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SCRUTINIZING UNION DEMOCRACY:

ORGANIZATION AND OPPOSITION IN TURKISH UNIONS OF THE POST-1982 CONTEXT

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Sendika-İçi Demokrasiyi İrdelemek: 1982 Sonrası Dönemde Türkiye Sendikalarında Örgütlenme ve Muhalefet

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Abstract

Although unionism in Turkey has lost a considerable amount of power due to globalization and other processes peculiar to the post-1982 context, union democracy remains as a vital issue for the political inclusion and participation of large masses in the society. In the study the importance of legislation and other procedural regulations in the Turkish context that shape the organizational structure of unionism are emphasized as direct determinants of democratic conduct qualities. The historical development, structure and sources of Turkish unionism, collective and individual union freedoms, union member, official and representative protections, mandatory and other union organs, delegation, representation and electoral systems and related procedures are thoroughly examined for the evaluation of all external (constitutional and legal) and internal (union statutory and lesser regulatory) rules to comprehensively present the union democracy climate in Turkey. Tensions arising from principles of union security/discipline and individual/minority rights are identified in relation with each aspect of these formal organizational features. The results of central presidential elections are analysed in order to determine the state of opposition in each organization, and are then evaluated together with the formal rules of each organization. The study partially establishes a correlation between these two sets of variables, asserting that the lack of organized opposition in Turkish unions stems from the current general organizational structure that cannot produce autonomous centers of power within the union hierarchy unless certain changes are made by unions themselves or through the force of law.

Öz

Türkiye'de sendikacılık her ne kadar globalizasyon ve 1982 sonrasına özel diğer süreçlerin de etkisiyle gücünü önemli ölçüde kaybetmiş olsa da sendika-içi demokrasi konusu, toplumda büyük kitlelerin siyasete katılımı için hayati önemini korumaktadır. Çalışmada, Türkiye bağlamında örgütsel sendika yapılanmasını oluşturan yasal ve usule ilişkin düzenlemelerin, demokratik yönetim niteliklerinin doğrudan belirleyicileri olduğu vurgulanmaktadır. Türk sendikacılığının tarihsel gelişimi, yapısı ve kaynakları, kolektif ve bireysel sendika özgürlükleri, sendika üye, yönetici ve temsilci güvenceleri, zorunlu ve diğer sendika organları, delegasyon, temsilcilik ve seçim sistemleri ve ilgili prosedürler, tüm harici (anayasal ve yasal) ve dahili (sendika tüzük ve yönetmelikleri) kurallar doğrultusunda Türkiye'deki sendika-içi demokrasi iklimini kapsamlı olarak değerlendirmek üzere ayrıntılarıyla incelenmektedir. Sendika güvenliği/disiplini ve bireysel/azınlık hakları ilkelerinin yarattığı gerilimler bahsi geçen resmi örgütsel özellikler bağlamında saptanmaktadır. Merkez başkanlık seçim sonuçları her örgütte muhalefetin durumunu belirlemek için analiz edilmekte ve ardından her bir örgütün resmi kuralları ile beraber değerlendirilmektedir. Çalışma, bu iki değişken grup arasındaki karşılıklı ilişkiyi kısmen saptamakta, sendikaların içinde örgütlü muhalefetin olmayışını, belirli değişimlerin sendikaların kendileri tarafından veya kanun gücüyle yapılmadığı takdirde halihazırdaki genel örgütlenme yapısının sendika hiyerarşisinde otonom güç merkezleri yaratamamasında bulmaktadır.

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The year 2012 in which I started research on my dissertation coincided with three important and unrelated events. Firstly, the drafting of a new union law that would find body in Act No. 6356 piqued my interest in trade union politics that I was indifferent towards in my youth, even though I had grown up among union officials due to my father's position of Secretary-General in MESS (Turkish Employers' Association of Metal Industries), one of the largest employers' organizations in Turkey. Secondly, at the end of the year, my father decided to retire, and I suddenly found myself as the sole "unionist" of the family as he completed his unionism legacy after four decades in service to the development of Turkish industrial relations. Also at the end of the year, my daughter and the light of my life, Idil was born and I got my hands full more than ever. During this period of rapid change in both Turkish union organization and in my personal life, I needed help more than ever and am truly grateful for certain individuals for their support on my studies. I express my sincerest gratitude to my advisor, Pınar Uyan Semerci, for her consistent patience, mentorship and kindness during my struggles in the research process. Although she made several invaluable suggestions that eventually ended up with the reformulation of some sections, she never lost faith in me and made this dissertation possible. Besides my advisor, I would like to thank the rest of my dissertation committee: It has been a great honor to have Toker Dereli, one of the pioneers of Turkish unionism studies in the committee who lead me to several sources of reference as well as sharing his knowledge on union democracy that can hardly ever be matched. Nihal İncioğlu supported me from the first to the last day of the PhD programme through both methodological and psychological means, and I cannot thank

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To my father, who was there for me

no matter which path I chose to walk

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ABBREVIATIONS

ACLU: American Civil Liberties Union

ANAP: Motherland Party

AYMK: Ruling of the Constitutional Court

BANKSİS: Bank and Insurance Workers Union

BİRLEŞİK METAL-İŞ: Unified Metal Workers Union

CFA: Committee on Freedom of Association

CHP: Republican People's Party

CIO: Congress of Industrial Organizations

COE: Council of Europe

ÇELİK-İŞ: Iron, Steel, Metal and Metal Products Workers' Union

DİSK: Confederation of Progressive Trade Unions of Turkey

DP: Democrat Party

EU: European Union

GENEL-İŞ: Turkish General Services Workers Union

GÜVENLİK-SEN: Private Security Workers Union

HAK-İŞ: Confederation of Just Workers' Unions

HD.: Law Office

HİZMET-İŞ: All Municipal and Public Services Workers' Union

ILO: International Labor Organization

ITU: International Typographical Union

KİT: Public Economic Enterprise

MGK: National Security Council

MHP: Nationalist Movement Party

MİSK: Confederation of Nationalist Workers Unions

MSP: National Salvation Party

ÖZ TOPRAK-İŞ: Cement, Ceramics, Soil and Glass Industry Workers' Union

SGK: Social Security Institution

TES-İŞ: Turkish Energy, Water and Gas Workers Union

TGS: Turkish Journalists' Union

TİP: Turkish Workers' Party

TİSK: Turkish Confederation of Employer Unions

TÜRK-İŞ: Turkish Confederation of Worker Unions

TÜRK METAL: Turkish Metal, Steel, Ammunition, Machinery, Metal Products and Auto, Assembly and Allied Workers' Union

UAW: United Automobile Workers

YHGK: General Assembly of Court of Cassation

YHK: High Arbitration Board

INTRODUCTION

Throughout its history, the Republic of Turkey has continually experienced major fluctuations in its fragile democracy with numerous coups and drastic political shifts. The participatory inclusion of large masses and the application of fundamental rights based on the rule of law were disregarded for certain social groups in the society depending on the context. For several decades, democratic norms were neglected, mainly in the name of political stability and economic development. More recently, priorities of national security and the fight against various sources of terrorism were added to these justifications. The coup attempt on July 15, 2016 and the ongoing state of emergency[1] in which several fundamental rights and liberties have officially been suspended is yet another instance that marks regime problems. The Turkish society has come to debate a radical shift in its system of government, the re-adoption of the death penalty, and the re-drafting of a new constitution that would without doubt alter the lives of individuals and the foundations of social interest groups. However, those directly or indirectly involved in such debates of great importance, and their ability to influence the related political outcomes, have been limited significantly in (arguably) all past and present conjunctures.

In a society where the consolidation of democratic norms has been chronically problematic, the role of civil organizations becomes even more vital. Various political theorists suggest that the political forms of nations are in large measure related to the

[1] 'State of emergency' is a legal condition in which fundamental rights can be restricted or suspended and democratic processes are less exercised due to the utilization of decrees having the force of law by the Council of Ministers, as stipulated by Turkish Constitution Articles 119 to 121.

type of organizational life which exists within them (Lipset et al., 1977, p. 73). Emil Lederer (1940), for instance, argued that a society without a multitude of organizations independent of state power has a high dictatorial potential. He defined this type of society as “the state of the masses”, or mass society. Much earlier, Alexis de Tocqueville (2004) had asserted that the success and stability of democratic political order in the United States was closely related with the constant formation of associations in the American society. As Emile Durkheim (2014, p. 27) argued, “A [democratic] nation cannot be maintained unless, between the state and individuals, a whole range of secondary groups are interposed. These must be close enough to the individual to attract him strongly to their sphere of influence and, in so doing, to absorb him into the torrent of social life”. The common approach to democracy adopted by all of these scholars is that the co-existence of a highly developed organizational life within the society and a democratic political system is more than a simple coincidence wherever it is experienced. Democracy in public government is largely dependent on the existence of political pluralism.

The base of political pluralism can be provided by a large variety of secondary organizations, from religious groups to fraternal orders and to veterans’ associations. Among them, in accordance with their relatively high political character, labor organizations deserve closer attention in the development and preservation of democracy. Due to their functions and formation, trade unions, as organized labor groups, originate from democracy and operate for the democratic advancement of their interests, representing large masses. The relationship between trade unions and democracy has two basic aspects. Firstly, in accordance with the approach mentioned

above, unions can serve as mediating organizations between the individual and the state (Lipset et al., 1977, p. 77). It has also been argued that unions may, as civil society agents, promote democracy within wider society in the case of authoritarian regimes and/or when formal structures of democratic pluralism seem moribund or semi-functional, as watchdogs protecting hard won democratic gains, or as partners to an accommodation between competing interest groups (Wood, 2004, p. 1). Secondly, an equally debated issue is the democracy which is exercised internally in the union organization: the ability of rank and file members to influence policies and choose their leaders; the existence and application of basic membership rights, and the accountability and transparency of union operations which may, in combination, lead to an effective opposition against the incumbent leadership. While this study focuses on the organizational properties that define the internal democratic climate of Turkish trade unions,[2] it also emphasizes their role in promoting democracy in the wider society by representing the working class and giving their members a voice, which is seldom heard in the Turkish political arena by other means. Unless the rank and file workers possess the rights and powers to 'control' their union organizations, this role may hardly be fulfilled.

Tensions in the wider society arising from the simultaneous needs of protection, economic development, and democratic norms have always been reflected in union organizations. In parallel with basic societal demands, the primary goals of a union are undoubtedly to defend its members' rights, to improve their working conditions and to

[2] In the Turkish legal context, employers are also organized as unions (*işveren sendikaları*) as well as associations (Act No. 6356 Art. 2/1-g). By unions, I specifically mean workers' trade unions and their higher organizations throughout the study, unless stated otherwise.

secure their economic interests. In order to achieve this, a union has to be an effective fighting force that acts decisively in its relations within the industrial arena. Yet, since the earliest days of the labor movement, there has been a general expectation that unions will also be democratically governed by their members. In the words of A. J. Muste (1928, p. 332), "the trade union seeks to combine within itself two extremely divergent types of social structure, that of an army and that of a democratic town meeting". This dual nature of unions is seen by many as a contradiction between control and conflict, giving birth to a fundamental question in their administration: "How are we to choose between leaders who emphasize efficient organization at the risk of losing freedom to differ, and members who demand more control from below at the risk of fragmentation and disunity?" (Hemingway, 1978, p. 176). For more than a century, scholars of unionism have tried to answer this democracy dilemma (Hurd, 2000, p. 104) and explored its complexity, in which concerns of oligarchy come to the fore as a major component in the life and administration of trade unions across the globe. A character in George Bernard Shaw's play *The Apple Cart* certainly had profound reason, as he claimed, "no king on earth is as safe in his job as a Trade Union official" (Shaw, 1956, p. 48). In the same sense, anyone who is familiar with the process of unionism in Turkey knows the all too common reference to union leaders as "union lords" (*sendika ağaları*),[3] even though unions, according to both current and previous Turkish constitutions, shall function under the principles of democracy.[4]

Before delving into this curious paradox (Herberg, 1943) and other theories of union democracy, answers to some other fundamental questions on unionism are necessary to

[3] *Ağa* is the title for feudal land lordship that still exists informally in rural Eastern Turkey.
[4] Turkish Constitution (1982) Article 51 and the previous Turkish Constitution (1961) Article 46/2.

clarify the importance of the subject. Why do we expect unions to be democratic in the first place? Internal democracy for a union is perhaps not as important as its overall strength derived from unity and effectiveness, and would not be tolerated for long if it means one or the other, even in unions that have stood out as exceptionally democratic.[5] As explained above, the Turkish experience of democracy at the state level and within political parties has proven time and time again that the consolidation of democracy as a whole has been troublesome. In spite of this, why should we focus on the type of government in Turkish unions?

