants have been deprived of this capacity.[50]

As it can be understood from these three judgments, the Court did not consider the right to consultation, collective agreement and strike as integral parts of union rights.

3.2.4 The Case of Gustafsson v. Sweden

The case was about the trade union action against an applicant who had refused to sign a collective agreement in the catering sector. The Court found no violation of 11 in the judgment of the case of *Gustafsson v. Sweden* (25.04.1996).[51] The Court after these judgments started to approach on the subject of the scope of the trade union rights positively. Indeed, the Court firstly renewed its old opinions regarding Article 11 and it stated that collective agreement is one of the way of collective actions to protect union rights as follows:
[45] At the same time it should be recalled that, although Article 11 (art. 11) does not secure any particular treatment of the trade unions, or their members, by the State, such as a right to conclude any given collective agreement, the words "for the protection of [their] interests" in Article 11 para. 1 (art. 11-1) show that the Convention safeguards freedom to protect the occupational interests of trade-union members by trade-union action. In this respect the State has a choice as to the means to be used and the Court has recognised that the concluding of collective agreements may be one of these (see, for instance, the Swedish Engine Drivers' Union v. Sweden judgment of 6 February 1976, Series A no. 20, pp. 15-16, paras. 39-40).[52]

[50] Para. 36.
[51] Case: 15573/89 *Gustafsson v. Sweden* [1996], (Accessed date: 01.06.2013).
[52] Para. 45.

Thus the court stated that conclusion of collective agreements are included among the collective action methods to be applied by associations emphasied to be guaranteed by article 11 all along to preserve the benefits of their members. Moreover, as it can be understood from the parapraph, the approach of the Court is clearly different from the approach in 1975's and 1976's judgements (Gülmez, 2008, p. 149).

3.2.5 The Case of Wilson, National Union of Journalists and Others v. the United Kingdom

The Court renewed previous opinions and also made an expansion in the case of *Wilson, National Union of Journalists and Others v. the United Kingdom* (02.07.2002).[53] The Court emphasized the positive obligations in the framework of Article 11 once more in the following terms:

[41] The Court observes at the outset that although the essential object of Article 11 is to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected, there may in addition be positive obligations to secure the effective enjoyment of these rights. In the present case, the matters about which the applicants complain – principally, the employers' de-recognition of the unions for collective-bargaining purposes and offers of more favourable conditions of employment to employees agreeing not to be represented by the unions – did not involve direct intervention by the State. The responsibility of the United Kingdom would, however, be engaged if these matters resulted from a failure on its part to secure to the applicants under domestic law the rights set forth in Article 11 of the Convention (see Gustafsson v. Sweden, judgment of 25 April 1996, Reports of Judgments and Decisions 1996-II, pp. 652-53, § 45.)[54]

Then, the Court after adressed to its 1975's and 1976's judgements, reminded that the words "for the protection of his interests" in Article 11 § 1 are not redundant, and the Convention safeguards freedom to protect the occupational interests of trade union members by trade union action in Paragraph 42. The Court stated that the collective bargaining is one of the way of collective actions as follows:

[53] Case: 30668/96 *Wilson, National Union of Journalists and Others v. the United Kingdom* [2002]. (Accessed date: 05.06.2013).
[54] Para. 41.

[44]However, the Court has consistently held that although collective bargaining may be one of the ways by which trade unions may be enabled to protect their members' interests, it is not indispensable for the effective enjoyment of trade union freedom.[55]

[45] The Court observes that there were other measures available to the applicant trade unions by which they could further their members' interests. In particular, domestic law conferred protection on a trade union which called for or supported strike action "in contemplation or furtherance of a trade dispute" (see paragraph 29 above). The grant of the right to strike, while it may be subject to regulation, represents one of the most important of the means by which the State may secure a trade union's freedom to protect its members' occupational interests (see Schmidt and Dahlström v. Sweden, judgment of 6 February 1976, Series A no. 21, p. 16, § 36, and UNISON, cited above). Against this background, the Court does not consider that the absence, under United Kingdom law, of an obligation on employers to enter into collective bargaining gave rise, in itself, to a violation of Article 11 of the Convention.[56]

