

## TO BE OR NOT TO BE: UNION BUSTING AND AVOIDANCE STRATEGIES IN TURKEY

### SER OU NÃO SER: ESTRATÉGIAS DE FALÊNCIAS E RECUPERAÇÃO DOS SINDICATOS NA TURQUIA

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**ABSTRACT:** Trade union membership has been decreasing all over the world due to the different factors, such as shift from manufacturing sector to service sector, digitalisation and informalisation of the economy, changing nature of labour. Furthermore, legal restrictions and non-union policies of the states and employers also play an undeniable role for declining membership rates. Turkey, as a candidate country for the EU since 1960's, is characterised by weak unionism, dominant state role in industrial relations as well as by hostile ideology towards unions. Both the loopholes in the legislative frameworks, and macro-economic and political structures pave the way for union resistant environment in Turkey. The paper aims to examine and discuss union busting and avoidance strategies in Turkey regarding with Roy's (1980) and Gall's (2004) classification, and country specific factors.

**KEYWORDS:** Trade Unionism; Union Busting; Union Avoidance; Freedom of Association; Turkey.

**SUMMARY:** 1.Introduction, 2. The General Framework of Industrial Relations System in Turkey, 3. Non-Unionisation Strategies in Turkey, 3.1. The Policy of Union Suppression, 3.2. The Policy of Union Substitution, 3.3. The Policy of Stonewalling, 3.4. The Policy of Ideological Hostility to Unions, 3.5. The Policy of Yellow Unionism, 4. Conclusion

**RESUMO:** A filiação sindical tem diminuído em todo o mundo devido a diferentes fatores, como a mudança do setor manufatureiro para o setor de serviços, digitalização e informalização da economia, mudança na natureza do trabalho. Além disso, restrições legais e políticas não sindicais dos estados e empregadores também desempenham um papel inegável para o declínio das taxas de adesão. A Turquia, como país candidato à UE desde a década de 1960, é caracterizada por um sindicalismo fraco, um papel dominante do Estado nas relações industriais, bem como por uma ideologia hostil em relação aos sindicatos. Tanto as lacunas nos quadros legislativos quanto as estruturas macroeconômicas e políticas abrem caminho para um ambiente resistente à sindicalização na Turquia. O artigo tem como objetivo examinar e discutir estratégias de repressão e evasão de sindicatos na Turquia em relação à classificação de Roy (1980) e Gall (2004) e fatores específicos do país.

Palavras-chave: Sindicalismo; Repressão Sindical; Evasão Sindical; Liberdade de associação; Turquia.

**SUMÁRIO:**1.Introdução, 2. O Quadro Geral do Sistema de Relações Laborais na Turquia, 3. Estratégias de Não Sindicalização na Turquia, 3.1. A Política de Supressão Sindical, 3.2. A Política de Substituição Sindical, 3.3. A política de obstrução, 3.4. A Política de Hostilidade Ideológica aos Sindicatos, 3.5. A Política do Sindicalismo Amarelo, 4. Conclusão

#### 1. Introduction

Trade union density rates worldwide has been decreasing over time due to the various social and economic factors, such as the shift from manufacturing to service sector, the informalization of economy, changing employment relationship and digitalization of employment. Furthermore, legal restrictions and violations of union rights are another serious challenge for trade unions in

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most of the countries. Consequently, it is not a coincidence that trade union density rates are lower where there are violations of trade union rights<sup>2</sup>. In other words, there is a significant negative relationship between labour rights violations (lrv) and the level of unionization:  $r(lrv)=0,46$  (N=137)<sup>3</sup>.

Although the ILO conventions directly relating with the union rights, no. 87 adopted by 157 countries and no. 98 adopted by 168 countries, including Turkey, in 2022<sup>4</sup>, today union rights have been violated or disregarded by some governments and employers. In Turkey, violations of union rights erode the trade unionism by keeping the workers away from right to organise. This hostile environment towards trade unions designates the industrial relations system in Turkey.

As a candidate country for joining the EU since the 1960s, Turkey is a fruitful country in terms of union hostility and union avoidance and busting policies. Although the retreat of trade unionism has usually been attributed to changing social, economic and political conditions in Turkey just as in other countries, the state suspicion and employer hostility towards trade unions has been a distinctive and dominant factor for the low union density rate.

The union rights have always been at the very bottom of the rights agenda in Turkey during its entire history. With the exception of the period of 1960-1980, the union rights were systematically disregarded or violated. As a result of violation of union rights, Turkey is one of the ten worst countries in the world for working people according to the Global Rights Index 2022 published by the International Trade Union Confederation (ITUC)<sup>5</sup>. In this paper, after drawing a general framework of industrial relations system in Turkey, main union avoidance and busting strategies, as a significant factor for low union density rate, will be discussed by using Roy's (1980) and Gall's (2004) classification, and country specific factors.

## 2. The General Framework of Industrial Relations System in Turkey

Industrial relations system in Turkey is generally characterized by low union density, decentralized collective bargaining and authoritarian state figure as well as hostile labour-employer and labour-state relations. The state is the dominant actor of industrial relations, neither a bourgeoisie nor a working class in the European sense developed in the Turkish pre-Republican period. Labour and union rights gained in Europe through intense class struggle were conferred unilaterally in Turkey by the state. Bülent Ecevit, the Minister of Labour during 1961-1965 period, gave a speech at the parliament stating that union rights, which were obtained as a result of bloody

<sup>2</sup> For the unionization levels and labour rights violation index see: <https://www.ilo.org/infostories/en-GB/Stories/Labour-Relations/trade-unions#where/unionization>

<sup>3</sup> VISSER, Jelle. **Trade Unions in the Balance**. ILO ACTRAV Working Paper. 2019. p. 52.