Whether unions should be governed democratically or not has been heavily debated for decades. Answers given by advocates of union democracy can be categorized into two types of approach. The justification for the demand for democracy is first of all made by instrumental approaches. Many scholars have argued that, contrary to its role as a fighting unit in the industrial arena, union democracy actually increases the effectiveness of trade unions' function in general, that the more democratic a union becomes, the better it performs to represent its members' interests and mobilize them (Strauss, 1991, 2000; Eaton, 2006). Stepan-Norris and Zeitlin's theory guiding their analysis is that "a union with a democratic constitution [statutes],[6] institutionalized opposition, and an active membership would tend to constitute a worker's immediate political community and sustain both class solidarity and a sense of identity between the members and their leaders. As a result, such democratic unions would also defy the hegemony of capital in the sphere of production" (Stepan-Norris and Zeitlin, 1995, p.

[5] Lipset, Trow and Coleman (1977, p. 252) claim this about the International Typographical Union (ITU), an exceptionally democratic U.S. union that was run by an effective two-party system.
[6] 'Statutes' is the term for union constitution (the U.S. term) or rule book (the British term) in the Turkish legal context. Statutes are hierarchically lower and therefore bound by the Turkish Constitution and laws.

829). Their studies claim to prove that stable, highly democratic industrial unions, whose leaders regularly faced lively organized opposition, were the most effective in defying the sway of capital (ibid., p. 843). Moreover, it has been argued that, in the long run, democracy makes unions more effective by weeding out the corrupt and incompetent, giving the officers an incentive to perform better, providing training and experience for potential leaders among the rank and file, and so forth (Dereli, 1977; Strauss, 2000).

A second type of approach, on the other hand, is more concerned with the intrinsic value of democracy, asserting that democracy is a good in itself for unionism and for the wider society, and not just a means to an end. Basically, this argument stems from the notion that the raison d'étre of trade unions is to democratize industrial relations. Unions are workers' collective voice (Freeman and Medoff, 1984) and they contribute to political and societal democracy as the most important representatives of working class interests (Lipset et al., 1977). Therefore, if unions are not governed democratically, they cannot truly counteract the power of the employer over the employee, who is virtually powerless as a single individual in work life. From this point of view, unless union leadership is responsive to the will of its members and policies are shaped accordingly, a union's true purpose will disappear in terms of its fundamental role in industrial democracy. Unionization would be "meaningless, when the worker is just as helpless within his union as he was within his industry; when the tyranny of the all-powerful corporate employer is replaced by the tyranny of the all-powerful union

boss".[7] In this sense, unions exist not just to better workers' economic conditions, but to give them a voice (Strauss, 2000, p. 211). Thus, it has been argued that the goal of industrial democracy through collective bargaining requires union democracy (Summers, 2000). The formal role of unions may, and occasionally does, surpass the narrower concept of collective bargaining and agreements with employers. Since 1995, trade unions in Turkey have formally represented workers in the Economic and Social Council and Tripartite Advisory Board in which the government, state bureaucracy, and capital gather for the deliberation of future economic and social policies through social reconciliation. Whether such advisory bodies in Turkey are effective in steering the policies towards the advantage of the working class is highly debatable. However, the true representation of the voice of workers is even more vital in such assemblies, despite their lack of formal power, which may wax and wane contextually.

As argued by Wood (2004) above, unions may play important roles in the advancement and protection of democracy in the wider society. From such broader perspectives of democratic pluralism theories, many scholars of unionism have asserted that societal democracy can be achieved not only by the separation of powers at the state level, but also by democratic practices among civil organizations in the society (Deren-Yıldırım, 2001). The advancement of economic interests of their members is not the sole purpose of unions. Unions are multi-dimensional and multi-purpose organizations, and one of the primary functions of unions is to train workers on the actual practice of democracy (Dereli, 1977). This role is "even more crucial in the case of a country where democracy is yet to be consolidated" (ibid., p. 30). According to a ruling of the German

[7] A part of U.S. Senator McClellan's argument in the U.S. Senate in the legislation for the protection of rights of union members (Summers, 2000, p. 8).

Constitutional Court, “[...] the individual's sole display of political choice in [parliamentary] elections is not sufficient to achieve [societal] democracy. Additionally, parties, associations and unions should exist to provide individuals the ability to express their political ideas, and the external behavior of the organization should be in parallel to the true will of the members in these organizations”.[8] In this sense, it is also accepted that the principle of democracy in political parties stated in the German Constitution (Article 21/1) is also valid for trade unions (Şahlanan, 1980, p. 36). Similarly, a ruling of the Turkish Constitutional Court states that unions are "organizations that operate for public benefit through providing common social needs of a large mass in the society, material and non-material development, occupation and preventing the suppression of the worker and disruption of social order by forming a balance between the employee and the employer".[9] As a general rule, under a democratic state system, undemocratic institutions shall not exist and unions shall internally operate under democratic rules (Şahlanan, 1980, p. 13). Last but not least, I assert that the political inclusion of the Turkish working class in the current context may partially be secured in the case that trade unions operate to function adequately as true representatives of their members’ interests and in other ways to ensure their political participation by bringing forth issues of redistribution in the wider society. In this sense, trade unions as interest groups matter as much as political parties in regard to the representation of large masses when they operate under democratic norms.

Focusing on either economical/industrial or societal concerns, these arguments rest on the fundamental idea that union democracy is its own reward and a necessity for its own

[8] Cited in Deren-Yıldırım, 2001, p. 1698.
[9] AYMK, 26–27.9.1967, 336/29 in Merinç, 1991, p. 24.

sake, regardless of questions of efficiency of the organizations' immediate operations in terms of securing short term improvements through collective agreements.

The trouble with the former group of arguments that I have categorized as the instrumental approaches is that there is not ample empirical data to support the hypothesis of democratic unions being more effective than oligarchic ones (Hurd, 2000). It has been claimed that "[…] with rare exceptions (e.g., Cochran, 1977; Margath, 1959; McConnell, 1958), relevant theoretical claims are unelaborated—they appear as stray assertions or as implicit ideas embedded in interpretations of the collective bargaining successes or failure of specific unions" (Stepan-Norris and Zeitlin, 1995, p. 834).[10] Moreover, even the leading advocates of union democracy admit that a trade-off is required between democracy and at least short term efficiency (Strauss, 2000, p. 212), in line with the hypotheses of Cook (1963) that, in the short term, efficiency can be achieved better under an oligarchy.

Despite these shortcomings, we cannot disregard the various indicators of how union democracy can enhance a union's functions and operative strength. It has been claimed that union democracy is an important power resource, promotes membership solidarity and support for leadership, and is a cornerstone for the renewal of unions (Eaton, 2006, pp. 202, 204). As a means of connection and communication between different levels of union hierarchy, union democracy promotes the flow of information to the members. By doing so, the rank and file can transmit their problems and issues to the leadership.

[10] Contrary to their general observation of the literature, Stepan-Norris and Zeitlin (1995) offered a contingency analysis of a sample of contracts won by democratic and oligarchic unions, observing that democratic unions do more pro-labor contracts than oligarchic unions.

These are regarded as compulsory factors for the success of unionism (Şahlanan, 1980, p. 13).

It is a fact that with the processes of globalization, union density among most developed countries is considerably lower compared to the early and mid-twentieth century, a pattern left yet unchallenged, save some exceptions,[11] which in turn makes us question the importance of unions altogether in our contemporary societies. Concerns about union democracy in the literature came to the fore during the 1950s and 1960s, when the labor movement in the west was potent, and began losing its emphasis with the general decline in union membership. Although several studies on union democracy were conducted in the 1980s and 1990s, the focus shifted on the decline and possible irrelevance of unions (Stepan-Norris, 1997, p. 476). In fact, in Turkey, 11.2 percent of all workers (as defined by the labor and union laws) are members of a union, reflecting the general decline across the globe as well as the strong de-unionization process initiated with the 1980 coup d'etat.[12] I emphasize that the concept of union renewal and its relationship with democracy is vital in the argument for greater union democracy, regardless of the waning strength of the labor movement. It has been asserted that the engine of labor renewal is the creation of a movement for democratic participation by union members (Eisenscher, 1999, p. 228). Studies supporting such claims which have analyzed public opinion polls have indicated that low union membership density is, in certain cases, an outcome of workers having concerns about (un)democratic processes

[11] The unionized workforce of Sweden (83%) and Germany (33%) are two of the exceptions proving that unionism is not obsolete (Tuncay and Kutsal, 2015, p. 83).
[12] The calculation has been done in accordance with the Ministry of Labor and Social Security Statistics of July 2015, as indicated in the bibliography.

in unions.[13] The majority of scholars of unionism have claimed that in general, when members are or feel they are to be the part of democratic processes, they are also more likely vigorously to implement policies or decisions taken, such as strikes. Democracy strengthens the sense of commitment to the union and helps mobilize member support (Strauss, 2000, p. 211). "Having a choice is of great symbolic value and considerably increases the members' identification with their union" (ibid.). Thus, scholars focusing on possibilities for union renewal place emphasis on greater democratic participation by union members (Hurd, 2000). Focusing on the context of Turkish unionism, Dereli (1977) argues that the combined effects of traditional conservatism, lack of class consciousness and self-help, under-developed state of industries, the tradition of centralism, authoritarian mentality, and related behavior patterns of employers versus unions and of union leaders versus the rank and file members hinder the development of Turkish unionism in general. Interestingly enough, her study asserts that all of these features of the Turkish context are arguably also the direct or indirect socio-cultural and economic factors that have prevented the development of internal democracies in unions. Simply put, the progress of unionism and union democracy is interlinked.

In sum, even though there is not concrete evidence to conclude that highly democratic unions perform better than their oligarchic counterparts in terms of effectiveness, I argue that the intrinsic value of democracy is essential for the effective role of unions as civil society agents, and its advancement a prerequisite for the survival of Turkish unionism and its renewal in the twenty-first century.

[13] Eaton (2006), for instance, examines a Canadian national public opinion poll study (CLC, 2003), stating that the top reason cited by 69 percent of non-union workers for not wanting to join a union is that "members have no say in how the union operates".

Research Design and Methodology

Studies from the early twentieth century onwards prove that there is no fixed set of variables to determine and measure the level of union democracy that is valid for all cases and contexts. Furthermore, external and environmental features such as the socio-cultural, economic, and political background of the labor movement, the development of unionism vis-à-vis industrialism, ideological differences, and the legalistic frameworks of various contexts yield a wide range of features and experiences that are only mildly similar if not altogether different from their counterparts. I agree with Cook (1963) that democracy cannot be measured by any single element but must be viewed as a complex system of practices and values. Democracy is multi-dimensional, and therefore no systematic way can be offered to arrive at a general combined measure of the degree of overall democracy, not to mention certain apparent incompatibilities between some of its elements (Edelstein and Warner, 1979, p. 30).[14] I find it fruitless to attempt to determine a fixed set of variables to measure union democracy *sub specie aeternitatis* [from the viewpoint of the eternal].

This does not mean, however, that it is altogether impossible to come up with certain features essential for union democracy. It should be clarified that while there are conflicting groups of scholars of unionism in terms of their views on how democracy should be regarded and handled, many advocates of union democracy consider it a procedural matter that should be derived directly from public democratic models of government, therefore proposing theories that accommodate a system of checks and balances between the functional branches of government (Cook, 1963; Dereli, 1977;

[14] For example, rights of minorities versus will of the majority.

Edelstein and Warner, 1979; Şahlanan, 1980). In its most fundamental sense, Robert Dahl's theory of polyarchy suggests the basic elements for democracy as being a high level of enfranchisement, one person one vote, and contested elections for the legislature and important executive offices (Levi et al., 2009, p. 205). To secure such requirements, formal measures through laws and union statutes are needed. Democratic rules may not always produce effective political opposition, but "those who cite absences of the latter in nominally democratic unions often neglect the pitfalls, or structural-procedural inadequacies, in the rules themselves" (Edelstein and Warner, 1979, p. 6).

Many scholars have approached union democracy from such structural/procedural perspectives, focusing on the formal structure of an organization, the powers of the top leadership, as well as civil and political rights guaranteed to individual and minority members in union statutes (Stepan-Norris, 1997, p. 476). Similarly, in the Turkish union literature, constitutional (state) provisions and labor/union laws were primary issues of focus (Şahlanan, 1980; Deren-Yıldırım, 2001). From such general principles on internal and external rules, specific issues have been put forth extensively. Slichter (1947), for instance, argues that in addition to pluralist political criteria such as voting based on equality and fairness, the resolution of disputes by separate and independent organs, and the separation of policy-making and execution organs, union-specific criteria should also be upheld: the guarantee of open membership regardless of race, religion and political orientation, transparency on the union's finances, pension provisions for the retired leaders, and compulsory retirement ages in order to secure a change of leadership with younger candidates are among such measures. Summers (2000, p. 9) provided an

"essentials" list: access to information about union affairs and finances; freedom to express views concerning union policies and conduct of union officers without fear of reprisal; ability to communicate those views within the union and freedom to organize with others to promote these views; the right to a fair hearing in union tribunals, and so forth. "Each aspect of democracy can be achieved to a different degree and there is probably no way to characterize the overall degree of democracy except on the basis of crude judgement. However, these aspects of democracy are probably to some extent mutually interdependent and supporting" (Edelstein and Warner, 1979, p. 30).