The Court emphasized the relation between freedom to belong to a trade union and to take action as follows:

[46] The Court agrees with the Government that the essence of a voluntary system of collective bargaining is that it must be possible for a trade union which is not recognised by an employer to take steps including, if necessary, organising industrial action, with a view to persuading the employer to enter into collective bargaining with it on those issues which the union believes are important for its members' interests. Furthermore, it is of the essence of the right to join a trade union for the protection of their interests that employees should be free to instruct or permit the union to make representations to their employer or to take action in support of their interests on their behalf. If workers are prevented from so doing, their freedom to belong to a trade union, for the protection of their interests, becomes illusory. It is the role of the State to ensure that trade union members are not prevented or restrained from using their union to represent them in attempts to regulate their relations with their employers.[57]

[55] Para. 44.
[56] Para. 45.
[57] Para. 46.

Sudre states that the decision of the court can inevitably but implicitly be interpreted as the court approves the right of collective bargaining as a part of freedom of association (2005, p. 478, Gülmez, 2008, p. 159).

As it can be clearly understood that in the mid 1970s, Strazburg Court signified that the right of trade union involved freedom to apply for collective actions and in this way the Court case law process began. Furthermore, it can be said that the Court accepted that trade union rights also involved collective bargaining, collective agreement, right to strike and collective action in the mid 1990s and the first half of 2000s.

3.3 The Violation of Article 11 in Turkey: Significiant Judgements

3.3.1 The Case of Tüm Haber-Sen v. Çınar

The first judgement regarding the violation of Article 11 was the case of *Tüm Haber-Sen v. Çınar* [58] under date of 21 February 2006.

Habersen was established when its founding document was lodged with the Istanbul Governor's Office, in application of Article 51 of the 1982 Constitution. In January 1992, the Istanbul Governor's Office sought an order for the suspension of Tüm Haber Sen's activities and its dissolution on the ground that civil servants could not form trade unions.[59] In this sense, Tüm Haber Sen, and its former president, İsmail Çınar complained that the dissolution of Tüm Haber Sen and the enforced cessation of its activities had violated their right to freedom of assembly and association and they relied on Articles 11 and 13 of the ECHR. [60]
The Government emphasised that Turkish legislation did not ensure the trade union rights for civil servants, covering the rights to strike and to conduct collective bargaining. The Court firstly summarized the development of the Article 11's case law which mentioned in the Chapter 2 and answered this justification as follows:

[36] In the instant case, the Government's arguments provide no explanation as to how the absolute prohibition on forming trade unions, imposed on civil servants and public-sector contract workers in the communications field by Turkish law as applied at the time, met a "pressing social need". The mere fact that "the legislation did not provide for such a

[58] Case 28602/95 *Tüm Haber-Sen v. Çınar* [2006], (Accessed date: 20.06.2013).
[59] Para. 9, 10.
[60] Para. 25.

possibility" is not sufficient to warrant a measure as radical as the dissolution of a trade union.[61]

The Court prevented that the government hide behind this justification by saying *'the legislation did not provide for such a possibility'* is not sufficient' and it contiuned its opinions as follows:

[40] Accordingly, in the absence of any concrete evidence to show that the founding or the activities of Tüm Haber Sen represented a threat to Turkish society or the Turkish State, the Court is unable to accept that an argument based solely on an absolute statutory provision was sufficient to ensure that the trade union's dissolution complied with the conditions in which freedom of association may be restricted. In view of the lack of clear legislative provisions on the subject at the relevant time and the broad manner in which the courts interpreted the restrictions on civil servants' trade-union rights, the respondent State failed, at the material time, to comply with its obligation to secure the enjoyment of the rights enshrined in Article 11 of the Convention. That failing amounted to a violation of the provision in question.[62]

As it can be understood from the paragraph 40, the Court therefore held that there had been a violation of Article 11. This judgement has an importance because it is the first judgement which convicted Turkey in consequence of the violation of civil servants' freedom of association.

3.3.2 The Case of Demir and Baykara v. Turkey

In the case of *Demir and Baykara v. Turkey*[63], the applicants claimed that the national courts had denied them, in breach of Article 11 of the Convention first, the right to form trade unions and, second, the right to collective agreements.