<sup>4</sup> For the list of the countries ratified the ILO conventions see: <https://www.ilo.org/dyn/normlex/en/f?p=1000:12001::NO::>

<sup>5</sup> ITUC. **2022 ITUC Global Rights Index**. Disponível em: [https://files.mutualcdn.com/ituc/files/2022-ITUC-Rights-Index-Exec-Summ-EN\\_2022-07-06-063804.pdf](https://files.mutualcdn.com/ituc/files/2022-ITUC-Rights-Index-Exec-Summ-EN_2022-07-06-063804.pdf). 2022. Access date: 13 Aug 2022.

and long struggles in Europe, were given by the state in Turkey without any class conflict polarizing the society<sup>6</sup>. This, though, led to detailed legislation non-existent in the European countries<sup>7</sup>. For instance, there are four detailed articles regarding union rights directly in the Turkish Constitution<sup>8</sup> (art. 51, art.52, art.53 and art.54) and the Trade Unions and Collective Labour Agreement Act (TUCLAA) No:6356<sup>9</sup> regulated the union rights in detail. In other words, trade unions have almost no autonomy to determine the industrial relations system in Turkey, all issues regarding union rights such as organisation models of unions, the content and levels of collective bargaining, authorisation for collective bargaining, procedures for dispute settlements and strikes have been defined by the TUCLAA. Besides these detailed legislation on labour relations, the public sector still employs 4.921.046 wage and salary earners in March 2022<sup>10</sup> in spite of recent privatisations and thereby the state has a power to influence the contours of industrial relations in Turkey. The civil society has usually been described as weak and controlled or channeled by the state through corporatist structures, transmitted from Ottoman political tradition<sup>11</sup>.

There is also strong inter-union rivalry on political ground in Turkey. Political parties have a strong influence on trade unions instead of the pressure of unions on political parties. Consequently, unions are divergent and polarized politically. There are more than 100 labour unions<sup>12</sup>, most of which are affiliated to seven divergent and rival labour confederations (Türk-İş, DİSK, Hak-İş, Tüm-İş, Ülkem-İş, Anadolu-İş, and Yeniden MİSK). The confederations do not have the competence to conclude collective agreements. The oldest, largest labour confederation is the centrist Türk-İş (Confederation of Turkish Trade Unions). The left-wing (formerly Marxist and militant) confederation is DİSK (Confederation of Progressive Trade Unions of Turkey) and the conservative (formerly Islamic and religious) one is Hak-İş (Confederation of Righteous Trade Unions of Turkey).

Türk-İş is characterised by its pragmatism, and bread and butter unionism and has refused to ally itself with any political party since its establishment. Although it has avowed adherence to

<sup>6</sup> Millet Meclisi Tutanak Dergisi. Yetmişbeşinci Birleşim, 18.4.1963 Dönem: I, C. 16, Toplantı: 2. 1963. Disponível em: <https://www.resmigazete.gov.tr/eskiler/2022/07/20220722-12.pdf>. Access date: 13 Aug 2022.

<sup>7</sup> While there is no codified constitution in the UK, there is only one article regarding to the union rights, freedom of association, in the constitution in Germany where the Collective Agreements Act consists of only 13 articles.

<sup>8</sup> To access the Constitution: [https://global.tbmm.gov.tr/docs/constitution\\_en.pdf](https://global.tbmm.gov.tr/docs/constitution_en.pdf)

<sup>9</sup> To access the TUCLAA: [https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/91814/106961/F2018685492/TUR91814\\_Eng.pdf](https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/91814/106961/F2018685492/TUR91814_Eng.pdf)

<sup>10</sup> Türkiye Cumhuriyeti Cumhurbaşkanlığı Strateji ve Bütçe Başkanlığı. Disponível em: <https://www.sbb.gov.tr/kamu-istihdami/>. Access date: 13 Aug 2022.

<sup>11</sup> YILDIRIM, Engin; ÇALIŞ, Şuayyip. The impact of EU accession on Turkish relations and social dialogue, *Industrial Relations Journal*, v. 39, n. 3, p. 212-228, 2008. p. 215-216.

<sup>12</sup> There are two types of trade unions in Turkey. The first, commonly known as labour union (işçi sendikası), represents blue-collar employees under the jurisdiction of the Labour Act No: 4857 and operating on the basis of TUCLAA. The second type, called as public servant union (memur sendikası), involves unions organising public servants who are under the jurisdiction of Public Servants Act No: 657 and operating on the basis of the Public Servants' Unions and Collective Agreement Act No: 4688. In this paper, public servant unions are out of discussion.

this supra-party policy, it aims for a permanent, friendly relationship with the government, regardless of who is in power. DİSK is the most critical of government policies. Hak-İş has a moderate position towards the government and, consequently, has been increasing its membership consistently since 2002, when AKP (the Justice and Development Party) became the ruling party. Membership increases of Hak-İş around 300 % since 2002. It can be suggested that the AKP government may have a desire to strengthen Hak-İş in order to create a friendly and eligible labour organization that will not oppose the government on every occasion. In other words, the AKP government may implicitly encourage Hak-İş as leverage against Türk-İş<sup>13</sup>. Hak-İş, engaged with the politics of the AKP, also avoided any political criticisms against the current government<sup>14</sup>. As a consequence, the membership gap between Hak-İş and Türk-iş has narrowed because of political support of AKP to Hak-İş.

Another characteristic of Turkish industrial relations is market-share unionism that is more common than expansionary unionism. In other words, the trade unions try to secure larger shares of the membership in existing organised sectors rather than membership expansion in the growing unorganised private sector in Turkey. Therefore, the inter-union rivalry does not pave the way for membership growth in total.

