# The general aspects of collective labour rights for workers in Turkey

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After Turkey's political system was transformed into a multi-party democracy, legally interpreted collective labour rights were introduced to the system by legal instruments. The first Trade Unions Act was enacted in 1947. In accordance with the articles related to collective labour rights, stated in the 1961 Constitution, the Turkish National Assembly adopted two particular pieces of legislation numbered 274 and 275 in 1963. These acts governed labour unions and collective bargaining, as well as grievance procedures such as strikes and lock-outs. The 1982 Turkish Constitution enshrined collective bargaining and striking as fundamental rights as it had been established by the prior Constitution. For nearly three decades, collective labour rights have been regulated by two different legal acts, numbered 2821 and 2822. In 2012, new legislation to regulate collective labour relations and meet the requirements of the social parties was proposed. The Law of Trade Unions and Collective Labour Agreements (Law no. 6356) is the current principal legislative tool for dealing with trade unions and collective labour agreements, as well as strikes and lock-outs. In the Turkish system, the formation of trade unions and employers' associations is based on a voluntary and free basis and requires no previous approval from administrative bodies. Employers' organizations and trade unions both have legal personalities. A double threshold approach for trade unions to conduct collective bargaining has been criticized by the ILO on several occasions. Strikes are infrequently utilized as industrial action, despite the fact that they are protected by the Constitution and Law No. 6356.

*Keywords:* trade unions, collective agreement, industrial action, collective labour relations, strike.

## 1. Introduction

This paper aims to give basic information about Turkey's collective labour rights for workers. In order to maintain a proper understanding, a brief history of the legislation will be given. The formation and legal capacity of trade unions and employers' associations, levels of collective bargaining, coverage levels of collective agreements, extension mechanisms, and industrial actions will be addressed in the paper.

## 2. Brief History of Turkish Industrial Relations and Related Legislation

The first glimpse of union activities in Turkey can be found in the late 1870s when the first wave of reforms was underway in Ottoman Empire. The right to form associations and the first examples of trade unions were established mainly in industrialized zones in Ottoman lands, such as Istanbul and İzmir.

Even though the Ottomans were quite late for experiencing the advances of the first industrial revolution, some private businesses somehow managed to establish a limited number of small and medium-sized enterprises mainly in basic industries like textile and mining for domestic demand (Makal 1997; Sur 2022).

In the Republican Era of Turkey, which began in 1923, trade unions and collective rights were overshadowed by vigorous industrialization strategies. The new republic prioritized the development and reformation of the war-stricken country. Accordingly, the Constitution of 1924 had no reference to collective labour rights.

Intending to facilitate the industry-based reforms and accelerate the country's economic development, policymakers discouraged the establishment of trade unions and employer associations.

Until 1947, the unions and employer associations had no legal status, and attempts to form these organisations were suppressed by the administration. After World War II, Turkey transformed its political regime into a multi-party democracy and this transformation led to developments regarding collective rights legislation. The first year of the Turkish multi-party democracy marked the enactment of the first Trade Unions Act. Consequently, legal uncertainty on the legality of such organisations was resolved by the legislature.

Prior to the 1947 reforms, despite the existence of the Labour Code regulating individual employment relationships, there was no specific legislation regulating collective rights. Ministry of Labour was established in 1946 before the adoption of the Trade Unions Act. According to this Trade Unions Act, workers and employers were entitled to form unions and associations for defending their rights. This Act contained a lot of restrictions regarding the scope of the Act, the autonomy of the organizations, and it imposed a total ban on strikes and lock-outs (Dereli 1998).

In 1961, a new Constitution has been adopted. In this Constitution, collective bargaining and strike action have been regulated as constitutional rights for the first time in Turkey. Following the adoption of the 1961 Constitution, two specific laws numbered 274 and 275 had been enacted by the Turkish National Assembly in 1963. These laws were the main legal texts related to trade unions and collective bargaining procedures, as well as grievance procedures, including strikes and lock-outs. These liberal laws remained in force for nearly two decades (Dereli 1998).