In a similar sense, but from a negative perspective, it has been argued that even though it is no simple task to make a list of each principle of democracy in our contemporary societies and their respective organizations, it is still possible to point out certain fundamental and indispensable features, simply because a consensus may be reached that when these essentials are disregarded, democracy suffers greatly or dies altogether. Within this approach, certain union studies in Turkey emphasized principles of collective rule, equality, and systems of elections, especially the formation of union branches, delegates, and the frequency of their periodic renewal (Dereli, 1977; Şahlanan, 1980; Deren-Yıldırım, 2001). These will be elaborated extensively in the study.

Nevertheless, having such formal guarantees of democratic conduct have seldom prevented oligarchic practices in unionism. Formal rules, rights, and procedures are essential, but we vividly know that most of the time these are not enough. More often than not, we come across comments in a union that they too have democracy, but "everyone knows who the boss is!" (Stepan-Norris and Zeitlin, 1995, p. 832). Such

common experiences have prompted several scholars of unionism to adopt participatory/behavioral perspectives, in which active membership involvement in decision-making and the actual existence and effectiveness of organized opposition in unions are seen as primary sources of focus for democratic conduct. The amount of contention in union elections provides one of the basic variables to measure democratic conduct in these approaches (Stepan-Norris, 1997), as the closeness of the electoral competition indicates the state of opposition. General (Strauss, 2000) and comparative studies on American and British unions (Edelstein and Warner, 1979) have focused on such variables.

These two approaches yield two main categories of variables to determine the level of union democracy in its most elementary sense: firstly, the nature of the statutes of the union and the national legislation the statutes are embedded in (structural/procedural); secondly, the amount of contention and the extent of incumbent officers' defeat in union elections (participatory/behavioral). Edelstein and Warner's study, which will be elaborated in the next chapter, shows important results examining the relationship between such measures, claiming that these two categories are highly related in the sense that formal rules may indeed encourage autonomous subdivisions and therefore contribute to internal democracy.

This study will primarily focus on examining the current and previous Turkish constitutions and union laws (external institutions), and statutes and other regulations of various unions (internal institutions) from each major union confederation to provide a structural/procedural understanding based on the theories mentioned above. Furthermore, although the study's main units of analysis are the sources of internal and

external formal institutions of union democracy, the study will also provide a basic analysis of the degree of contention in union elections to elaborate participatory/behavioral outcomes, which has not previously been done comprehensively in relation to Turkish unions. I will attempt to establish a relationship between these two sets of variables in the light of past hypotheses advanced by theorists of union democracy. Whether Turkish labor laws support or hinder union democracy will also be discussed under each related issue in a theoretical and practical context.

It shall be noted that there are certain limitations to the study. As mentioned before, even though union democracy is influenced in several indirect ways that are of contextual and external nature, this study focuses on the direct dynamics of union organization and decision-making in terms of internal democratic conduct. Empirical features of specific cases under which candidates for leadership emerge, the informal operation of electoral processes, the perceptions of rank and file members and officials on opposition, leadership contention, and on the decision-making processes have not been analysed through deep interviews or polls within the study. Although these features are essential for a conclusive analysis and the establishment of a grand theory of union democracy in Turkey, such studies in the literature mostly neglect the determinative aspects of both unionism as a system in which democratic rules are shaped and molded, and the rules provided by the trade unions themselves, which generally reflect the democratic climate as well as behavior patterns inside the organization. Union democracy, as indicated in several studies examined in the literature review in the first chapter, can be elaborated through case studies that provide certain variables for the success or failure of democracy inside unions. Moreover, comparative studies based on

specific and dynamic processes of decision-making (i.e., central and branch level general-assembly operations, decisions on strikes and workplace related issues) and in-depth analyses of grass-root activism deserve equal attention, but are beyond the scope of this study. While this study is more comprehensive on a procedural and structural basis and therefore sustaining a broader perspective, the literature on the post-1982 Turkish context is limited to a great degree on the issues of formal organizational features derived from the combined analyses of both external rules of unionism in the country and internal rules based on the regulations of specific unions. The study aims to fill this gap in the literature, and by identifying certain formal areas and issues through which democratic conduct tends to suffer or completely disappear, gives new impetus for the elaboration of empirical comparative and case studies based on dynamic features of decision-making and rank and file behavior as well as perceptions. It is argued that much current union organization continues to be relatively independent of context, and agreed that the effects of context are transmitted largely through the influence on union organization (Edelstein and Warner, 1979, p. 54), which is the concern of this study in the first order. In this study, general sociological factors and more specifically external dynamics such as the nature of unions' relationships with employers, political parties, and the government, while greatly relevant to Turkish union democracy, are only partially discussed when directly related to internal union democracy, and are otherwise omitted deliberately. A method to explain behavioral patterns of union members is through socio-cultural qualities and the perceptions of the workers that may be analyzed through polls and interviews, as has been done in the Turkish context by the pioneering comprehensive study of Dereli (1977) and more recently by Demirdizen and Lordoğlu

(2013). Instead, I emphasize the importance of legislation and other procedural regulations that shape the system of unionism as direct determinants for democratic conduct. Formal rights, freedoms, organizational structure, and electoral systems and related procedures are as important for democracy in unions as they are for democracy in public government and political parties. Therefore, I examine the formal features of both internal and external rules of organizational structure and the basic behavioral patterns that shape union democracy.

The factors that are deemed external which are taken into account in this study are the Turkish constitutions and laws, past and present. As explained in the following chapters, since Michels' theory of the iron law of oligarchy (1915), pioneering studies of union democracy have focused mostly on the internal dynamics of organizations. This may perhaps be the most appropriate way of understanding the democracy phenomenon in its respective contexts. Most of these studies have been carried out in advanced western democracies that have witnessed the earliest socialist movements and their organizing processes. It is observed that many of these unions are strong, autonomous bodies in relation to their higher organizations, the state and political parties.[15] While certain laws have undoubtedly played an important role in shaping future dynamics of unions in some of those contexts,[16] the process of social organizing in these societies has been developed mainly through the initiatives of the labor organizations themselves instead

[15] Edelstein and Warner's (1979) study concludes on this aspect of British and American unions (p. 26).
[16] Wagner Act (1935), Taft-Hartley Act (1947) and Landrum-Griffin Act (1959) are important examples on how unionism and union democracy have been improved in the twentieth century United States through the force of law by regulating internal union conduct in parallel with American political elections (Summers, 2000; Eaton, 2006).

of direct state action through legalistic measures.[17] Several countries (e.g., France, Belgium, Germany, Sweden, Switzerland, and Israel) do not even have laws that specifically regulate unions. Laws related to unionism in these contexts are shaped by general organizational provisions or jurisdiction of court rulings (Tuncay and Kutsal, 2015, p. 12). One of the best examples of this is the Canadian system of unionism, which is much less regulated by the state in comparison to the United States and the United Kingdom. In that context, union elections, administration, internal discipline, and freedoms of speech and dissent are matters left to the self-regulation of unions through their constitutions [statutes] (Lynk, 2000, p. 38; Eaton, 2006, p. 202). Even though the forms of regulation in advanced western contexts are not homogenous, it is important to clarify that the life of industry and unionism in Turkey is highly regulated through legal forms compared to these western examples.[18] Labor laws and union laws in Turkey, echoing the casuistic properties of the Turkish Constitution, have been long, heavily detailed texts with procedures and specific forms on how unions obtain certain rights such as collective bargaining agreements and its processes, elections, the acquisition and termination of union membership, etc. for the last five decades. Within this study it is observed that the Turkish constitutions, laws, and related state regulations have been directly and indirectly defining the organization of Turkish unions through numerous rules of both vague and precise nature. These will be elaborated in detail as

[17] Although several scholars have championed union democracy regulations in the United States, it should also be noted that these regulations have been found to be ineffectual and counter-productive in certain studies whose authors suggest moving to a system where the law is indifferent to the form of union administration by deregulating union democracy (Estreicher, 2000).

[18] State control over the unionization process through the direct action of governments and political parties (by making laws and by various other means) has been a palpable feature of Turkish unionism that will be elaborated in Chapter 2.

much as the internal rules (statutes and other regulations) of Turkish unions in order to present a comprehensive structural/procedural case on union democracy.

At the time of this dissertation's preparation, Turkey has gone through a fundamental series of changes in regard to its general legal framework of unionism. At the end of 2012, a new law of unions and collective labor agreements[19] was ratified by the Turkish parliament, in which legal provisions for unions were altered drastically in several respects. The new law has already been amended in 2014 and, even though the effects of all these changes on union democracy may not be fully elaborated in this study, the detailed comparison of the new laws with the older versions and the evaluation of the nature of this change process with its aims and justifications will shed light on the future of unionism and democracy in the upcoming new period of industrial relations in Turkey.

Overview of the Study

The first chapter (Theories of Union Democracy: From Iron to Elastic Laws) is a review of the relevant literature on union democracy built on my premises of organizational features concerning union democracy as well as other perspectives on the subject. The theory of iron law of oligarchy (Michels, 1915) and the studies by Dereli (1977), Lipset, Trow and Coleman (1977), Edelstein and Warner (1979), Şahlanan (1980), and Stepan-Norris and Zeitlin (1996, 2003) are elaborated. The post-1982 Turkish union literature and the role of law in promoting union democracy are also discussed.

[19] Trade Unions and Collective Labor Agreements Act No. 6356.

In the second chapter (Historical Development, Sources and Structure of Turkish Unionism and Democracy), after an examination of the legal and structural history of Turkish unionism, sources of union legislation on democratic administration in the Turkish legal system (current and previous constitution provisions on unions and democracy, laws on unions, the Civil Code, the Associations Act and its relationship with union laws) and the primary features of Turkish union organizational structure that basically set the boundaries for the union democratic environment are identified and explained.

In the third chapter (Union Membership: Individual Freedoms, Rights and Their Limitations), the issues of union membership (the procedures on the acquisition and termination of membership by expulsion and resignation) are thoroughly examined in order to determine the democratic qualities of these rules. The related analyses are done through the evaluation of all structural/procedural sources (constitution, law and statutes of each sample union). While doing so, the membership dues system (check-off) and special conditions of unionism that are peculiar to Turkey (e.g., authorization barrages, industry-based unionization) are elaborated in order to evaluate union membership and its relationship with internal union democracy. All legal issues in the third and the fourth chapters are discussed comparatively through the analyses of past and present provisions.

Chapter Four (Union Organs: A Dysfunctional Formal Separation of Powers) thoroughly examines the formation of union organs (general assembly, administrative board, board of auditors, disciplinary board, and other organs established by union

statutes) in terms of union democracy, since the functions and powers of each organ, as well as its operational procedures, are crucial for democratic conduct.

In the fifth chapter (The Dilemmas of Delegation and Representation in Union Administration), systems of delegation (on both union and union branch levels) and elections are elaborated. A relationship between unions' formal rules and the amount of contention in elections that I have obtained from sample unions and confederations will be sought in the light of past hypotheses advanced in the union democracy literature. How the power structure of unions, the role of the shop steward in the workplace, and the double-delegation phenomenon affect union democracy will also be clarified.

Finally, in the conclusion, I present an overall evaluation and discussion of the study and identify major external and internal issues that are problematic in the Turkish context of unionism, together with possible suggestions to improve union democracy in Turkey structurally and procedurally. Whether Turkish labor laws and statutes support or hinder union democracy will also be discussed in theory and practice.