According to the most recent statistics published by the Ministry of Labour and Social Security on 22 July 2022, 2,280,285 workers in Turkey are members of trade unions<sup>15</sup>. The official union density rate in Turkey (14.26%) may appear to be higher than that in some EU member countries such as France, but when one looks at the figures for workers covered by collective agreements, the number of workers who actually benefit from trade union rights falls to approximately 1 million. In other words, about half of unionised workers in Turkey are unable to benefit from collective agreements. Since the huge differences between unionised and non-unionised workers in terms of wages and social benefits, the workers benefit from a collective agreement can be described as the “privileged minority” or “aristocrats of workers” considering the total employment (29.956.000 by March 2022<sup>16</sup>) in Turkey.

In EU countries the number of workers covered by collective agreements is higher than the number of unionised workers<sup>17</sup> but the number of workers covered by collective agreements in

<sup>13</sup> YILDIRIM, Engin; UÇKAN, Banu. Union Avoidance in Turkey: The State and Employers vs Unions, **15<sup>th</sup> World Congress of International Industrial Relations Association**. 2009.

<sup>14</sup> ÖZTÜRK, Aykut. Islamists against the class cleavage: Identity formation and interest representation in the case of Hak-İş in Turkey, **Middle Eastern Studies**, v. 54, n. 3, p. 459-474, 2018. p. 469.

<sup>15</sup> Millet Meclisi Tutanak Dergisi. Yetmişbeşinci Birleşim, 18.4.1963 Dönem: I, C. 16, Toplantı: 2. 1963. Disponível em: <https://www.resmigazete.gov.tr/eskiler/2022/07/20220722-12.pdf>. Access date: 13 Aug 2022.

<sup>16</sup> <https://data.tuik.gov.tr/Bulten/Index?p=Isgucu-Istatistikleri-Mart-2022-45647>

<sup>17</sup> France is the most striking example of this. In France the proportion of unionised employees has been around 8% for many years but collective-bargaining arrangements are widespread, covering more than 90% of the workforce (<https://www.eurofound.europa.eu/publications/report/2015/france-working-life-country-profile>). In some EU countries such as Belgium and Austria, since all employees benefit from any collective labour agreement signed with management, the extent of collective bargaining arrangements again exceeds 90%.

Turkey is lower than the number of unionised workers, because of two major and controversial stipulations concerning authorisation for collective bargaining which is also called as the double barrage requirement.<sup>18</sup> Lack of extension mechanisms of collective agreements<sup>19</sup> and limited coverage of collective agreement with only members of signatory union also restrict the collective bargaining coverage<sup>20</sup>.

Besides the double threshold requirement for trade unions to attain collective bargaining competence, the TUCLAA presents other authoritarian–neoliberal industrial relations characteristics, some of which being: it only allows industrial unionism and only permits the establishment of confederations as trade unions' umbrella organisations. The occupational/craft and establishment-based unions are implicitly prohibited. It bans several groups of people, including students, judges, security guards, pensioners and the unemployed, from establishing and joining trade unions. It only permits strikes in interest disputes, other types of strike and industrial actions, such as political, solidarity, general strikes or slowdowns are implicitly prohibited<sup>21</sup>. The postponement of legal strikes, accepted as a legal borrowing case from US Taft-Hartley Act<sup>223</sup>, has also been a characteristic feature of Turkish industrial relations under the AKP government<sup>24</sup>. A legal strike may be postponed by the President for 60 days if it is likely to be prejudicial to national security and/or public health. At the end of the postponement period, if a collective agreement can not be signed here is recourse to compulsory arbitration in order to settle the dispute. In other words, upon the expiration of 60 days postponement period, workers can not go on the strike. Following the postponement period collective agreement should be concluded by the

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<sup>18</sup> According to the TUCLAA: “On condition that a trade union has a membership of at least 1% of the total number of employees working in the field for which it is established, that trade union may, if , on the date of application, it has a membership totalling more than half of the employees working at the workplace in which the collective labour agreement is to be applied, and more than 40% membership within the enterprise concerned, be authorised to conclude a collective labour agreement with respect to this workplace or enterprise” (Article 41/1). For the details of the authorisation process for collective bargaining in Turkey, see: HEKİMLER, Alpay. *Überbetriebliche versus innerbetriebliche Kollektivvereinbarungen in der Türkei – Gesteuert durch Verfassungsnormen, Überbetriebliche versus innerbetriebliche Kollektivvereinbarungen*, (Ed. Gerhard Ring), Baden Baden: Nomos, p. 38-59, 2012.

<sup>19</sup> According to the TUCLAA, the president may extend a collective agreement concluded by the trade union with the largest number of members in the concerned sector, either in whole or in part of the workplaces not covered by any collective agreement within the same sector. (art. 40) However, the extension, viewed as an action violates free collective bargaining in general, is not a common method in Turkey. In the period of 1983-2022, only 18 extension decisions were issued. For the extension system in Turkey and EU countries see: BAYCIK, 2019.

<sup>20</sup> The non-members of the signatory union can also benefit from collective agreement if they pay monthly solidarity due to the union. HEKİMLER, Alpay. *Das türkische Tarifvertragswesen, Das Tarifvergassystem in der EU und der Türkei*, (Ed. Alpay Hekimler & Gerhard Ring), Baden Baden: Nomos, p. 367-403, 2012.

<sup>21</sup> HEKİMLER, Alpay. *Ein Allgemeiner Überblick über das Streikrecht und Streikfreiheiten in der Türkei, Freiburger Internationales Kolloquium zum Arbeitsrecht*, (Ed. Gerhard Ring), Baden Baden: Nomos, p.105-127, 2017.

<sup>22</sup> In the USA, the postponement period can last no more than 80 days and if the dispute cannot be settled during the postponement period, the strike may continue after this period.

<sup>23</sup> AYDIN, Ufuk. From the Taft-Hartley Act to Turkish industrial relations-postponement of legal strikes: a legal borrowing case, *Comparative Labor Law and Policy Journal*, v. 25, n. 3, p. 365-390, 2005.