The 1961 Constitution and accompanying laws enabled the unions and employer associations to emerge and strengthened their activities. The main bargaining level was the workplace and the overwhelming majority of unions were established at that level. The representative power and influence of unions were at an all-time high with a vast collective labour agreement coverage. Unfortunately, the coup d'état of 1980 was detrimental to the freedom of associations, and the legal framework was rearranged with an authoritarian approach. Many liberal laws and regulations were abolished and an obstructive standpoint was deployed by the military-driven administration.

After the abolition of these above-mentioned laws, the new Turkish Constitution, dated 1982, regulated collective bargaining and strike actions as constitutional rights as well. Accordingly, articles 51, 53 and 54 of the Constitution guarantee the right to form associations, the right to collective bargaining, and the right to strike and initiate lockouts respectively.

In 1983, two "new" laws were adopted. These were the Law no. 2821 on trade unions and Law no. 2822 on collective bargaining, collective agreement, and grievance proce-

dures. These two laws had been in place for 29 years and they have been criticised for being strict and restrictive towards collective labour rights.

New legislation was prepared for the regulation of collective labour relations in 2012. The Law of Trade Unions and Collective Labour Agreements (Law no. 6356) is the current main legal tool concerning Turkish collective labour relations (Dereli 1998; Yildiz 2018). Implementation of the law is ensured by the secondary legislation which regulates such subjects as the functioning of related institutions or procedural steps for determination of representativeness.

In accordance with the constitutional provisions, it's highly relevant to acknowledge the connection between domestic laws and international laws such as treaties and conventions. The international treaties directly regulating the economic and social rights of the citizens have been given priority over domestic law in the Turkish Constitution. According to article 90 of the Constitution, "International agreements duly put into effect have the force of law". No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In 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.'

Due to the last sentence of this article, international agreements concerning collective rights will prevail over national legislation in case there is a conflict between these two. In that sense, the Universal Declaration of Human Rights, European Convention on Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, ILO's Conventions numbered 87 and 98, European Social Charter (revised) will have a direct impact on national practices and administration of justice[1] concerning collective rights, if there is a conflict between national legislation and these international texts.

### *2.1. Formation and legal capacity of trade unions and employer associations*

The establishment of trade unions and employers' organizations is free and there is no prior authorization required. Trade unions and employers' organizations have legal personalities. They are established by the association consisting of at least seven workers or employers in order to protect and promote their common economic and social rights and interests in labour relations. These organizations can be formed by workers and employers, on the basis of "branches of activity". Branches of activities are determined by the annex to Law no. 6356. According to the legal regulation, there are 20 different branches of activity[2].

[1] Some examples for the juridical interpretation concerning the prevail of provisions of international agreements over conflicting national legislation: Y22HD, 27.6.2019, 4095/14387, Kazancı İçtihat Bankası. YHGK, 13.12.2018, 1168/1928, Danıştay 10.D, 19.10.2009, 4835/8958, Kazancı İçtihat Bankası. Available at: http://www.kazanci.com.tr/ (accessed: 05.05.2022).

[2] These are hunting and fisheries, agriculture and forestry; food industry; mining and stone quarries; petroleum, chemicals, rubber, plastics and medicine; textile, garment and leather; wood and paper; communication; press, publication and journalism; banking, finance and insurance; commerce, office, education and fine arts; cement, clay and glass; metal; construction; energy; transportation; ship constructing and

Employers' and workers' trade unions may form confederations. A confederation can be established by five trade unions which are established in different 'branches of activity'.

### *2.2. Levels of collective bargaining*

According to Law No. 6356, there are three different levels of collective bargaining. The first one is workplace collective bargaining. The second level is the enterprise level and the last one is group collective bargaining. Besides these levels, there is another type of agreement mentioned in Law no. 6356. According to article 2 of the Law, a "framework agreement' can be concluded at the level of the sector of activity between trade unions and employers' associations which are members of workers' and employers" confederations represented in the Economic and Social Council. This is not a type of collective agreement in legal terms. This kind of framework agreement can be concluded about vocational training, health, safety at work, social responsibility and employment policies. On the other hand, Law no. 6356 stipulates that a collective agreement shall consist of provisions regarding the conclusion, content and termination of the employment contract. Therefore, the main difference between a framework agreement and a collective labour agreement is that the former does not contain provisions about the terms of an employment relationship, whereas the latter fulfills the aim to regulate employment relations. A framework agreement can be considered as a policy statement or a roadmap between the signatory parties rather than a binding collective agreement.