In February 1993, Tüm Bel Sen entered into a collective agreement with the Gaziantep Municipal Council for a period of two years effective from 1 January 1993. However, the Gaziantep Municipal Council had failed to fulfil certain of its obligations under the agreement. Thereon, the president of the union, brought civil proceedings against it in the Gaziantep District Court. The government argued that the Article 11 did not cover the right to collective agreement and the government argued that following the amendment of 12 June

[61] Para. 36.
[62] Para. 40.
[63] Case 34503/97 *Demir and Baykara v. Turkey* [2006], (Accessed date: 01.07.2013).

1997 to section 22 of the Law no. 657 Civil Servants, civil servants were now allowed to form and join trade unions. However, at the material time, they had not union rights.

The Court firstly referred the case of Tüm Haber-Sen v. Çınar and it reiterated its opinions by saying "legislation [had] not provide[d] for such a possibility" was not sufficient to warrant a measure as radical as the dissolution of a trade union. [64] After that it emphsized that Turkey failed to respect its obligation to secure the rights enshrined in Article 11 of the Convention. Then, the Court emphasized its settled case law between paragraph 30 and 35, and under these judgements, it concluded its opinion as follows:

[36] In the light of the foregoing principles, the Court considers that, in the present case, a number of arguments militated at the material time in favour of the interpretation that maintaining the collective agreement in question constituted an integral element of the applicants' freedom of association.[65]

The Court approached cautiously in terms of right to collective agreement in its settled case law. It held that Article 11 does not include a right for a union to be recognised for collective bargaining (*National Union of Belgian Police v. Belgium*) nor does Article 11 impose any specific obligation on the employer to enter into collective agreements with the unions (*Swedish Engine Drivers' Union v. Sweden*) Then, the importance of collective agreements has been strengthened, although the main opinion is unchanged (*Swedish Transport Workers Union v. Sweden).* In this sense, this paragraph has an importance because the collective agreement related with collective bargaining was defined as an integral part of freedom of association by the Court obviously.

After that the Court stated that there was a clear violation of Article 11 in para. 40 as follows:

[40] Accordingly, the Court cannot but observe that the collective agreement that the applicants had previously entered into with their employer, in the present case, represented for the trade union Tüm Bel Sen the principal, if not the only, means of promoting and safeguarding the interests of its members. It follows that the annulment of the collective agreement between the authority and the trade union entered into two years earlier, and

[64] Para. 28.
[65] Para. 36.

applied since then, constituted interference with the applicants' freedom of association within the meaning of Article 11 of the Convention.[66]

According to this judgement, collective bargaining was considered as a right and governments are not only under an obligation not to prevent negotiations but also have a positive obligation to promote them.

Moreover, in this case the Court reminded that Turkey had already adopted ILO Convention No. 98 which secures for all workers the right to bargain collectively and to enter into collective agreements.

[44] The Court notes that, at the material time, the applicants acted in good faith when they chose, as a collective action for the purpose of protecting their interests within the meaning of Article 11, the option of entering into a collective agreement, because Turkey had already ratified the International Labour Organisation Convention No. 98, which secures for all workers the right to bargain collectively and to enter into collective agreements. [67]

As it can understood from this parapraph also, Turkey does not comply with the provisions of international agreements. It also means that the violation of Article 90 of the Constitution of 1982 which ensure in the case of a conflict between national law and the provisions of international agreements shall prevail.

3.3.3 The Case of Erhan Karaçay v. Turkey

The Court's judgement in the case of *Erhan Karaçay v. Turkey* [68] in March 27, 2007 was the another judgement regarding the violation of Article 11 of ECHR.

In the case of *Erhan Karaçay v. Turkey,* Erhan Karaçay was an electrician and at the material time was a member of the trade union Yapı Yol Sen, which is related to KESK (Trades Union Confederation of Public Sector Employees). In December 2002, the applicant was given a disciplinary penalty because he had protested about the reduction of civil servants' salaries. However, Karaçay claimed that he did not participate that strike in his argument. Nonetheless, Karaçay was given the disciplinary penalty. So, the applicant complained relying, in particular, on Articles 11 and 13 of ECHR.