Notes on Data Sources

Although the legal terminology and translation of the constitutions, laws, statutes and regulations in the study are conducted first-hand in reference to the legal terminology dictionaries specified in the bibliography, I have also examined and partially used the English translations in governmental and ILO sources. It should be noted that the

translation of the current Union Act No. 6356 in these sources has several mistakes, which will be indicated in relation to each provision the study elaborates.[20]

The statutes of each union in the study have been collected through the sources of the Ministry of Labor and Social Security's Labor Head Office. What has been a daunting task is the collection of electoral data and regulations on delegates and representatives of Turkish unions, since there is no central location to find them. I originally attempted to contact unions informally to obtain these documents and data without much success. Consequently, I sent formal letters from the department via registered postal service (by which the receiving party's pick-up documentation is provided together with the name and authorized signature of the receiver) and requested data from the major union confederations and the select group of unions in the sampling of the results of their latest three periods of presidential elections. Each union's and confederation's statutes and regulations of delegates and representative elections and/or appointments (in the case that they exist separately from the statutes) were also requested and examined for a structural and procedural analysis. The postal service provided me with documentation of all of the sample unions' correspondence officers' names and authorized signatures for picking up these letters.[21] The majority of sample unions and confederations supplied the related data by post, e-mail, or invitation to their headquarters for my direct

[20] Footnotes 98, 117, 118, 119, 125 and 131 elaborate the mistakes that cause meaning changes in the English translation of the Trade Unions and Collective Labor Agreements Act No. 6356 in ILO and governmental sources. For comparison, see:
Original text in Turkish:
http://www.mevzuat.gov.tr/Metin1.Aspx?MevzuatKod=1.5.6356&MevzuatIliski=0&sourceXmlSearch=&Tur=1&Tertip=5&No=6356
English translation:
http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/91814/106961/F2018685492/TUR91814%20Eng.pdf

[21] Except for Banksis, who replied to a second correspondence via e-mail on 21/4/2016 but did not supply the requested data.

personal examination of official documents, whereas the rest did not respond by any means, including to e-mails, following a long period of silence after the registered correspondence.

Sample unions in the study have been selected according to five criteria. First of all, as each union confederation in Turkey either claims or at least is perceived to be following certain ideological or political views, the study aims to cover all union confederations in the country in an equal manner. Such ideological differences and their various effects on internal democratic conduct have been debated in several studies examined in Chapter 1 (Lipset et al., 1977; Stepan-Norris and Zeitlin, 1995; Stepan-Norris, 1997). The possible effects of different ideologies on union democracy in Turkey are beyond the scope of this study. Therefore, the study aims to avoid an inadvertent focus on a specific ideological or political formation and its possibly special practices and experiences in relation to democracy peculiar to its orientation by a balanced selection in the union sampling. Secondly, the two largest unions in each confederation have been targeted in order to cover the highest possible membership in unions and examine the strongest and most developed unions to present the case of Turkish union democracy on the largest scale. Thirdly, by covering the largest two unions of each confederation, three unions in the metal industry have also been covered, which serves comparative purposes. The metal industry is highly representative of samples based on the hypotheses of major union democracy studies. The first reason is quantitative: the metal industry houses 16.18 percent of all workers in Turkey that are members of a union (making it the second biggest branch of activity after general affairs), as well as housing the largest

union in Turkey, Türk Metal.[22] The second reason is qualitative: it is a branch of activity that is formed by a proficient workforce.[23] According to democratic theories discussed in the first chapter, higher skilled and paid workers' unions, where incomes and security are high and where the status gap between the leaders and members is not great, tend to succeed more in terms of democracy (Stepan-Norris, 1997, p. 479). Fourthly, the smallest unions from each three confederations that are large enough to possess the right to make collective labor agreements (by passing the recently adjusted one percent margin of the authorization barrage)[24] have been targeted. Several studies of unionism (Michels, 1915; Dereli, 1977, p. 42; Lipset et al., 1977) which I will elaborate in the following chapters assert that smaller union organizations are more inclined toward union democracy where direct participation is possible compared to bigger, bureaucratized unions and their higher organizations. Moreover, the majority of these small unions operate in skilled industries, as detailed in the next section, which further supports democratic conduct as indicated above.

Lastly, independent unions (unions that are not members of any confederation) are added into the sampling for evaluation. According to the statistics, only two of the independent unions possess the right to collective labor agreements and I have selected the slightly bigger one operating in a branch of activity other than those covered by the

[22] Public servants' unions which are bound by special rules (e.g., absence of the right to strike, mandatory arbitration) are disregarded in this calculation as well as in the statistics of the Ministry of Labor and Social Security under Union Act No. 6356.

[23] Statistics indicate that the majority of workers in the metal branch of activity are skilled workers, foremen, engineers, etc. According to a metal industry report of the Ministry's labor inspection board, in the inspected workplaces, 58 percent of the workers are qualified as such (December 2011 Report, p. 33). Skilled labor is significantly lower in most branches of activity, especially among the other large branches.

[24] Not every union in Turkey has the legal right to make collective labor agreements. In fact, most of the existing unions cannot fulfill the authorization requirements in the current context. This will be elaborated extensively in subsection 2.3.3.

other samples. The other union confederations (Tüm-İş and Aksiyon-İş) are disregarded in the study as none of their member unions possesses a significant number of members (a total number of 13 member unions, of which none pass the authorization barrage, with a total number of 27,501 individual members) and they are therefore statistically marginal to the study.

The reason that I have adjusted the sampling around the authorization barrage is that unions which do not fulfill the authorization prerequisites are prohibited from conducting collective labor agreements in the Turkish legal context (Act No. 6356 Art. 41), an issue that shapes the contemporary system of unionism in Turkey and indirectly affects union democracy in several respects which are to be examined throughout the study. In addition, the right to strike is provided only on the basis of disputes on each specific collective labor agreement process (Art. 58/2). In this regard, unions which do not pass the authorization barrages basically lose two basic functions of unionism, making them somewhat identical to workers' solidarity associations in terms of their operational capabilities. Considering them as less than fully functional unions *per se* under formal organizational means, I have intentionally disregarded them in the sampling.

Sample Coverage of the Study[25]

The list of unions yielded by these criteria cover three confederations and ten trade unions from seven (out of twenty) different branches of activity. Consequently, 35.35 percent of the total unionized workforce in Turkey is covered by the study.

Union confederations, number of members, union membership coverage:

DİSK: 20 member unions covering 143,233 workers

HAK-İŞ: 20 member unions covering 385,065 workers

TÜRK-İŞ: 33 member unions covering 842,322 workers

Union, member quantity, branch of activity, confederation:

BANKSİS: 8,816; banking, finance and insurance; independent

BİRLEŞİK METAL-İŞ: 31,066; Metal; DİSK

ÇELİK-İŞ: 32,192; metal; HAK-İŞ

GENEL-İŞ: 63,154; general affairs; DİSK

GÜVENLİK-SEN: 2,873; defense and security; DİSK

HİZMET-İŞ: 139,553; general affairs; HAK-İŞ

[25] All statistics of workers and union and confederation membership in the study are derived from the 2015 July Statistics of the General Directorate of Labor's Union Membership and Statistics Bureau Presidency, Turkish Ministry of Labor and Social Security. Unions and confederations written in *italicized* fonts have not responded to requests for electoral results of their presidential elections and inner regulations apart from those in their statutes on delegates and workplace union representatives.

ÖZ TOPRAK-İŞ: 1,631; cement, clay and glass; HAK-İŞ

TES-İŞ: 58,706; energy; TÜRK-İŞ

TGS: 1,016; printed and published materials and journalism; TÜRK-İŞ

TÜRK METAL: 166,250; metal; TÜRK-İŞ

1. Total number of unions in Turkey: 162

2. Total number of workers in Turkey[26]: 12,744,685

3. Total number of union members in Turkey: 1,429,056 (11.21% of **2**)

4. Total number of union members covered by the study: 505,257 (35.35% of **3**)

[26] Excluding informal economy and those not formally qualified as workers under labor and union laws.

CHAPTER I

THEORIES OF UNION DEMOCRACY:

FROM IRON TO ELASTIC LAWS

In this chapter, the literature on how unions are governed and the factors that support and hinder union democracy in general and in the Turkish context will be reviewed and discussed in a theoretical framework.

Although it is also possible to elaborate each aspect of union democracy separately in accordance with the contributions in the literature instead of examining each major study one by one chronologically, the contexts of the pioneering studies are vital for a comprehensive understanding of how the related theories have been developed. This way, the review also constitutes a continuous debate on union democracy, its difficulties, dilemmas, and the factors that contributed to its success in certain contexts. It would not be an over-simplification to say that the study by Lipset et al. is a dialectic extension of the theory of Michels, as the study of Edelstein and Warner is of Lipset et al., and so forth. Therefore, in order to fully realize the evolution of the theories, the context and scope of each of these studies will be discussed individually.

1/A. Overview of the General Literature

Pessimism regarding the possibility of strong democracies among unions has its theoretical roots in the study *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy* by Robert Michels, published for the first time in Germany in 1911. Michels focused on the nature of leadership in European socialist

parties and labor organizations of the time. The main arguments of this study have more than just historical significance: it is commonly acknowledged that debate on union administration has more often than not been through empirical studies testing Michels' hypotheses of tendencies to oligarchy in labor organizations (Eaton, 2006; Levi et al., 2009). Therefore, the hypotheses of Michels will be examined extensively. It should be emphasized that what Michels claimed as an iron law of oligarchy is still an ongoing concern of virtually all studies on union democracy, simply because it is difficult, if not altogether impossible, to deviate from its essential arguments when we examine any number of unions or their higher organizations.

As unions in Europe and America grew both in number and size during the 1940s and 1950s, more and more scholars sought to determine if unions were internally democratic and therefore representative of the workers' views and concerns or if they were oligarchic and reflected the interests of top union officials. Seidman (1958), Summers (1958), Tannenbaum and Kahn (1958), Cook (1963), and Lipset, Trow and Coleman (1977) are among the major contributors in this era. I will examine the study of Lipset et al. that focuses on an exceptionally democratic American union (ITU), which presents a comprehensive understanding of the factors that shape the democratic climate and the role of secondary associations in unions in terms of democratic practice.

Edelstein and Warner (1979), in their study of comparative union democracy, emphasized internal and formal organizational features for the differences of democratic quality in British and American unions, and claimed to have shown surprisingly strong empirical relationships between these and the effectiveness of opposition. They concluded their study convinced that the structure of a formal organization may

contribute even more to democratic decision-making than they were able to show in their studies (ibid., p. 340). I will examine their analyses extensively, and should note that my research and methodology are highly influenced by this study.

Stepan-Norris (1997, 1998), and together with Zeitlin (1995, 1996, 2003), made several studies of union democracy, comparing the deviant case of ITU with other unions with equally high democratic standards. Not only did they claim to discover that democracy can be sustained through completely different political and structural characteristics, but they also pointed out that such democratic unions would also defy the hegemony of capital in the sphere of production compared to authoritarian unions.

1.1 Robert Michels' Iron Law of Oligarchy: The Futility of Popular Rule in Organized Labor

The German sociologist Robert Michels' theory of the iron law of oligarchy has been an essential component in virtually every discussion on union democracy in the literature. As the old Latin dictum goes, *simplex sigillum veri* [simplicity is the seal of truth], and this theory has withstood the test of time by the simplicity of its elements forming its basic hypothesis. In Michels' words, "It is organization which gives birth to the dominion of the elected over the electors, the mandataries over the mandators, of the delegates over the delegators. Who says organization, says oligarchy" (Michels, 1915, p. 401). I will now discuss how Michels develops this theory.

Michels examines the socialist and revolutionary labor parties and the labor movement in Europe, observing that these organizations which were supposedly committed by their ideologies to the extension of democracy in all layers of society were in fact

oligarchies themselves. Even if they were bound by their own rules to enact democratic instruments of administration, leaders of virtually all labor organizations held so much power in their hands that their positions were rarely challenged. Michels claimed this to be a natural—that is, an inevitable—result of a built-in defect of organizing the masses. He was not concerned as much with conservative parties as with the socialists, since searching for greater democracy was not a priority of the conservatives' agenda, and therefore oligarchy within their organizations was not such a curious phenomenon. The study aimed to explain "the development in such parties of the very tendencies against which they have declared war" (ibid., p. 11). Accordingly, the tendency toward oligarchy is dependent: (1) upon the nature of the human individual (members and leaders); (2) upon the nature of the political struggle (social/class); and (3) upon the nature of the organization (parties/unions) (ibid., p. viii). He uses the term 'political parties' in a highly comprehensive manner, covering a variety of mass organizations, with special emphasis on trade unions. Therefore, while he focuses on socialist parties in his analysis, as well as relying heavily on union experiences across Europe, his studies have later been applied to all types of labor organization (Eaton, 2006, p. 203).

The theory of the iron law of oligarchy asserts that those who come to power as leaders in mass organizations through elections :(1) are separated from their electorates by the administrative processes of bureaucratization and professionalization; (2) use the power derived from these processes to consolidate their control over the whole; and (3) due to a lack of meaningful opposition and checks as a result of psychological and intellectual factors such as the incompetence of the rank and file members, are able to act according to their own interests.