There is a general principle regarding collective agreements. There can be only one collective agreement in the collective bargaining unit (workplace or enterprise). Hence, there is no possibility to have more than one collective agreement in one workplace or enterprise at the same time in Turkish law (Yildiz 2021).

The Law also mentions "group collective labour agreements". This is a collective labour agreement concluded between a trade union and an employer association that covers the workplaces and the enterprises in the same sector of activity. The difference between enterprise-level collective labour agreements and group collective labour agreements lies in the number of employers. If there is only one employer (whether a natural or legal person) who runs an enterprise, an "enterprise collective labour agreement" has to be concluded. It is a mandatory level of collective labour agreement if there is an enterprise in the legal terms of Law no. 6356. On the other hand, if there is more than one employer (whether a natural and/or legal person) conducting business in the same sector of activity and amongst their workplaces or enterprises the same trade union is "authorized", they can conclude a group collective labour agreement. Group collective agreements cannot cover contractual terms and conditions for an entire sector. There is only one trade union as the representative of workers. There are several workplaces and/or enterprises in which the same trade union has the authority and competency. On the other hand, the employer side consists of employers who have chosen to be a part of a negotiation party called a group. They are conducting activities in the same sector of activity. As it was mentioned above, the main difference between a framework agreement and collective bargaining (whether workplace-level, enterprise-level, or group collective agreement) is the scope of

naval transportation, warehouse and storage; health and social services; accommodation and entertainment; defence and security; general works.

the provisions. A framework agreement does not contain provisions about the terms of an employment relationship, whereas collective agreements succeed in regulating employment relations. In practice, there are several examples of group collective agreements in the metal, textile and cement sectors. This is not a mandatory level of collective bargaining. If the social partners do not wish to conduct a group collective labour agreement they can conduct separate and independent collective bargaining for every workplace or enterprise (Yildiz 2021).

### *2.3. Two important terms: Competency and authority*

There are two main requirements for collective bargaining and collective labour agreements for workers in Turkish collective labour law. These are "competency" and "authority".

At that point, the meaning of a "competent trade union" has to be explained briefly. First of all, a trade union has to include at least 1 % of workers, who are working in the respective sector of activity, as its members. This is the first prerequisite for a trade union in order to engage in collective bargaining with the employer. This can be defined as "competency". The Ministry of Labour and Social Security issues biannual statistics concerning the membership numbers in trade unions at the sectoral level. These statistics are published in January and July of each year.

If a trade union fulfills the first prerequisite mentioned above, the second requirement is 'authority'. An authorized trade union is the one that has the majority (50 % + 1) of workers as members at the workplace to conclude a collective agreement at this level. To be considered authorized for the conclusion of an enterprise-level collective agreement, at least 40 % of workers of that enterprise have to be members of that trade union (Sur 2022; Yildiz 2021).

### *2.4. Coverage of collective bargaining*

The Ministry of Labour and Social Security releases official statistics every year regarding various aspects of working life. One of the figures is the number of collective agreements. The latest official statistics related to collective labour agreements concerning the year 2017 were released in December of 2018. The figure below (Fig. 1) shows the total number of workers, unionised workers and workers who are covered by collective labour agreements for the period between 2014–2017.

According to the July 2017 statistics of the Ministry of Labour and Social Security, concerning workers number and trade union members, there were 13.581.554 workers, 1.623.638 of whom were trade union members. Amongst these 1.623.638 workers, only 800.288 were covered by a collective agreement. This suggests that nearly half of the trade union members could be covered by collective labour agreements[3].

The number of workers covered by collective agreements in these statistics reflects the total number of workers who are working at the workplaces. The number of workers who are actually in the scope of these collective agreements is much less than that amount. It should be considered that there can be different working conditions, concerning wages

[3] Available at: https://www.csgb.gov.tr/media/3394/tis-2017_.pdf (accessed: 05.05.2022).