According to the Court's judgement:

[66] Para. 40.
[67] Para. 44.
[68] Case 6615/03 *Erhan Karaçay v. Turkey* [2007], (Accessed date: 15.07.2013).

[36] The applicant availed himself of his freedom of peaceful assembly (Ezelin-France, 26 April 1991, no: 202, p. 21, § 41).[69]

Then, it follows its judgements as follows:

[37] The penalty imposed on the applicant, however minimal, was such as to deter trade union members from legitimately participating in strikes or actions to defend the interests of their members.[70]

Moreover, in paragraph 38, the Court stated that:

[38]The disciplinary penalty to the applicant had not been "necessary in a democratic society.

Therefore, the Court once again found a breach of Article 11 of ECHR in this case.

3.3.4 The Case of Satılmış and Others v. Turkey

In the case of *Satılmış and Others v. Turkey* [71], the Court found a violation of Article 11 of ECHR once again. The case originated in three applications which are civil servants against the Republic of Turkey lodged on 17 July 2002 with the Court under Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms. They are also member of Yapı Yol Sen related to KESK.

The applicants who work as ticket agents in Bosphorus bridge, went on strike to protest working conditions for 3 hours, and during this strike nobody could pay the pass fee. In investigation, civil servants who participated to the strike were found faulty.

After the exhaustion of internal remedies, the applicants claimed that the national Court did not recognize their freedom of association and assembly. They claimed that their rights which came from Article 11 and 14 and Protocol No.1 Article 1 of ECHR were violated. However, the Court decided to consider these claims in the framework of only Article 11.
The judgement of the Court in this case as follows:
[73] The Court considered that the applicants have civil liabilities had not been "necessary in a democratic society".[72]

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[69] Para. 36.
[70] Para. 37.
[71]Case *74611/01, 26876/02, 27628/02 Satılmış and Others v. Turkey* [2007], (Accessed date: 15.07.2013).
[72] Para. 73.

Accordingly, the Court found a violation of Article 11 of ECHR by Turkey once again on July 17, 2007. In this case, the judgement of the Court indicates once again that civil servants' union rights are limited in Turkey.

3.3.5 The Case of Çerikçi v. Turkey

The case of *Çerikçi v. Turkey*[73] (13.07.2010) was the last case regarding violation of Article 11 of ECHR. It was also regarding right to collective agreement and strike of civil servants.

The applicant who worked as a civil servant in Beyoglu Municipal at te material time, was a member of Tüm Bel Sen related to KESK. The applicant was given disciplinary penalty because he participated the labour day on May 1, 2007. The applicant objected to this decision and stated that the disciplinary penalty was contrary to national provisions. After he exhausted of internal remedies, he claimed that it was also contrary to Article 11 and 13 of ECHR. However, the government objected to these claims.

The Court firstly remained its opinion in the case of *Karaçay* and then decided to consider this application in its judgements. In this case, the Court could not find any reason to consider apart from its settled case law. Moreover, the government did not present a convincing argument different from in *Karaçay*'s. Therefore, the Court found once again that a violation of Article 11 of ECHR, accordingly a violation of right to strike of civil servants on July 13, 2010.

As it can be understood from the cases, from the case of *Tüm Haber Sen Çınar* to case of *Çerikçi*, Turkey has paid compensation for several times. These cases obviously indicates that the violation of civil servants's trade union rights exists in Turkey.

[73]Case 33322/07 *Çerikçi v. Turkey* [2010], (Accessed date: 19.07.2013).

CONCLUSION

Before investigating civil servants' restricted union rights in this thesis, it was essential to study industrial relations and the factors and theories that affect the relations. Industrial relations define corporate relations between labor and capital organizations which depend on collective bargaining that the state rarely intervenes in which share and working conditions take place. These relations are also outputs of industrialization which emerge from relations of organized groups between workers and employers. In order to understand structure of industrial relations of a country, it is also essential to discuss many factors that affect this structure as well. The economic, social and political factors of that country also affect the industrial structure. In addition, as in other fields, theorizing is required to understand the field of industrial relations. Industrial relation is a disciplined field which takes place under economy, society and policy and shows differences according to time and place. That's why, researchers have developed different theories in different times and countries to explain facts of industrial relations depending on economic, social and political system in which they involve.