This oligarchy debate within socialist organizations was not altogether new. It has been argued that Marx and Engels also viewed oligarchy as a phase of the early stages in the political emergence of the working class, but they assumed that workers would come to control their institutions as soon as large numbers of them acquired class consciousness and political sophistication. "Clique domination of the socialist groups could not survive when workers really understood the facts of political life" (Lipset et al., 1977, p. 6). The difference in Michels' perspective is more than plain pessimism: oligarchy within the democratic socialist movement was significant because it was an unintended consequence of organization (ibid., p. 5). Simply put, "democracy leads to oligarchy, and necessarily contains an oligarchical nucleus" (Michels, 1915, p. viii).

In the theory, the primary factor that paves the way to oligarchy is the increasing complexity of administrative practices and divisions of labor that are naturally demanded by the growth of the organization modeled on a democracy through delegation (representative democracy), which in turn widens the gap between the leaders and the led in terms of power and knowledge of union affairs. Accordingly, the process of organizing typically follows a common path. When the organization is first founded, there is certainly no intention on behalf of the masses to end up as such. As direct democracy is not practically feasible for running an efficient mass organization, a model of representative democracy is adopted. "At the outset, the attempt is made to depart as little as possible from pure democracy by subordinating the delegates altogether to the will of the mass, by tying them hand and foot" (ibid., p. 28). Michels puts forth examples of this from the early days of Italian agricultural workers' movements and the infancy of the English labor movement, in which the delegates were

either appointed in rotation from among all the members, or were chosen by lot. Gradually, as the delegates' duties become more complicated, personal abilities based on technical information, knowledge of affairs, and experience become a necessity for the effective operation of the organization.

Thus, Michels observes that a tendency to shorten and stereotype the process of administration which creates powerful leaders arises—"a process which has hitherto developed by the natural course of events" (ibid., p. 28). From then on, the leaders, who were at first no more than the executive organs of the collective will emancipate themselves from the mass and become independent of its control (ibid., p. 32). As the size and strength of the organization grows, so does the complexity of the administration and bureaucracy, separating the leaders from the rank and file further. The negative correlation between bureaucratization and democratic conduct has been observed since the earlier studies of Sidney and Beatrice Webb (1902). It should be noted that the term 'bureaucracy' is used by Michels in the Weberian sense, meaning a form of organizing ruled by effective, rational, predictable, and impersonal relations (Dereli, 1977, p. 35). To conclude on the primary hypothesis, he suggests that "the increase in the power of the leaders is directly proportional with the extension of the organization [...] in the various parties and labor organizations in different countries the influence of the leaders is mainly determined (apart from racial and individual grounds) by the varying development of organization. Where organization is stronger, we find that there is a lesser degree of applied democracy" (Michels, 1915, p. 33). Michels' conclusion would be that the possibility for democracy in developed trade unions is

almost non-existent in the long run, precisely because of this basic hypothesis, regardless of the context on which this study focuses.

Michels argues that as soon as leaders secure their positions, they obtain interests that vary from those of the rank and file. "By a universally applicable social law, every organ of the collectivity, brought into existence through the need for the division of labor, creates itself, as soon as it becomes consolidated, interests peculiar to itself. The existence of these special interests involves a necessary conflict with the interests of the collectivity" (ibid., p. 389). In this process, he claims that leaders opt for less aggressive tactics in their policies in order to keep their gains and status secure. The second part of the argument has created controversy in the union literature. While it has provided a fundamental lesson and organizing principle of analysis to some (Piven and Cloward, 1979; Voss and Sherman, 2000), it also has strong skeptics (Dimick, 2009, p. 23). What is essential to my study is the former part of the argument: the professional officials attain a higher social level and their interests naturally diverge from the rank and file.

A relatively optimistic attitude toward the interests of the top union officers would be that the leaders' objectives of personal power and permanent tenure need not conflict with the needs of the members. According to Lipset et al., even though most voluntary organizations represent their members' interests in conflicts with other groups, situations may arise in which the needs and goals of the leaders, or simply the desire for peace and quiet as they remain in office, could lead them to oppose or not fight for membership objectives. "In an organization in which the members cannot vote on alternative procedures or courses of action, it is impossible to know whether a leadership decision is in fact something that the members desire" (Lipset et al., 1977, p.

8). What is important to acknowledge in both arguments is that (a) leaders have their own goals and needs and therefore interests; and (b) the two sets of interests of leaders and members may come into conflict, irrespective of forms and frequencies. Recent organizational theories bring forth Michels' argument in the same sense within a different jargon. Accordingly, all organizations pose issues of agency costs—the costs that arise when 'principals' (the members of the organization) must rely on 'agents' to effectively promote their interests. Consequently, when agents take the form of bureaucratic organizations, the opportunities to "slack" at the principal's expense increase (Estreicher, 2000, p. 248). Similarly, it is asserted in the literature that 'businesslike' conduct by the union officials that is unaccountable and unrepresentative of the ordinary member results less in a rational and efficient approach to pursuing the interests of union members, leading them to establish closer ties with employers. Consequently, they are less likely to push for contracts to the advantage of workers (Stepan-Norris and Zeitlin, 1995, p. 835).

1.1.1 Psychological and Intellectual Causes of Leadership

Michels puts forth factors he classifies as psychological and intellectual causes of leadership—a series of advantages on the side of the leaders and disadvantages on the side of the ordinary members which prompt the rank and file's loss of control over the operation of their organization. In the study, he frequently brings up the first intellectual factor that is called 'the formal and real incompetence of the masses'. Elected leaders in due time become professionals of administrative processes, therefore also attaining intellectual superiority over the common worker in several respects:

> Whilst their occupation and the needs of daily life render it impossible for the masses to attain to a profound knowledge of the social machinery, and above all of the working of the political machine, the leader of working-class origin is enabled, thanks to his new situation, to make himself intimately familiar with all the technical details of public life, and thus to increase his superiority over the rank and file (Michels, 1915, p. 82).

Michels sees this as a new class division between ex-proletarian ‘captains’ and proletarian ‘common soldiers’. Members have further difficulties in understanding the policies and the bureaucratic mechanisms of the leaders' control over communication channels in the organization. The resources, technical knowledge and competence that are acquired in matters inaccessible to the mass helps secure the leaders’ position, making them virtually indispensable. Simply put, "they are the masters of the situation” (ibid., p. 85). These factors grant so much power to the leaders that in the long run the process contradicts the basic principles of democracy:

> The leader's principal source of power is found in his indispensability [...] in flagrant contradiction with the fundamental principles of the movement, but in which the rank and file have not been able to make up their minds to draw the logical consequences of this conflict, because they feel that they cannot get along without the leader, and cannot dispense with the qualities he has acquired in virtue of the very position to which they have themselves elevated him, and because they do not see their way to find an adequate substitute (ibid., p. 86).

This conviction reflects a common phenomenon experienced in Turkish unionism throughout its history of free organizing. In addition to the qualities acquired by the office, Turkish union leaders have frequently devised various methods to eliminate potential future leaders who could develop the necessary leadership skills. In the long

run, the organization is deprived of the ability to produce contenders, making the incumbent officials indispensable.

There are several psychological factors Michels puts forth that pose further problems to democratic conduct. Apathy toward the formation and implementation of policies is frequently discussed in the study (not to mention in most of the future studies on unionism and democracy). This phenomenon was extensively discussed earlier by Tocqueville (ibid., p. 49), who argues about what all students of democracy observe, sooner or later: the members are indifferent to the affairs and seldom attend meetings in the organizations. Whether in parties or trade unions, "this human, all-too human, tendency" (ibid., p. 51) arises. Accordingly, because an electoral right exists but no electoral duty, the minority will always dictate laws for the indifferent and apathetic mass (ibid., p. 52):

> In the majority of human beings the sense of an intimate relationship between the good of the individual and the good of the collectivity is but little developed [...] The majority is really delighted to find persons who will take the trouble to look after its affairs [...] This tendency is manifest in the political parties of all countries (ibid., pp. 49–53).

Thus Michels criticizes the political gratitude of the masses towards their leaders, implying that members display their gratitude by re-electing their leaders, which secures their perpetual leadership. Combined, these psychological factors lead to a cult of veneration, a state that directly strengthens oligarchy in the organization. The veneration for the leaders is so palpable that, as an example, Michels urged making a showcase of

the German people's "trust in authority which verges on the complete absence of a critical faculty" (ibid., p. 53).

Several studies of union democracy delve further into what Michels classifies as the psychological and intellectual causes of oligarchical tendencies as they reformulate it, which will be elaborated in the following sections.

A crucial element of the iron law of oligarchy for my study is that whether it is about the superiority of the leaders, the incompetence and apathy of the members, or the cult of veneration among the masses, the factors and processes Michels takes into consideration on the transformation of democracy into oligarchy are dynamics almost completely internal to the organization itself. The greater portion of the union democracy literature developed after Michels has followed the same method of analysis.

1.2 Lipset, Trow, and Coleman's Study on ITU: A Deviant Case to Challenge the Iron Law

I will now examine Lipset, Trow, and Coleman's study, first published in 1956, on the International Typographical Union (ITU), an organization that was based on the typography printing profession which became obsolete toward the end of 1980s with the automation and computerization of the print media. The exceptional characteristic of this union was that for several decades it was run by an effective two-party system: there were two main parties contesting the election of administrative offices, an extraordinary case among union organizations. The study yielded high democratic standards in the ITU, uncommon in other trade unions across the globe. The ITU was an exemplary case deviant to Michels' iron law of oligarchy.

Influenced by the studies of Michels (1915), Lipset et al. claimed that significant and widespread democracy in unions is a rarity precisely because of the special characteristics they observed in the ITU, and they developed their hypotheses on how union democracy can be achieved through the elements peculiar to the ITU. Before we delve into these factors, it is necessary to examine the general problems of democratic organization in the unions that are discussed in the study. Following the trail of Michels' arguments on the psychological and intellectual causes of leadership, Lipset et al. (1977, pp. 9–13) offered a concise reformulation of the factors that account for the lack of democracy in unions and the reasons that opposition groups find it difficult to survive. Each of these factors is now elaborated thoroughly with their past and present critics and contributors for a comprehensive layout of the problems of democracy common to every union organization.

1) *Large-scale organizations give union officials a near monopoly of power.*

a) The process of union organization develops a hierarchical, bureaucratic structure. I have already discussed the topic in the previous section with Michels. Bureaucracy is a result of increased and necessary specialization and division of labor which is demanded by the needs of the increased size and capabilities of the organization, and makes the administration rational and responsible in its dealings with management and their subordinate units. Increased bureaucracy directly results in increased power at the top of the organization and decreased power among the rank and file members. Union top officers control the power base and the source for an organized opposition is depleted with the extension of the powers of the officers. It is a common practice that union administrative boards possess various rights and other instruments to keep local union

officials in line when their policies or positions are threatened. The monopolization of power at the top is commonly obtained by justifications based on the organization's efficiency and unity against adversaries.

b) Control over formal means of communication within the organization is in the hands of the officials, in the form of union newspapers or other channels. Michels had also posed this issue as a severe problem (Michels, 1915, pp. 130–135). Union members receive the news on union policies, actions, and other matters at hand through the viewpoint of the administration, while discontented and opposing voices, however big or small, have little opportunity to be heard. It is possible to limit information so that members only get the administration's point of view, which may obstruct the emergence of opposition. Even though methods of communication and social media have greatly improved through various means since the days of Michels and Lipset, gathering objective information on the content of specific policies and operations of the union is still problematic regardless of technological advancements. The decisions and actions of the administration go through complex channels and sometimes affect the life of ordinary members before they even know it or can react to it. The leadership may use disciplinary instruments or other informal methods to limit such activities, preventing their effective usage.

c) The administration has a complete monopoly of political skills and there is an absence of those skills among the rank and file, a case also advanced by Max Weber (1946, pp. 77–128). The ordinary member, by being elevated to leadership through elections, attains skill, knowledge, and political sophistication in time only through the actual administrative practice and experience. Most potential contenders against the

incumbent leadership, however, lack such a source of training and opportunities to possess these acquired qualities. This works against the rise of an effective opposition. While local office positions are open to anyone, incumbents who are already well-known and possess political skills due to their experience as officers have a greater chance of being favored, and therefore to win elections.

2) *The leaders want to stay in office.*

As obvious as it may sound, the motivation of leaders to keep their seats deserves further elaboration for a proper analysis of the problems produced by it and the remedies proposed to ease them to ensure democratic conduct. The social mobility of union officials and its preservation is a vital issue. As Lipset et al. argue, the leader of a large local or national union has the income and prestige of a member of the upper-middle class and therefore has a natural interest in maintaining both. In Michels' words, "for them, the loss of their positions would be a financial disaster, and in most cases it would be altogether impossible for them to return to their old way of life [...] the proletarian leader has ceased to be a manual worker, not solely in the material sense, but psychologically and economically as well" (Michels, 1915, pp. 208, 299). Lipset et al. assert that the social distance between the trade union leader's position as an official and his position as a regular worker correlatively determines his desire to retain the leadership position. Consequently, in the Turkish context, the motivation for the incumbent leadership to stay in office would be even more vital. Considering the actual welfare of the average Turkish worker and the professional official of a national union, it is safe to assume that the social distance between the two positions is comparatively greater than most examples of western unionism. Furthermore, due to leading

nationwide organizations[27] for long periods of time, union officials in Turkey have commonly and systematically established close ties with political parties as a result of the unionization structure since the early stages of unionism, which is discussed in Chapter 2 under historical sections. As a result of this relationship pattern, many union leaders upon leaving their organizations join political parties and are nominated with high chances of winning seats in parliamentary elections. It is fairly obvious that professional union leaders in Turkey have great mobility to move towards the upper classes once they have secured seats on their boards, and is a rarity to see them go back to their previous posts in the workplace.