<sup>24</sup> For the strike postponements under the AKP government (2003-2019) see Disk-Ar, 2020 :107.

Supreme Arbitration Board<sup>25</sup>. Consequently, this provision paves the way for a transformation of “strike postponement” into “strike prohibition”. Therefore, it may not be a wrong finding that trade unions can go for a strike only if it is not postponed by the President. However, these provisions undermine not only the right to strike but also the idea of democracy in Turkey<sup>26</sup>.

### 3. Non-Unionisation Strategies in Turkey

Employers apply different forms of union busting and avoidance strategies not only in developing countries<sup>27</sup> but also in developed countries, such as in the USA. The USA is unique in having a large and specialized “industry”, consisting of sophisticated union avoidance and busting consultants and consultant firms, having perfected strategies to devoted entirely to create union-free workplaces. These consultants and firms have operated in the USA since the postwar decades. Furthermore today, a number of these large firms have been exported towards overseas markets, i.e., Canada, Mexico, South America, UK, Belgium, France and Germany, to “share their experiences”<sup>28</sup>. Besides these professional businesses on anti-unionism, most of the employers apply different de-unionisation policies individually.

The most widespread non-union labour relations practices are union suppression and union substitution which are also called as “either/or” scenarios. While particularly multinational “good” companies are cited as exemplars of good practices for human resource management that “substitute” the need of unionization by mitigating employee dissatisfaction, the sweatshop or exploitative “bad or ugly” small firms “suppresses” union demands<sup>29</sup>. In other words, union suppression is based on a direct attack on unionism, but union substitution appears to be comparatively indirect in nature. However, this “either/or” scenario over-simplifies the problem which is, in fact, remarkably diverse and complex<sup>30</sup>. First, Roy<sup>31</sup> drawn a conceptual framework

<sup>25</sup> HEKİMLER, Alpay. Die Grenzen des Arbeitskämpfrechts in der Türkei nach dem neuen Gewerkschafts- und Tarifvertragsgesetz im Lichte der Aktuellen Entwicklungeng, **Aktuelle Entwicklungen im Arbeitskämpfrecht**, (Ed. Reinhard Resch), Wien: ÖGB Verlag, p.98-123, 2015.

<sup>26</sup> ÖZKIZILTAN, Didem. Authoritarian neoliberalism in AKP’s Turkey: An industrial relations perspective, **Industrial Relations Journal**, v. 50, n. 3, p. 218-239, 2019. p. 224.

<sup>27</sup> For the anti-union practices in Ghana see: AYENTIMI, BURGESS and DAYARAM, 2019, in Chile see: BELLIDO DE LUNA, 2020, in the Democratic Republic of Congo see: INAKA, 2022.

<sup>28</sup> LOGAN, John. **U.S. Anti-Union Consultants: A Threat to the Rights of British Workers**. London: TUC, 2008. p. 3-16; LOGAN, John. The U.S. union avoidance industry goes global, **New Labor Forum**, v. 29, n. 1, p. 76-81, 2020.

<sup>29</sup> The ‘good’ non-union employers provide above-average remuneration and extensive training and development, while the ‘ugly’ non-union employers seek to exploit workers and the ‘bad’ ones offer poor wages and working conditions without any intended malice (DUNDON, 2002: 236).

<sup>30</sup> DUNDON, Tony. Employer opposition and union avoidance in the UK, **Industrial Relations Journal**, v. 33, n. 3, p. 234-245, 2002. p. 236; AYENTIMI, Desmond Tutu; BURGESS, John; DAYARAM, Kantha. Union suppression and union substitution strategies of multinational enterprises in Ghana, **Industrial Relations Journal**, v. 50, n. 4, p. 379-398, 2019. p. 380.

<sup>31</sup> ROY, Donald F. Repression and Incorporation, *In*: NICHOLS, T. (Ed). **Capital and Labour- A Marxist Primer**. Glasgow: Fontana, 1980. p. 395-415.

for classifying the non-union policies and then Gall<sup>32</sup> advanced this typology by adding three categories to Roy's original four classification (see Table 1).

Table 1. Classification for Non-unionism

<b>Non-union Approach</b>	<b>Type of Anti-union Behaviour and Control</b>
Fear stuff*	<i>Union suppression:</i> Employer behaviour here includes blatant intimidation of workers, the objective to instill a “fear” (real or otherwise) of managerial reprisals to possible unionisation
Sweet stuff*	<i>Union substitution:</i> Management argue that unions are unnecessary, with better terms and conditions and sophisticated employee voice channels to resolve any grievances.
Evil stuff*	<i>Ideological opposition to unions:</i> Management articulates the view that unions are “reds under the beds”, and will be destructive to the company performance
Fatal stuff*	<i>Blatant refusal:</i> Employer behaviour here includes refusal to recognise a union, or at best refusal to “bargain in good faith”.
Awkward stuff*‡	<i>Stonewalling:</i> Managers create what appear to be legitimate obstacles to union recognition, effectively employing “delaying” tactics.
Tame stuff*‡	<i>Damaged limitations:</i> Employer behaviour can take the form of “sweetheart” deals, partially recognising “moderate” unions or creating internal (managerial controlled) staff associations.
Harm stuff*‡	<i>By-passing:</i> Employer behaviour seeks to effectively marginalise collective employee voice, often through specific non-union communication channels.

<sup>32</sup> GALL, Gregor. British employer resistance to trade union recognition, *Human Resource Management Journal*, v. 14, n. 2, p. 36-53, 2004.

\*Roy's (1980) original classification

\*Gall's (2004) additional typologies<sup>33</sup>

**Source:** DUNDON, Tony. Employer opposition and union avoidance in the UK, **Industrial Relations Journal**, v. 33, n. 3, p. 234-245, 2002. p. 236.