When investigating theories of industrial relations from past to now, it is possible to understand changes of working life that also reflect transformation process of industrial relations discipline. Therefore, primary theories were discussed at the first chapter and their relations with one another were revealed.

Union rights, which have undergone many evolutions during the history, are precondition of an active and autonomous social dialogue of European Union institutions (Gülmez, 2005, p. 1) and one of the eight elements of International Labor Organization (ILO) as well. What is more important is that union rights take part in many agreements and in particular, these rights are given to everyone as an human right according to the article 11 of European Convention on Human Rights (ECHR).

Unionization in Turkey has been affected by many factors. Union rights in the country were not achieved as a result of struggle that comes from grassroots due to economic, social and political factors and especially the late arrival of industrialization. They were given by legal regulations.

Although public unionization, which constitutes the subject of the research, has received an affirmative consensus in international arena, association of civil servants and the rights stemming from this association have been disputable in many domains due to a privileged status they have. The state has been cautious while constituting a structure that will question its own dominance.

That the civil servants reached union rights has been seen with cautious and hesitation in the country for long years. As it was mentioned at the second chapter of the thesis, civil servants were given the right to organize with a constitution which was approved in 1961. They had to wait till 1965 to use their rights. All workers were given the right to organize with the constitution 1961 and this right was regulated with the state's personnel unions law numbered with 624, which was accepted in 1965. However, as this law did not give any union right which includes collective contract and strike, rights and freedoms were restricted in this period. Participation of civil servants into any strike or attempt to strike, support or urge the strike was prohibited so that public order could not be obstructed. When observing the changes in 1971, the right to organize which was regulated in the constitution 1961 was restricted with workers. An important innovation brought by the constitution 1982 with amendments in 2010 was that civil servants and other civil servants were given the right of collective contract. However, the right of collective contract, an affirmative step, does not include the right to strike for them.

In addition to these restrictions, on the other hand, Turkey has become a party to European Convention on Human Rights, Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, European Social Charter and ILO's conventions number 87, 98 and 151. These conventions give union rights to everyone. ECHR regulated the union rights as a human right at its article 11. In addition, Turkey proved a dominance for international conventions with its article 90 at the constitution 1982 concerning basic rights and freedoms.

This thesis discussed the civil servants' union rights and freedoms in terms of a humanitarian dimension. An individual's right to organize can be seen as a right to sustain a honored life in the society. This right is a natural requirement of a social democratic state which respects to human rights. Union rights and freedoms are a whole and to form a union and to register as a member is a process. The continuation of this process require collective

bargaining and the right to strike. Therefore, Turkey has been sentenced five times by the European Court of Human Rights for the violation of the article 11.

Turkey became a party of European Convention on Human Rights and proved a dominance for international conventions with its article and recognized the right of collective bargaining late, which constituted a paradox and is also a violation of a human right. The five cases which are discussed at the third chapter with their case laws constituted an evidence of this violation, as well.

Although positive developments such as giving the civil servants the right of collective contract have occurred in recent years, the civil servants are not given the right to strike and the violations restrict the union rights of them as well. Problems concerning the servants' union rights should be solved on a joint ground and Turkey should understand its mistakes from the decisions released at the cases. The right to strike should be guaranteed by the constitution and legalized. A regulation, which will not obstruct public order, but make public officers demand their rights, should be made by the officials.

What should take part in a democratic, social and legal state which respects to human rights is an association model that supports all workers to take an active role while making a decision about their union rights.

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DECLARATION OF AUTHORSHIP

I declare that this thesis and the work presented in it are my own and have been generated by me as the result of my oriqinal research.

None of the part of this thesis has previously been submitted for a degree of any other qualification at this University or any other institution

The written Document matches completely to the CD version.

Where I have quoted tom the wort of others, the source is always given within the reference part of my thesis.

Place	Date	Signature
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