The motives of union officials to keep their offices which are peculiar to the Turkish context will be further discussed in section 4.2 (Administrative Board).

3) *The members do not participate in union politics.*

Most union members have little concern for the routine activities of the union, which naturally results in apathy towards the union policies. There is ample data for students of internal union politics to observe that most members seldom attend union meetings unless there is some sort of crisis. Lipset et al. give a more technical and political understanding of this phenomenon than Michels' gloomier premises of intellect and psychology. Union rank and file members generally spend most of their time at work and choose to be with their families after work hours. Secondly, in general, union meetings are uninteresting, routine sessions: "the ordinary member who attends can hardly feel himself a significant participant in any decision-making process, nor does

[27] In the post-1982 era, unions in Turkey are virtually obliged to organize nationwide for reasons elaborated in the following chapter (section 2.3).

the meeting itself, as a spectacle, usually possess any interest or human drama" (Lipset et al., 1977, p. 262). Members mostly perceive the union administration processes as technical matters and therefore have less concern over them.

These factors work to the advantage of union leaders, who present a case of efficient and speedy conduct of their job when they are not hindered by the ordinary members' 'interference'. Union officials commonly argue that since the union is fighting against the employers to further the interests of the union members, internal problems of discontent would only harm that process and help the 'enemy'. Thus, factionalism cannot be tolerated because of the common goals of the workers' movement against the employers. According to a more radical version of this thesis, organized political conflict should occur only among classes, not within them. Both of these arguments were used by the communists to justify the contradiction between the one-party state and democratic values in the Soviet Union. They asserted that since the Soviet Union was surrounded by the capitalist enemy, any domestic opposition was in effect treason, and that in a one-class workers' state there was no legitimate basis for disagreement (ibid., p. 12). As a consequence, dissidents and oppositionists were faced with the probability that if they exercised their constitutional democratic rights, they may be denounced and punished for harming the organization and helping the enemy. This phenomenon is not a product peculiar to communist ideology, and has been observed in most trade unions across the globe. The use of antagonistic reasoning to suppress opposition is a part of the history of trade unionism, and Michels also observed that "in such circumstances they [the leaders] exhibit a notable fondness for arguments drawn from the military sphere. They maintain, for instance, that, if only for tactical reasons,

and in order to maintain a necessary cohesion in face of the enemy, the members of the party must never refuse to repose perfect confidence in the leaders they have freely chosen for themselves" (Michels, 1915, p. 224). Consequently, "wherever martial law prevails, the leader is omnipotent" (ibid., p. 399).

Although membership participation is shown to be relevant for democracy (Tannenbaum and Kahn, 1958; Edelstein and Warner, 1979; Strauss, 1991) and participation in union meetings should be encouraged for its improvement (Lipset et al., 1977; Dereli, 1977), high levels of participation do not necessarily indicate a high level of democracy. Lipset et al. (1977, p. 11) contend that "dictatorships also find participation useful". Furthermore, they argue that while participation in non-communist unions enhances democracy, the same patterns in communist unions indicate totalitarian control. Stepan-Norris asserts that without strong evidence detailing the ways participation is used to accomplish different goals in the two sets of unions, this line of argument is unconvincing (Stepan-Norris, 1997, p. 502). According to the electoral results analyzed in my study, the highest amounts of delegate participation in Turkish union general assemblies have taken place when there is only one candidate in administrative elections, and there has been close electoral competition in general assemblies with the lowest amount of participation (see Table 2 under subsection 5.3.2). This indicates that participation does not directly determine democratic conduct in a correlative manner.

Although the degree of impact of the factors discussed above that are inherent in every union organization may vary in each context on the issues of democracy, the identification of problematic areas that have a causal relationship with these elements is

crucial for my study. The democratic evaluation of formal organizational features in the Turkish structure of unionism shall be conducted throughout the study on the basis of how these features are arranged in order to counter the above-mentioned factors, as well as others the following studies have identified as determinants.

1.2.1 The Effects of Occupational Community (Secondary Associations) on Democracy: A Theory of Political Pluralism/Mass Society

Lipset et al. built their hypothesis on how union democracy can be realized (and is realized in the ITU) by extending the theories of political pluralism and of mass society to union organizing, which Tocqueville also saw as a necessity for a democratic system (Lipset et al., 1977, p. 105). Basically, both sets of theories argue that in a large society, if citizens cannot be a part of a variety of political groups and therefore remain as atomized individuals, those in power will have absolution in their rule.

In western societies, historical struggles of class, religion, professions, etc. against one another and against the state did not result in the domination of one group and the annihilation of the opposing groups. This prompted the development of mutual tolerance among them that paved the way for the emergence of democratic culture and rights.[28] Lipset et al. apply these theories to the realm of internal politics of private organizations, suggesting that democracy is most likely to be institutionalized in organizations whose members form organized or structured subgroups in which they

[28] For example, the enmity of Catholic and Protestant churches, which throughout bloody struggles resulted in the recognition of the fact that they could not destroy the opposite faction and a complete victory was either impossible or immensely costly. This is one of the various examples of the political struggle of interest groups that paved the way for political pluralism deemed legitimate by western democracies.

maintain a basic loyalty to the larger organization, as they constitute relatively independent and autonomous centers of power within the organization (Lipset et al., 1977, p. 15).

Most trade unions have one formal, hierarchical organization in which there are no autonomous subgroups that can serve as a base for opposition against the incumbent administration or as an alternative source for communication among the rank and file members. Therefore, members are usually unable to act collectively in dealing with their leaders (ibid., p. 77). In the case of the ITU, several institutions apart from the union's administrative body—such as sports clubs, newspapers, lodges, and veteran groups—existed. These institutions counteracted the above-mentioned factors that work against union democracy first of all by creating permanent and separate channels of communication among the members. Although the primary goals of these groups were social, they also served to increase political awareness and activity, training their members in political conduct. Thus, these organizations that formed the basis of the ITU's occupational community, together with cross relations in the workplace and union administration, including its unique two-party system, broke up the linear relationship between union rank and file members and officials which exists in most trade unions (ibid., p. 104).

According to Lipset et al., the existence of (and the consistent participation in) the ITU occupational community that held the primary basis for democratic conduct in the ITU was shaped by several factors. The special characteristics of the printing industry (technology and ownership properties; giving a higher and more ambiguous social status to the highly skilled and highly paid printing profession, with a ‘deviant work

schedule' that has shifts mainly at night), the comparatively smaller income/status gap between rank and file members and leaders, and the nature of the shop-floor organization (chapels) are among such factors. These brought printers closer to each other socially by preventing their association with people outside their occupation, both on and around the job and in their leisure time, which in turn created and maintained a vigorous community, therefore sustaining democracy.

Apart from basic constitutional (statutory) protection of the rights of political opposition, the formal organizational features of the ITU that contributed to democracy were the two-party system, in which union parties compete for administration, and the autonomy of the locals that serve as independent bases of political power. Lipset et al. argue that due to the structure of the printing industry, the chapel chairman (shop steward) in the ITU was highly autonomous compared to other unions and less vulnerable to controls from above because of the two-party system (ibid., p. 148). The turnover in administrative offices as a result of the two-party system prevented the chapel chairmen from being dominated by each administration. The political independence of the chapel that was possible by the two-party system contributed to the stability of democracy in the union, which is an example of the interdependence of elements in a functional relationship (ibid.). These formal organizational features secured a general distribution of power in the union which "makes it impossible for the incumbent leadership to destroy the opposition without destroying or seriously weakening the union" (ibid., p. 416). Similar findings were put forth in later studies (Stepan-Norris and Zeitlin, 1996, 2003). The Turkish union and branch relationship and

shop-floor organizational structure which typically reflects features opposite to the ITU will also be examined in the following sections and chapters in this regard.

It should be noted that the occupational community that is outside the formal union organizational hierarchy is the main focus of the study of the success of democracy in the ITU. It has been argued that although Lipset et al. give importance to formal organizational factors, they seemed to have little expectation that such factors would lead to a successful two-party system or significant deviations from oligarchy in trade unions (Edelstein and Warner, 1979, p. 61). The thesis of the following study, focusing on the formal factors, claims otherwise.

1.3 Edelstein and Warner's Study: A Formal Organizational Theory of Union Democracy

The study by Lipset et al. had placed emphasis on the secondary associations (occupational community) in the ITU which served as an alternative base for opposition that contributed greatly to union democracy. These secondary associations which were discussed in the study on the ITU were informal groups, and their existence a result of various factors created by the special aspects of the typography industry. Instead, Edelstein and Warner's study (1979) focuses on the formal structure of organization itself, suggesting an organization in which a formal status system and formal substructures allow or even promote a high level of competition for office in order to achieve democracy (ibid., p. 62). Autonomous sub-organization that is formally a part of the union structure is the key element of Edelstein and Warner's theory on the realization of union democracy.

The study compares large U.S. and British unions (51 American and 31 British) and the results of their periodic elections for top posts (president, secretary, etc.) between 1949 and 1966, in which British unions prove to have closer competition than U.S. unions.[29] The closeness of elections is the primary component in determining the level of union democracy in this theory, which has also influenced my methodology to examine electoral data in the analysis in the final chapter. The closeness of elections is measured by a set of basic variables. Firstly, the percentage of the votes given to the winner shows the general state of support for the leadership and for the opposition. A very high percentage would mean that the opposition is either ineffective or non-existent in practice. Secondly, the percentage of votes for the runner-up is a strong indicator of the strength of the opposition, showing how organized and successful the opposition is toward a possible change in top office. Thirdly, the number of candidates and their respective percentages of votes won would be another indicator, although unless supported by a meaningful number of votes, a high number of candidates would only marginally affect the democratic state of the union, if at all. Combined, these elements measure the closeness of votes, and together with the frequency of turnovers (defeat of incumbent officials) provide the effectiveness of opposition in the union. Analyzed in accordance with the distribution of powers in the union and the rules of the voting system, they establish the method of measuring union democracy in the study (ibid., p. 67).

[29] The average runner-up in periodic presidential elections in the U.S. received 8.5 votes per 100 received by the winner, compared to Britain's 14.4 votes. Some of the largest British unions had sustained high levels of contention for the whole period.

Although Edelstein and Warner admit that electoral competition is not the sole determinant of democratic conduct, they attribute primary importance to its measurement:

> While there is more to democracy than competition between leaders and would-be leaders, the absence of such a basic aspect of democracy has been all too obvious in probably most of the large national unions in many countries, and some would have it in all [...] Where little or no electoral opposition for top posts manifests itself in a country with democratic norms, we would ordinarily conclude that a union's organizational climate is unfavorable, if not hostile, to democracy (ibid., p. 4).

The essence of Edelstein and Warner's theory is that close elections (and therefore democracy) are most likely to result from competition among contenders of equal status, power, and reputation, which is resolved by an electorate formally subdivided into potential supporters (e.g., regions and locals) of equal electoral strength. The contenders either emerge as strong countervailing powers (in which the contestants are few and equally powerful) or randomly among numerous candidates that are equally powerless (ibid., p. 67). Judicial processes outside the administration's control are also an important means to check the power of the administration (ibid., p. ix). Inspired by this theory, my study attempts in the following chapters to identify the relationship between formal rules of both internal and external nature and the election results in Turkish unions.

Edelstein and Warner used several variables on internal rules to form classification models for the top offices and their powers and succession, namely the national general assemblies; their frequencies and delegates; administrative boards, disciplinary boards

and boards of auditors; levels of officers; geographical organization, etc. Furthermore, they have asserted that voting systems are crucial in providing operative variables because they may create several obstacles for democracy: for example, restrictive rules for nomination; a voting system which provides no representation for minorities at the national level; or a distribution of the membership which permits one or two large regions to dominate elections (ibid., p. 340).