This categorisation may not be able to illustrate for all cases the complexity and uneven nature of employers' implementations for resisting unions and de-collectivising. While some of these categories do not make any sense for certain countries, it is sometimes very difficult to place country specific practices and policies into this classification. Nevertheless, it is still a crucial and substantial categorisation to explain the non-unionisation policies. Although Turkey is a country rich in those non-union policies<sup>34</sup>, the paper aims to analyze the most widespread ones regarding with both the classification at Table 1 and the country specific factors.

### 3.1. The Policy of Union Suppression

The policy of union suppression, which may be characterised as a "stick policy", relies on various union busting techniques which make union members and workers involved in union activities pay certain "costs". These methods, labelled as "fear stuff", essentially use a strategy of the employer depriving employees of their basic rights by means of pressure and threats<sup>35</sup>. This policy, the most widespread, and also the most ancient of all employer anti-union practices, is very common and effective in countries where unemployment is high. In Turkey, the high rate of unemployment<sup>36</sup> and the weak system of job security also mean that employees are confronted with a dilemma of employment and union membership. This in turn means that employers can more conveniently apply policies which keep trade unions out of the workplace. The recent ITUC Global Rights Index published in 2022 also underlines the employers' discriminatory tactics aiming at avoiding union formation and union membership and states that "employers continued to engage in systematic union-busting by methodically dismissing workers who attempted to organise"<sup>37</sup>. By the policy of union suppression, trade unions face difficulty for retaining and

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<sup>33</sup> Dundon (2002) referred a paper presented at The Work, Employment and Society Conference in 2001 by Gall. However, this paper now could not be accessed. Therefore here, Gall's paper published in 2004 is referred, instead of published in 2001.

<sup>34</sup> BAKIR and AKDOĞAN (2009) determined that employers in Turkey use forty different types of non-union policies.

<sup>35</sup> DUNDON, Tony. Employer opposition and union avoidance in the UK, **Industrial Relations Journal**, v. 33, n. 3, p. 234-245, 2002. p. 234; FIORITO, Jack. Human resource management practices and worker desires for union representation, **Journal of Labor Research**, V: XXII, n. 2, p. 335-354, Spring 2001. p. 335.

<sup>36</sup> According to the Household Workforce Survey conducted by the Statistical Institute of Turkey (TÜİK) for the third quarter of 2021 (July-September), the employment rate in Turkey was 11.7% while underemployment, the unproductive proportion of the workforce comprising both the unemployed and the potential labour force was 22.4%. (<https://data.tuik.gov.tr/Bulten/Index?p=Isgucu-Istatistikleri-III.-Ceyrek:-Temmuz---Eylul,-2021-37547>).

<sup>37</sup> ITUC. **2022 ITUC Global Rights Index**. p. 36.

expanding their membership, and consequently for meeting the double threshold requirement for collective bargaining.

This policy consists of varied techniques, but the most common one is dismissal of union members. Managers also utilize the threat of dismissal for union members by organizing mandatory captive speeches and one-on-one meetings between workers and supervisors. Union representatives or activists are special targets for dismissal, so these workers are closely monitored in terms of their performance at work, absence due to illness etc. in order to prepare justifiable or legally valid pretexts for firing them. This policy instilling fear into workers who even thought about the possibility of union membership drives down the union support and activity among the workers. Such fear tactics are usually understood by workers as the message that “the employer does not allow us to join the union”<sup>38</sup>.

While the relationship between union membership and job security is a positive one in a number of European countries such as the United Kingdom<sup>39</sup> and Germany,<sup>40</sup> in Turkey this relationship is negative. In other words, in European countries a non-unionised worker is more likely to be dismissed than a unionised workers, but in Turkey, where there is a high rate of unemployment, union membership becomes almost a threat to job security, and employers use the threat of termination of employment contract as a means of inhibiting a worker’s exercise of their freedom to join a union, a pattern corroborated by the fact that legal proceedings brought on grounds of violation of trade union freedoms usually concern a dismissal<sup>41</sup>. One of the leading union officials in Turkey explains that “*to be a union activist in Turkey is the same thing as being unemployed. And being unemployed is the same as being poor*”. Therefore, the fear of getting fired for union activities and membership is very widespread due to the increasing economic insecurity in Turkey<sup>42</sup>. Furthermore, the activist workers are put in the blacklists, circulated to all employers in order to warn them about these “trouble-makers”<sup>43</sup>.

Weak job security in Turkey also leads to a felicitous environment for the violation of union rights. According to the TUCLAA, union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours shall not constitute valid

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<sup>38</sup> YILDIRIM, Engin; UÇKAN, Banu. İşverenlerin sendikasılaştırma modelleri ve Türkiye örneği, **Çalışma ve Toplum**, v. 25, n. 2, p. 163-184, 2010. p. 170.

<sup>39</sup> For the positive relationship between union membership and job security in the United Kingdom, see BENDER, Keith A. and SLOANE, Peter J. Trade Union Membership, Tenure and the Level of Job Security. **Applied Economics**, v. 31, pp. 123-135, 1999.

<sup>40</sup> For the positive relationship between union membership and job security in Germany, see: <https://www.igmetall.de/service/sicher-mit-gewerkschaft>; GOERKE, Laszlo and PANNENBERG, Markus. **Trade Union Membership and Dismissals**. Discussion Paper No. 5222, Institute for the Study of Labor. 2010.

<sup>41</sup> EYRENCİ, Öner; TAŞKENT, Savaş; ULUCAN, Devrim and BASKAN, Esra. (2020). **İş Hukuku**. İstanbul: Beta Yayınevi, 2020. p. 512.

<sup>42</sup> LOGAN, John. Workers’ victory at DHL Turkey, **International Union Rights**, v. 20, n. 4, p. 8-9, 2013.