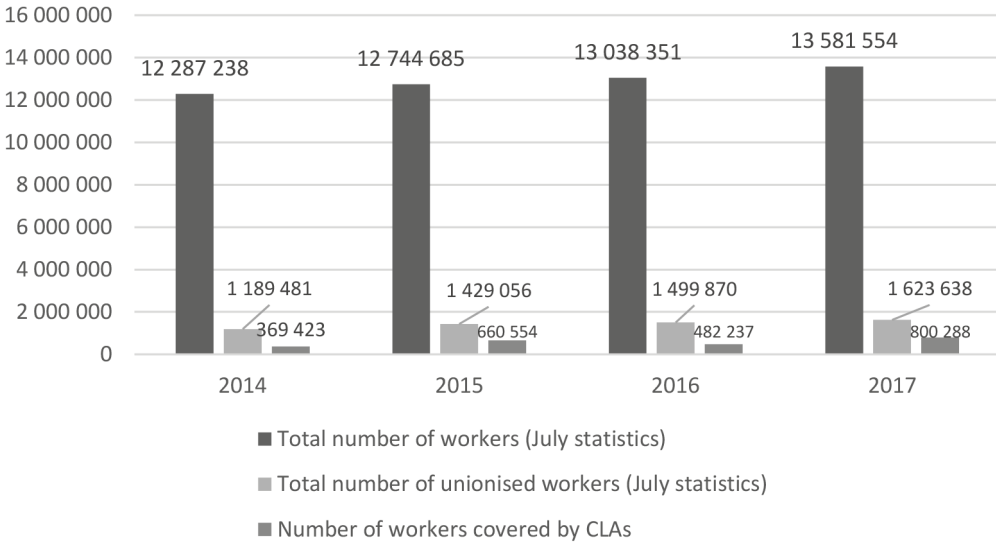


*Fig. 1.* Coverage of collective labour agreements for workers (2014–2017).
Source: Statistics of Ministry of Labour and Social Security[4]

and other pecuniary rights, between workers even in the same workplace. This depends on whether the worker is a member of the trade union which signed the collective labour agreement. There is an option for workers who want to be subject to the benefits of the collective labour agreement even though they are not members of that union. Workers can choose to pay solidarity contributions to the signatory trade union. Hence, if a worker is not a member of the signatory trade union and does not pay a solidarity contribution to that trade union, she/he cannot demand the same wage as the workers who are members of the trade union.

### *2.5. Extension Mechanism in Turkey*

In order to increase collective agreement coverage, an extension can be a proper instrument. It is not used in Turkey although there is an explicit article in Law No. 6356 about the extension.

The extension mechanism is a rarely used instrument in Turkey. From 1963 to 1980, the extension has never been used in Turkey. Between 1983 and 2012 only 18 extension decisions were given. Between the two periods, after the military coup in 1980, strikes and lock-outs were banned. From 1980 to 1983, there were 63 extension decisions given by the authority (Baycik 2019).

### *2.6. Industrial actions and social partners*

Although the right to strike is enshrined in the Constitution and Law no. 6356, in practice strikes are rarely used as industrial action (Fig. 2)[5].

The ban on strikes and lock-outs has been regulated in a broad context in Turkish legislation. The list of the industries and workplaces where strikes and lock-outs are

[4] Available at: https://www.csgb.gov.tr/media/31747/grev_lokavt.pdf (accessed: 05.05.2022).
[5] Ibid.