Examining the electoral results and the internal rules of British and U.S. unions, Edelstein and Warner point out several formal factors that contribute to higher amounts of contention: the existence of intermediate levels between the top of the organization and its subunits, such as autonomous, large, and high numbers of regions or locals; a high number of elected officers of both the same rank and of lower and higher ranks in union administration; narrow status gaps between the top positions; full-time delegates who are drawn from the rank and file that are highly autonomous and independent from the national (top) organization; and voting systems not biased in favor of administrations which "ameliorate rather than exaggerate any structurally-produced inequalities" (ibid., p. 66). Accordingly, these elements exist more in British than in U.S. unions—hence the results of closer contention in higher office elections. The authors observed that the only factor they have measured favoring opposition in the United States is the greater number of levels of full-time national officers—"a variable whose meaning is somewhat contingent upon the number at each rank, and which is clouded by the special and/or inconsistent place of the American secretary-treasurer in the hierarchy" (ibid., p. 113).

The quality of the formal appeals system in regard to member protection (the possibility of suspended members appealing over the heads of the body by which they have been suspended) and the frequency of policy-making conferences or assemblies are specific features pointed out in the study that are directly linked to democracy and facilitate opposition. Other features that affect democracy indirectly include mechanisms on who elects top officers (the assembly of delegates or general membership); how well political minorities are represented at the assembly and administrative boards; what portion of administrative boards consists of regionally elected full-time officers; the accountability of the top officer to the administrative board (and vice versa); the absence of punitive clauses against factionalists in the constitution; and the protection of possibly dissident local unions against arbitrary takeovers under the direction of the top officer. These constitutional provisions are shown to support closer elections for top posts, which proves that they function as they are intended to (i.e., processing appeals fairly, representing minorities on decision-making bodies, holding the top officer accountable, etc.) (ibid., p. 30). The study also points out that the leaders' ability to discipline subsidiary organizational units and members is greater in the American case. Furthermore, although American unions have greater proportions of both national and local full-time officials and a larger staff of specialists, they wield little power in their own right. Union organization is "more complex and less hierarchical in many British unions because of the ambiguous position of workplace representatives in plants where no one union has exclusive bargaining jurisdiction" (ibid., p. 26). The existence or absence of the formal features listed above and their impact on Turkish union democracy will be discussed in the following chapters.

Although finding the British unions to be more democratic than their U.S. counterparts, Edelstein and Warner's analysis challenged the Michelsian iron law of oligarchy, concluding that an effective opposition through a high level of competition in top office elections in both countries were "found to be more frequent and successful than many observers would have thought possible in trade unions [...] The overwhelmingly closer British elections for top vacancies seem related to and explained by the more favorable organizational situation in British unions" (ibid., p. 112).

Several other studies that took electoral contention and its relationship with formal rules as their primary instrument for measuring union democracy were conducted in the decades following the work of Edelstein and Warner, providing further impetus for a more optimistic stance for union democracy compared to Michels. Stepan-Norris, for instance, concluded that "instead of an iron law, we have an elastic law: the features that act to suppress democracy do not always overwhelm those that encourage it" (Stepan-Norris, 1997, p. 502). I will now examine these studies.

1.4 Stepan-Norris and Zeitlin's Studies on UAW and CIO

Judith Stepan-Norris (1997, 1998) and Stepan-Norris and Zeitlin (1995, 1996, 2003) made several studies on union democracy that compared the highly democratic ITU with other unions of similar democratic quality. The study that compared United Automobile Workers (UAW) Local 600 with the ITU yielded entirely different structural and political characteristics despite the equally impressive level of democracy (Stepan-Norris, 1997). Stepan-Norris asserted that while union factions based on communist influenced ideology boosted union democracy, factions based on the

conservative Association of Catholic Trade Unionists suppressed it. Therefore, she proposed that factionalism's impact on democracy depends in part on the factions' ideological orientation (ibid., p. 475). However, in another study, Stepan-Norris and Zeitlin observed that contracts won by both communist and anti-communist unions in the CIO that had organized factions were far more likely to be pro-labor than were those won by unions with sporadic factions or no factions (Stepan-Norris and Zeitlin, 1995). In the related study, they theorized that an overall democratic union with democratic rules, institutionalized opposition, and active membership would sustain class solidarity and a sense of identity between the administration and the rank and file, which would result in the union's defiance of the hegemony of capital in the sphere of production. Through contingency analysis of a sample of contracts won by CIO unions between 1938 and 1955, they concluded that highly democratic unions made more pro-labor contracts than moderately democratic or oligarchical unions, consistent with their theory (ibid., p. 829). Similar to Edelstein and Warner's (1979) methodologies, Stepan-Norris measured union democracy by the level of electoral contention in top union offices (Stepan-Norris, 1997, p. 494), adopting the three basic sets of data clarified in the previous subsection to measure the closeness of elections.

In other studies, Stepan-Norris and Zeitlin (1995, 1996, 2003) examined unions of Congress of Industrial Organizations (CIO), with emphasis on the autonomy of the subgroups within their organizations that promoted union democracy. They adopted two instruments for measuring democracy within CIO unions. Firstly, civil liberties and political rights based on the constitution (statutes) of the union were examined according to four scales: personal liberties, societal liberties, the right of franchise, and

accountability. Secondly, the state of organized opposition (factions inside the union, if any) was taken into account. Combining the differences of specific insurgent political practices of CIO unions with these measures, they asserted certain patterns for the outcome of sustained democracy in unions. The unions which had insurgent practices or independent organizing processes, as well as those that were formed by amalgamation, were more democratic in terms of their constitutions and had multiple factions.

Although Stepan-Norris and Zeitlin assert that certain insurgent political practices which took place among these unions provided political variety and organizational diversity and therefore became the pillars of internal democratic conduct within CIO unions, these practices were possibly the result of secondary associations that acted as centers of opposition, as emphasized in the study of the ITU by Lipset et al. Through such subgroups, independent organizing was led by an ample pool of skilled activists who acted to protect dissent and limit executive power (ibid., 1996, pp. 10–13). As emphasized in the case of the UAW, the autonomy of shop stewards and the shop-floor was pivotal in the formation of these insurgent political practices. The decline of democracy in the UAW in its later years was observed to coincide with the loss of shop steward autonomy as a result of their incorporation into the union's bureaucratic hierarchy (Dimick, 2009, p. 30), which further reinforces the importance of local autonomy for union democracy. The role, functions, and formal status of shop stewards of Turkish unions, in accordance with their relationship with rank and file members and workplace administrators, will be examined in detail in Chapter 5.

1/B. Literature on the Turkish Context

The two primary studies that have comprehensively examined and evaluated union democracy in Turkey both belong to the pre-1982 context of unionism. Dereli (1977) and Şahlanan (1980), through different methodologies, discussed the Turkish union democracy debate in their PhD dissertations. Although Dereli also made a pilot study of quantitative analysis of polls among union members, both placed emphasis on the legalistic framework of the 1961 Constitution and the union laws that followed which shaped the structure of unionism and democracy in Turkey until the 1980 coup d'etat. More recent studies on Turkish union democracy (Duman, 1987; Saracık, 1997; Merinç, 1991; Deren-Yıldırım, 2001; Zorlutuna, 2016) have generally performed legal analyses on the basis of union laws in relation to the criteria primarily provided by the earlier studies of Dereli and Şahlanan.

1.5 Dereli's Study on Union Democracy: The Struggles of Early Free Unionism in Turkey

The pioneering study of union democracy in Turkey is B. Dereli's (1977) PhD dissertation that analyses the processes of internal union organization dynamics, collective labor agreements, and issues of leadership on political, socio-cultural, and legal terms in an interdisciplinary manner. She also presented a pilot study and an empirical analysis of polls conducted among union members, in which demographical data and the perceptions of the rank and file members were examined.

As explained in detail in the next chapter, the unionism process in Turkey had gained momentum after the legal provisions of 1963 that followed the 1961 Constitution, and

the impact of these formal measures was already considerable in the actual practice of collective bargaining and agreements, negotiations, and strikes, as well as a boost to the increase in union memberships. Dereli emphasized that such achievements in unionism did not imply an improvement in internal democracy dynamics of Turkish unions. Leaders of both local and national unions had seldom changed for more than a decade, as the internal mechanisms devised by their administrations had ensured their repeated success in elections. The frequency of the change of leadership for Dereli is a decisive component of union democracy, which she defines as the members' ability to replace administrators whose performances they do not approve with those of whom they have better expectations (Dereli, 1977, p. 16). Although this definition seems to project a limited perception of the concept, the study brings together various aspects of democratic conduct for an overall comprehensive evaluation of Turkish union democracy.

In her analysis, Dereli first of all offers a broad conception of Turkish socio-cultural qualities that affect union democracy. She asserts that the behavior adopted in the resolution of disputes is imperative in shaping the relationships between both employers and employees and the union leaders and the rank and file union members. In the Turkish experience, it has been argued that general authoritarian behavioral tendencies in the society have also been observed in these two sets of relationships (ibid., p. 94). Accordingly, authoritarian behavior stems from the common social/cultural perception that a dispute or discontent from its very beginning is already an undesirable state of affairs instead of a normal process of clash of interests that is to be solved by mutual compromise. Under authoritarian settings, disputes are often perceived as

misunderstandings instead of natural conflicts. Dereli argues that following the conceptualizations of Friedland (1961) and Berelson and Steiner (1964), she classifies the Turkish socio-cultural setting as authoritarian and consensus-oriented, in which individuals feel that once discontent between two parties of different stature is voiced out loud through an open exchange of opinions, the argument that would follow and the imposition of new conditions may wound the relationship or dissolve it altogether. People acquire this notion when dealing with their 'superiors' throughout their lives in social settings that are marked by class differences and clear-drawn roles in the society, or in militaristic cultures that demand discipline in the form of obedience to superiors. Consequently, loyalty to leaders in work life, whether inside the union or in the workplace, would be the natural state of affairs. Once discontent is voiced in such settings, arguments and demands may turn into harsh or even violent behavior. Therefore, a third (neutral) party to prevent the escalation of issues is often needed in such confrontations.

The concept of a 'consensus-oriented culture' does not exist directly under the related reference (Friedland, 1961) indicated in B. Dereli's dissertation,[30] or in the other references on authoritarian cultures in the study. T. Dereli has stated that he acquired the concept from Friedland firsthand during academic lectures and further developed it himself, both in general terms and in relation to the Turkish social, cultural, and industrial context in his dissertation for associate professorship,[31] which is reflected in B. Dereli's conceptualization. Accordingly, in Anglo-American and similar cultures,

[30] Friedland, William H., 1961. "The Institutionalization of Labor Protest in Tanganyika and Some Resultant Problems." *Sociologus*, 2(2), p. 134, cited in Dereli, 1977, p. 94.
[31] Private correspondence with Toker Dereli, 23/8/2016.

individuals from childhood learn by experience that criticizing parents, teachers, and superiors under certain norms brings reward instead of punishment. However, in consensus-oriented cultures, while problems between father and son are handled by the mother to avoid worse possible outcomes, between employers and workers they are handled by the state.[32] The reason we have commonly experienced the presence and arbitration of state authorities in matters of dispute between employers and unions in Turkey, and the frequent lack of fair and square dealings in such negotiations, according to the Derelis, rests on such socio-cultural qualities.

Consensus-oriented culture first of all affects dealings between union leaders and employers, as well as governments. When a third party (i.e., the state) is not an arbiter, the union leader, as a result of constant authoritarian and paternalist pressure, may either gravitate toward a 'middle man' role that serves the will of the employers, or, in the case of open conflict, may turn aggressive and even violent, disregarding the risk of breaking the relationship with the employers and/or their representatives. Through countless cases, both outcomes are familiar to students of unionism in Turkey. This is not peculiar to the leader-employer relationship, but is also palpable between union administrations and government agencies. As an example, this attitude is revealed in the following declaration in the earlier days of Türk-İş, the first union confederation in Turkey: "opinions that rest on evidence and ways of persuasion free of heavy criticism shall be followed [...] Plain talking, holding back from excessive behavior that verges on bigotry,

[32] Bradburn (1963) studied interpersonal relationships within formal organizations in Turkey in which managers were interviewed about their relationship with their fathers. Father-dominance, characterized by autocratic behavior, was the key element of the relationship pattern in which the managers either avoided arguments with their fathers argued in spite of the breakup of their relationship (Dereli, 1977, p. 95).

explanation of realities with a moderate language and care for mutual understanding has become our slogan in our dealings with the government".[33]

Secondly, the same phenomenon affects the relationship between union leaders and rank and file members, and therefore internal union democracy in a direct manner. As discussed by Lipset et al., the leaders who have been separated from ordinary members in time become professionalized and acquire higher status and income, which contributes to oligarchic control. Dereli argues that the consensus-oriented culture would normally cause further incentives for undemocratic conduct through authoritarian behavior. However, she also notes that the working-class origin of Turkish union leaders positively serves these relationship patterns. This aspect of unionism in Turkey has been enforced by union laws for several decades, as will be discussed further in the study.