<sup>43</sup> YILDIRIM, Engin; UÇKAN, Banu. Union Avoidance in Turkey: The State and Employers vs Unions, **15<sup>th</sup> World Congress of International Industrial Relations Association**. 2009.

reason for termination of employment relationship (art. 18). A worker dismissed because of union activities and membership has right to file a lawsuit for reinstatement. But the reinstatement process is often complicated and lengthy. Even if the court decides that the dismissal is invalid, unjust or illegal, the employer has no responsibility to reemploy this worker. The employer should either reinstate the worker or pay union compensation which shall not be less than one year's wage of worker (art. 25(5)). But employers usually choose paying compensation instead of reinstatement. So, the act does not provide a full union and job security to unionised workers, except union representatives. Only union representatives have full job security in Turkey (art. 24).

The findings of some researches also predicate that the fear of dismissal is one of the dominant factors keeping the workers away from trade unions. According to the research held by an independent research company, 49.7% of the correspondents answered that "I'm afraid to be dismissed" to the question of "why do not you be a member of a trade union"<sup>44</sup>. In parallel with the argument of Urhan and Selamoğlu<sup>45</sup>, Uçkan and Kağnicioğlu<sup>46</sup> also found that 36.4 % of workers claimed the employers' suppression is the main reason for the insufficiency of unions to protect the rights and interests of workers. Therefore, unless strengthening the job security of unionised workers, it is almost impossible to struggle with the "fear stuff" in Turkey. Besides dismissals, many workers also face discrimination and pressure because of their union membership, such as being transferred to other workplaces, often in other cities, moral harassment and mobbing. Although there is no a reliable statistic on dismissals for the reason of union membership, one could suggest that the policy of suppression, particularly dismissals, as a cheaper and discreet union busting strategy is a typical employers' reflex towards unionisation in Turkey<sup>47</sup>.

### 3.2. The Policy of Union Substitution

With the policy of union substitution or replacement which has a long tradition in labour relations research<sup>48</sup>, employers strive to give the impression that unions are unnecessary organisations. By paying above average wages and providing good terms and working conditions, allowing worker participation, offering mechanisms for resolving grievances and creating a friendly working environment, the "good" employer endeavours to head off problems in the workplace before they arise. The intention with this "carrot" policy, as a non-aggressive form of

<sup>44</sup> Petrol-İş. 2012. Disponível em: <https://petrol-is.org.tr/haber/bir-sendikaya-uye--en-onemli-nedeni-isten-atilma-korkusu-5712>. Access date: 13 Aug 2022.

<sup>45</sup> URHAN, Betül; SELAMOĞLU, Ahmet. İşçilerin sendikalara yönelik tutum ve davranışları; Kocaeli örneği, **Çalışma ve Toplum**, v. 18, n. 3, p. 171-197, 2008. p. 188.

<sup>46</sup> UÇKAN, Banu; KAĞNICIOĞLU, Deniz. İşçilerin sendikalara ilişkin algı ve tutumları: Eskişehir örneği, **Çalışma ve Toplum**, v. 22, n. 3, p. 35-56, 2009.p. 49.

<sup>47</sup> Not only national companies, but some multinational companies operating in Turkey, such as Deutsche Post DHL, have also been accommodated to union resistant environment and engages in a variety of aggressive and illegal anti-union tactics (LOGAN, 2015).

<sup>48</sup> For a brief review about the tradition of policy of union substitution see: DONAGHEY and et. al., 2012.

non-unionism, is to engender loyalty to a non-union corporate identity and obviate the need for unions<sup>49</sup>. The employers adopting the policy of substitution proclaim that they are not anti-union but are non-union because that's what their workers prefer. The tactics consisting of various human resource management (HRM) policies, personal favours, privileges, promises or suggestions of privileges or protection are usually used as a policy of union substitution. From Henry Ford's "5 dollar day" to Harvard Business School's model of "soft" HRM, this policy and managerial ideology represents a system in which trade unions are viewed as an unwelcome enemy<sup>50</sup>.

As a union avoidance strategy, non-unionised workers may also be employed in more elevated and managerial positions while those involved in the union are employed in more menial positions. Employers can also make small but significant changes in the working conditions of those workers whom they wish to steer away from the union (for example, by moving workers from the nightshift to the day shift, employing workers' spouses, or lifting the pressure on production output of quality) effectively reversing the standard fear-based approach, and endeavouring to eliminate any idea that unions might be needed<sup>51</sup>.

In Turkey, besides those policies mentioned above, employers may provide financial privileges as sweetener to non-unionised workers particularly in some multi-national companies and may ensure the financial conditions in the collective agreement to all non-unionised workers. Consequently, these employers paralyze the trade unions and give impetus to the membership losses due the lack of strong labour class and solidarity conscious. Although the financial privileges can be accepted as managerial remuneration policy, the European Court of Human Rights decided that these kinds of financial incentives to induce workers to surrender important union rights are contrary to Article 11, freedom of assembly and association, of the European Convention on Human Rights<sup>52</sup>.

### 3.3. The Policy of Stonewalling

Employers use various stonewalling tactics based on obfuscation to obstruct and demobilize union activities and campaigns particularly during the recognition period. "Awkward stuff" concerns providing (not unlawful) obstacles that appear to be fair and legitimate such as

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<sup>49</sup> GALL, Gregor. British employer resistance to trade union recognition, **Human Resource Management Journal**, v. 14, n. 2, p. 36-53, 2004. p. 37.

<sup>50</sup> DUNDON, Tony; CULLINANE, Niall; HARNEY, Brian. The ideology of union busting, **International Union Rights Journal**, v. 13, n. 2, p. 5-6, 2006. p. 5.

<sup>51</sup> ROY, Donald F. Repression and Incorporation, *In*: NICHOLS, T. (Ed). **Capital and Labour- A Marxist Primer**. Glasgow: Fontana, 1980. p. 405-408.