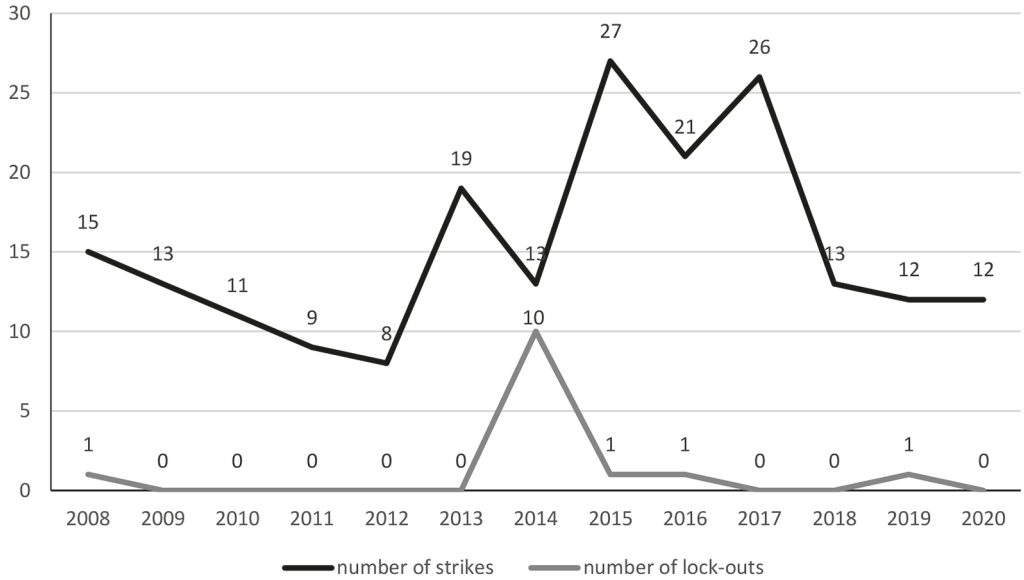


*Fig. 2.* Numbers of Strikes and Lock-outs (2008–2020).
Source: Official Statistics of Ministry of Labour and Social Security

banned is as follows: life or property- saving; funeral and mortuary; production, refining and distribution of city water, electricity, natural gas, petroleum as well as petrochemical works, production of which starts from naphtha or natural gas; workplaces operated directly by the Ministry of National Defence, General Command of Gendarmerie and Coast Guard Command; firefighting carried out by public institutions and hospitals.

In addition to this wide ban on strikes and lock-outs, there is an article about the suspension of a strike. According to the 63rd Article of Law no. 6356, the President can suspend a strike or lock-out for sixty days, on the grounds of public health or national security, by a decree. During that postponement, social parties have an opportunity to conclude a collective agreement. If they are not able to conclude a collective agreement, they do not have the opportunity to go on a strike or lock-out. In other words, in Turkish legislation, if a strike is suspended by the decree of the President, it actually means the ending of the strike. The system regulates the solution of the conflict as a compulsory arbitration by the High Board of Arbitration (Yildiz 2016).

This article has been criticised by the Committee of Experts in 2019. The Committee states that for a number of years, the Committee, along with the Committee on Freedom of Association (CFA), has been requesting the Government to ensure that section 63 of Act no. 6356 is not applied in a manner so as to infringe on the right of workers' organizations to organize their activities free from government interference. The Committee considers this article to be an infringement of ILO C87 (ILO 2019).

## 3. Conclusion

Although collective labour rights have been recognized by the legislation for over seven decades, the actuality of the situation showcases low unionisation rates and limited

collective agreement coverage preventing the majority of the workers from being subject to the fundamental rights. In order to broaden the effectiveness of collective labour rights, trade unions have to find new methods for registering new members and shall offer various means of support for their members which must go beyond conducting a collective agreement. Besides this, some amendments regarding the elimination of the double threshold system and limitation of the context of strike and lock-out bans have to be taken into consideration.

## References


Baycık, Gaye. 2019. *Extension in European Union Member States and Recommendations for Turkey, Ankara*. Available at: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-ankara/documents/publication/wcms_683781.pdf (accessed: 05.05.2022).

Dereli, Toker. 1998. *Labour Law and Industrial Relations in Turkey*, Istanbul.

Makal, Ahmet. 1997. *Osmanlı İmparatorluğunda Çalışma İlişkileri: 1850–1920, Türkiye Çalışma İlişkileri Tarihi*, Ankara.

Sur, Melda. 2022. *İş Hukuku Toplu İlişkiler, Ed.10*, Ankara.

Yıldız, Gaye Burcu. 2016. *Determining the Scope of Freedom of Association with regard to Right to Strike, Labour Law and Social Progress Holding the Line or Shifting the Boundaries?* The Netherlands.

Yıldız, Gaye Burcu. 2018. "The fundamental aspects of collective bargaining in Turkey: past, current and future." Peer Review on *"The organisation, outcomes and effectiveness of social dialogue"*. Belgium, 23–24 October 2018.

Yıldız, Gaye Burcu. 2021. "Enhancing Social Partners." *Capacity and Social Dialogue in the New World of Work*; 491–527; The New World of Work, Challenges Opportunities for Social Partners and Labour Institutions, ILO.



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