<sup>52</sup> In a judgment delivered on 2 July 2002 in the case of Wilson and the National Union of Journalists, Palmer, Wyeth and the National Union of Rail Maritime and Transport Workers and Doolan and Others v. the United Kingdom, the European Court of Human Rights decided that "*by permitting employers to use financial incentives to induce employees to surrender important union rights, the respondent State has failed in its positive obligation to secure the enjoyment of the rights under Article 11 of the Convention*". For the full text of the decision see: <https://web.boe.legislationline.org/taxonomy/term/14305>.

requiring ballots, refusals to and delays in replying unions' letters, having meetings, allowing access to the workplaces for recruiting and organizing and allowing members to meet at the workplaces<sup>53</sup>. In other words, this policy serves a benign legitimation of management intent to frustrate union recognition<sup>54</sup>.

The most typical example of this policy in Turkey is the employers' objections on grounds of collective bargaining authorisation in order to put off the collective bargaining process<sup>55</sup>. According to the TUCLAA, any trade union or employers' union or unaffiliated employer may lodge an appeal following the receipt of communication of collective bargaining competence. However, the procedure to determine competence shall be suspended until the final decision given on the objection (art. 43). Therefore, such an objection triggers a judicial marathon, not less than 1,5-2 years. Until the finalized court order about the competence of the union for collective bargaining issued and delivered, employers usually continue to implement their suppressive policies against the union as described above, i.e., dismissing unionised workers, or mobbing workers to leave the union<sup>56</sup>. Consequently, at the end of the judgement period, although most of the unions secure the authorisation for collective bargaining, they lose almost all members at the concerned workplaces<sup>57</sup>.

The abuse of strike ballot is also another common stonewalling strategy against unions in Turkey. According to the TUCLAA, a strike ballot, as a single means to inject a democratic specification to the strike decision, should be held in order to decide whether a strike should be organised not before but just after adopting a decision of strike and only upon the demand by a specific ratio of workers (one-fourth of the total numbers of workers at the concerned workplace) (art. 61). If the majority of the voters<sup>58</sup> cast votes, no strike shall be organised and held in the related dispute<sup>59</sup>. In some cases, employers intervene the right to collective action and build stonewalls for unions by forcing the workers to request the strike ballot and vote 'no' to block the right to strike or sometimes "yes"<sup>60</sup> to knock down the union that has no intention for the strike, financially.

<sup>53</sup> GALL, Gregor. British employer resistance to trade union recognition, **Human Resource Management Journal**, v. 14, n. 2, p. 36-53, 2004. p. 37-45.

<sup>54</sup> DUNDON, Tony; CULLINANE, Niall; HARNEY, Brian. The ideology of union busting, **International Union Rights Journal**, v. 13, n. 2, p. 5-6, 2006. p. 5.

<sup>55</sup> ÖZVERİ, Murat. **Türkiye'de Toplu İş Sözleşmesi Yetki Sistemi ve Sendikasılaştırma**. Ankara: Ankara Üniversitesi Siyasal Bilgiler Fakültesi Yayınları, 2013; CANDOĞAN, Gökhan. Sendikasılaştırma Aracı Olarak Yetki Tespitine İtiraz Süreci ile Sendikal Hakların Kullanılmasının Engellenmesi Suçunun Uygulanması, **İş ve Hayat**, pp. 181-192, Şubat 2015.

<sup>56</sup> YILDIRIM, Engin; UÇKAN, Banu. İşverenlerin sendikasılaştırma modelleri ve Türkiye örneği, **Çalışma ve Toplum**, v. 25, n. 2, p. 163-184, 2010. p. 178-179.

<sup>57</sup> ÖZVERİ, Murat. Toplu iş sözleşmesi yetkisinin belirlenmesindeki açmazlar ve 2822 sayılı Toplu İş Sözleşmesi Grev ve Lokavt Yasası, **Çalışma ve Toplum**, v. 2, n. 2, p. 81-90, 2004. p. 87.

<sup>58</sup> The voters are workers who are employed at the workplace on the date of the strike announcement.

<sup>59</sup> For the legislation on strike ballot see: CENTEL, 2017: 342-345.

<sup>60</sup> In 2005, strike ballot process in Novamed, a German based in multinational medical company, is an extra-ordinary case for the abuse of strike ballot in Turkey. See: YILDIRIM and UÇKAN, 2009.

### 3.4. The Policy of Ideological Hostility to Unions

One can suggest that non-unionism is simply an undercurrent for employer hostility and managerial distaste of trade unionism. Ideological hostility towards unions can be sustained through socialisation and education that are transferred to specific non-union arrangements. The unitarist and anti-union ideology, linked to a discourse of meanings and symbols, reflects directly on the managerial action and human resources practices at the workplace. Furthermore, even when usually subtly masked by the rhetoric of high commitment management, the reality is that many employers resist unionisation because of their deep-rooted ideological hostility to the idea of collective voice<sup>61</sup>. This hostility called as “evil stuff” signifies propaganda and ideological acts to produce hatred towards trade unions. Companies which exercise this malicious and sinister policy see unions as organisations which negatively affect the performance of the enterprise, and try, in various ways, to generate powerful hostility focusing on an idea of “what the unions really are”. The employers adopting this policy usually propagate the view that trade unions are more communist communities and “reds under the bed” rather than workers’ friendly organisations by circulating some materials which argue that unions are parasitic, undemocratic and force members to go on strike<sup>62</sup>.

Trade unions, facing with severe legal constraints, are also in a position to function in an ideologically hostile environment in Turkey. The negative attitudes against unions, extend beyond mainstream media to the general public, also erode their basis of social legitimacy. This is reflected in the results of public surveys issued by different organisations. According to these surveys, trade unions are among those institutions least liked<sup>63</sup>. In Turkey some employers promote ideological hostility to unions, presenting them as secretly terrorist or communist or even un-Islamic organisations.

### 3.5. The Policy of Yellow Unionism

Big business firms often adopt a seemingly tolerant attitude towards organised labour, which they seek to limit to a small segment of the total workforce. However, they may also empower the yellow unions to prevent the organisation of a genuine trade union. In other words, employers frequently promote yellow unions that negotiate weak collective agreements and are

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<sup>61</sup> DUNDON, Tony; GOLLAN, Paul J. Re-conceptualizing voice in the non-union workplace, *The International Journal of Human Resource Management*, v. 18, n. 7, p. 1182-1198, 2007. p. 1192.

<sup>62</sup> GALL, Gregor. British employer resistance to trade union recognition, *Human Resource Management Journal*, v. 14, n. 2, p. 36-53, 2004. p. 37; DUNDON, Tony. Employer opposition and union avoidance in the UK, *Industrial Relations Journal*, v. 33, n. 3, p. 234-245, 2002. p. 236; ROY, Donald F. Repression and Incorporation, *In: NICHOLS, T. (Ed). Capital and Labour- A Marxist Primer*. Glasgow: Fontana, 1980. p. 408-409.

<sup>63</sup> ADAMAN, Fikret; BUĞRA, Ayşe; İNSEL, Ahmet. Societal context of labor strategy the case of Turkey. *Labor Studies Journal*, v. 34, n. 2, p. 168-188, 2008. p. 175.

usually bogus organisations to undermine independent unions<sup>64</sup>. Therefore, employers adopting the policy of yellow unionism (tame stuff) have recognised that the question face is not “*should we grant recognition?*” but “*to whom should we grant recognition?*”. Employers here select the “appropriate” union which eschews traditional bargaining in favour of “business unionism” or “social partnership”<sup>65</sup>.

In Turkey, the political fragmentation on labour side exacerbates the inter-union rivalry in favour of yellow unions. Since trade unions compete with each other for the authorisation for collective bargaining, inter-union rivalry, destroying union solidarity, has been more destructive rather than constructive in Turkey. Inter-union rivalry is severe, not only between trade union affiliated to different labour confederations but also affiliated to the same labour confederation. The hawkishness of rival unions both endangers the whole collective bargaining process and have been utilized as a union busting strategy by employers. By supporting “appropriate” and “moderate” trade unions, employers may control the workers and suppress the rival and more aggressive trade unions as was the case in the authorisation process for collective bargaining in many workplaces in Turkey<sup>66</sup>.

#### 4. Conclusion

Union resistance is a pandemic worldwide, regardless the development level of countries. While in the USA, union avoidance and busting turns to a concrete industry even exported to some European countries, de-unionisation policies in the developing countries have been followed not only by employers but also by governments. In other words, one can suggest that trade unions face an enormous challenge globally.

In Turkey, besides socio-economic and political conditions against unions worldwide, hostility and suspicious towards unions also undermine the spirit of collectivism and collective action. High unemployment rate, weak job security and poor labour class-conscious lead to an industrial relations environment rich in union busting and avoidance strategies. Although Turkey ratified the ILO conventions no: 87 and no: 98, the core conventions for union rights, some legal provisions are still contrary to these international labour norms and most employers either exploit the legal loopholes or violate the union rights directly. The most widespread union busting strategy in Turkey, in both multi-national and national companies, is dismissals of unionised workers. Therefore, union membership is perceived as the loss of job and castaway from labour market. The objection for collective bargaining authorisation is also a common stonewalling strategy and turns

<sup>64</sup> LOGAN, John. Workers’ victory at DHL Turkey, **International Union Rights**, v. 20, n. 4, p. 8-9, 2013. p. 9.

<sup>65</sup> GALL, Gregor. British employer resistance to trade union recognition, **Human Resource Management Journal**, v. 14, n. 2, p. 36-53, 2004. p. 44.

<sup>66</sup> YILDIRIM, Engin; UÇKAN, Banu. Union Avoidance in Turkey: The State and Employers vs Unions, **15<sup>th</sup> World Congress of International Industrial Relations Association**. 2009.

to a reflex of employers to obstruct to sign a collective agreement. HRM policies, as sweeteners, may aim to replace trade unionism as the policy of union substitution. These policies, high-cost in the short run, may serve to form a union-free workplace in the long run. Ideological hostility towards independent trade unions and provoking inter-union rivalry in favour of yellow unionism by employers also strengthen the anti-union climate in Turkey.

Trade unions worldwide fight with those anti-union policies to survive. While some unions use creative ways of protests in struggling with union resistance, such as the scabby, the inflatable rat and other similar inflatables (fat cat, greedy pig and union bug)<sup>67</sup> in the USA, some of them, including Turkey, utilize the international solidarity to overcome anti-union attitudes of employers. Today, it is almost impossible to combat with the strong wind of anti-unionism without international solidarity. Trade unions vis a vis the global problems consisting of unlimited mobility capacity of capital and growing scale of multinational companies have to accumulate the international solidarity. A number of unions in Turkey, organizing particularly in the multinational companies, achieved to overcome the harsh organising and recognition obstacles by international solidarity. With the support of global union federations, trade unions in Turkey attempted to pressurise employers in multiple ways. UPS, IKEA, Novamed and DHL campaigns are only a few cases for good international solidarity practices in Turkey<sup>68</sup>. Although this paper only focuses on the union busting and avoidance strategies in Turkey, it will hopefully lead the papers discussing and analyzing the union practices against these strategies for developing the union revitalisation policies.

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<sup>67</sup> Since the 1990’s, trade unions across the USA started to use the inflatables to garner attention and a message to union resistant employers and the public about their labour disputes (SOLIS, 2020: 391).

<sup>68</sup> DİNLER, Demet Şahende. **Trade Union in Turkey**. Friedrich Ebert Stiftung, 2012, p. 18.

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