The elaboration of socio-cultural qualities and analysis based on workers' perceptions is beyond the scope of my study. However, as I focus on the organizational features of union democracy, the relationship between authoritarian behavior inherent in the society and centralism deserves more clarification than the other cultural processes and perceptions advanced by the Derelis.[34] Dereli asserts that the centralist tradition of the Turkish state, combined with paternalist attitudes, affects the management of industrial and commercial enterprises. Accordingly, centralism prompts top administrators to avoid sharing authority with lower officers and the rank and file, and this tendency also appears in Turkish unions. The concentration of power at the top, as opposed to

[33] Türk-İş (1958, p.14) in Güngör, 1994, p. 180. Güngör argues that this speech was in line with the "above party politics" slogan of Türk-İş, which practically suggested settling for a continuation of the current social order, preventing the emergence of an independent political worker movement (ibid.). This will be elaborated in the next chapter.

[34] For more information on consensus-oriented/authoritarian cultures and their impacts on democracy, see Dereli (1977, pp. 93–101) and Dereli (1974, pp. 274–284).

decentralization of the union organization, holds direct implications for democratic conduct. Compared to western unions, bureaucratization of union administration started earlier in Turkish unions because of these cultural and traditional characteristics (ibid., p. 99). Although the causal relationship between authoritarian culture and centralism may be a matter of debate, the hierarchical character of Turkish union organizations described in Dereli's study that reflects the pre-1980 era of unionism has been preserved in our contemporary system, and is a primary concern of my study. Therefore, related problems identified by Dereli also serve as subjects to evaluate the current context of union democracy.

Before the provisions of 1963 that were made in the same libertarian spirit of the newly made 1961 Constitution, unionism had existed within severe limits in terms of its capacity to influence workers' social and economic conditions through collective bargaining, strikes, and other activities as autonomous organizations. With the changes of 1961, union democracy debate rested on how legal provisions that would follow the new constitution could be improved, as well as the formation, structure, and practices of specific unions and confederations. Consequently, Dereli's study made a detailed examination and analysis of the legal provisions and related practices, as well as the jurisprudence formed by the Court of Cassation.

Accordingly, union freedoms (individual and, to a certain extent, collective) are determinants of union democracy. Thus, the provisions on union membership in terms of its acquisition, termination, and the protection of members' rights against arbitrary expulsion and prevention of using membership rights are thoroughly examined. Provisions on the pluralist (rival) unionism principle, a matter of collective union

freedom, are also elaborated. The existence or absence of rival unionism indirectly affects union democracy. When there is no formal or practical possibility of rivalry among unions to win over the workers in a workplace, there is also no practical freedom of choice for the worker on joining a union. Joining a union would be mandatory in the case that the union functions properly while dealing with the employers, or may become a burden that needlessly damages the relationship with the employer (note the cultural perception of the 'undesirability' of such situations that has already been discussed). Members' identification with their union, in either case, would be immensely hindered, and whether the union is run by democracy or oligarchy would be a lesser concern. Dereli, examining the 1963 provisions (Union Act No.1317 Article 9), argues that rival unionism is hindered by the law (ibid., p. 103). The evolution of the related provisions is elaborated in the next chapter, and union freedoms are extensively discussed throughout Chapter 3.

1.5.1 Formation of Union Organs, Delegation and the Problems of Centralization

The foremost aspect of union democracy Dereli puts forth is the necessity of the separation of powers inside union administrations and the problems experienced in this respect in the Turkish context. The general assembly, its composition (the whole of the members or delegates and how they are formed), and meeting frequency, and the autonomy of disciplinary and auditing boards that serve as internal judicial organs, are crucial for union democracy. In the 1961 Constitution era (1961–1982), union internal judicial (disciplinary and auditory) power still lacked the necessary level of autonomy (Dereli, 1977, pp. 191–192). The legal status and powers of these organs were unclear and insufficiently provided, matters that will be examined in detail in Chapter 3 under

the related (Board of Auditors and Disciplinary Board) subsections. Dereli argues that disputes in local unions were handled properly by the national union presidencies in the earlier days of Turkish unionism, but due to the increase of control and influence of the national union on the locals/branches (a Michelsian phenomenon we have closely looked into), the administrations developed further tendencies toward bias. Therefore, it is asserted that judicial and disciplinary matters should be handled by "neutral" parties (ibid., p. 192). Dereli suggests measures be taken through the force of law and states that in case the law does not provide, independent organs of legislation, execution, and judiciary should be made compulsory by statutes if necessary, and that administrations should not have any judicial role whatsoever (ibid., p. 198). These suggestions have been met to a certain extent under the later provisions, which will be examined and discussed extensively.

The legal framework of the 1961 Constitution era allowed both delegation and direct participation of union members in union general assemblies, which also resembles the current system in several aspects, as will be discussed in Chapter 4. Dereli asserts that national (central union) elections made through delegation are not truly representative (ibid., p. 43). To overcome this, members should be directly voting for the elections of their national leaders through referenda to be conducted in the local/branch (ibid., p. 191). Moreover, in order to achieve democracy, general assemblies of local unions and union branches shall not be formed by delegation, regardless of the size of the local/branch (ibid., p. 198). Furthermore, measures should be taken to prevent administrative boards' influence on the election of delegates, in line with the verdicts of the Court of Cassation. Although it is not possible to come up with an ideal ratio, the

member/delegate proportion should be minimal in order to achieve proper representational function as argued in other major union democracy studies (ibid., p. 190; Cook, 1963, p. 228). Members and delegates should be able to have contact opportunities, and whether or not the representatives (officials and delegates) have appropriate levels of communication with the rank and file members is a direct determinant of democratic conduct (ibid., p. 190).

Under the post-1961 unionization structure, two different types of unionism co-existed: local unions that joined to form union federations (from bottom to top) and national, 'Turkey-type' unions[35] that formed their branches locally (from top to bottom). It is generally agreed that the former type of organization tends to yield more democratic results (Lipset et al., 1977; Edelstein and Warner, 1979). Concurrently, in Dereli's pilot study, the polls indicate that the decision making process in local unions that are members of union federations is more inclusive than that in union branches of national unions. National unions have more control and influence over the union branches, who have no legal identity compared to local unions (Dereli, 1977, p. 196). Since collective labor agreements in Turkey have been centralized on the basis of work branch and workplace, union branches also generally did not possess the right to collective bargaining, contracts, and financial or administrative autonomy. Dereli suggests that local unions and union branches should also have the right to bargain and make agreements (ibid., p. 193), and that other ways to strengthen locals and branches should be sought. Centralized collective labor agreements and negotiations are economically proven to be more advantageous (ibid.), but hinder internal democratic conduct, and

[35] *Türkiye tipi sendika*, a term to describe the distinct legal structure of union formation in Turkey, will be elaborated in the next chapter (section 2.3.1).

therefore a middle ground should be found. Furthermore, union branch officials could be directly appointed by the central administration, a process Dereli strongly suggested be replaced with elections (ibid., p. 199). Union laws of the post-1982 era adhered to this last suggestion, making branch organ elections mandatory by force of law.

Although the union branch system properties provide a limited measure for democratic conduct, the system is a primary concern of Turkish union democracy, as the rank and file members' connection to the central organization is essentially through the branches to which they belong. In most Turkish unions of both the 1961–1980 and the post-1982 contexts, a large majority of union members does not directly participate in decision-making mechanisms concerning the organization at a level higher than the branch general assembly. As local unions and federations do not exist in the post-1982 system of unionization, Turkish union democracy suffered in the absence of local, workplace unions due to the formal restrictions of the new system. These restrictions and their evolutionary processes will be discussed extensively in the following chapters.

1.5.2 Other Vital Leadership and Procedural Issues in the Pre-1982 Context

Dereli identified several other problematic issues in Turkish unionism and made proposals to counteract the elements that hinder democracy: new provisions on more rights for the shop stewards that will provide the transmission of power from the top to the local and also help them to become future leaders (ibid., p. 188); prevention of first degree administrators in workplaces (such as foremen) becoming shop stewards (ibid., p. 177, p. 201); narrower salary gaps between union officers and workers; compulsory retirement programs for leaders; reduction of the requirements to qualify as a union

founder; and maximum ceiling wage schemes for union managers (ibid., p. 197); the enforcement of pensions and retirement on certain conditions; the requirement of a statement of assets by union officers; the abolishment of the notary obligation to resign from membership and the abolishment of the check-off system; master agreement procedures in which local unions/union branches partially conduct collective bargaining (ibid., p. 193); and a referendum requirement for the decision to strike.

A large portion of these proposals, including issues on delegation and organs explained in the previous subsection, aims to alter legally the formal organizational features of unions in order to reinforce democratic conduct, since most of them can be ensured only through the force of law as opposed to internal union regulations. The basic problem that arises from the adoption of such methods is that most of these measures to be enforced by the law violate collective union freedom to varying degrees by limiting the unions' capacity to freely regulate their internal administration and organizational structure. Therefore, formal interventions to secure union democracy need to take into account the right to free organizing, and each related proposal needs to be balanced with collective freedom (and in certain cases, also with the principles of union protection) in order to achieve an optimal legal union organizational structure.

1.6 Union Law and Democracy: Şahlanan’s Study on the Formal Operation of Turkish Unions under Democratic Principles

While Dereli's study is more comprehensive through interdisciplinary and methodological means, Şahlanan's PhD dissertation (1980) focuses strictly on the legal features of the union democracy debate in Turkey. The reason for conducting such

studies in the Turkish context has already been explained in my introduction and in relation to the study by Dereli. Şahlanan presented a thorough analysis of the legal structure concerning unions and democracy, the previous Turkish constitution and laws, and the related jurisprudence. The study ran out of legal validity and became part of the academic legacy on unionism and democracy in the same year that the coup d'etat of 1980 immediately suspended all union activities and strikes. The years that followed were marked by the ratification of a new constitution and labor/union laws that drastically changed unionism and overall politics in Turkey.

Şahlanan observed that while autocratic tendencies in unions were in general a by-product of the bureaucratization of bigger, advanced unions in highly industrialized western countries, in Turkey, bureaucratization of unionism had not developed at such a stage of industrialization. Therefore, he shared the concerns of Dereli for the palpable tendencies to deviate from the practice of democracy inside Turkish unions. He hypothesized that the prerequisites for union democracy rested on the democratic character of the structural and procedural rules derived from the sources of legislation, asserting that problems inherent in Turkey-type unions reinforced rather than countered the factors that hindered democratic conduct in unions, as elaborated by Michels and Lipset et al. in the literature. As union organizations grow and move upward from local union levels toward the national union, federation, and confederation levels, democratic aspects of administration showed tendencies to diminish. Furthermore, as the functions and activities of the organization became more complex and technical, the members' ability to understand and know the politics inside the union and what the leaders do weakened. Therefore the Michelsian ‘incompetence of the masses’ becomes more

apparent in more developed, higher union organizations. Turkey-type unions that organize from top to bottom in a manner that restricts local (branch) autonomy aggravates these problems. The delegation instrument that is used in Turkish unionism for the election of leaders and policy-making in such cases brings various setbacks, as it deviates from direct democracy even further (Şahlanan, 1980, p. 10). Advancing the hypotheses of Lipset et al., Şahlanan asserts that the resources available to national and federation and confederation leaders are in general wider and more vast than those of local and smaller union organizations, and therefore the appeal of such higher positions gives rise to the resistance toward democratic processes by incumbent leaders, since losing their leadership position is a more costly and undesirable alternative (ibid., p. 11). While it is probable to come into contact with leaders and criticize them in local unions, it is practically much more difficult to form opposition groups or support opposition leader candidates at the national level, and especially in federations and confederations, and leaders have more and stronger means to suppress opposition. The appointment of branch administrators by the head (national) office, a common phenomenon in this period of unionism in Turkey, is highly criticized in this respect.

Şahlanan derives democratic principles from general democratic state administration theories, asserting that political regimes differ not by attributes but by degree, and that any type of social organizational regime is supposed to be taken into account by the regime of the state itself (ibid., p. 14). The basic constitutional theory for union democracy in the study is that the constitutional provisions that are aiming for democratic administration of Turkey are also the supplementary sources for the constitutional provision that explicitly states the rule of democratic conduct in unions,

and therefore these supplementary provisions should also be applied in union administration wherever applicable (ibid., p. 46). Therefore, Şahlanan examines the constitution's democratic attributes and its principles with an emphasis on the horizontal relationship of the constitutional rules with the rules over and inside unions and their higher organizations (ibid., p. 15). The functioning of unions by "democratic essentials" provided by the Turkish Constitution has introverted democratic administration implications in unions, in parallel spirit with the constitutional provisions that require democratic conduct inside political parties (ibid., p. 37). In this sense, the principle of popular sovereignty, elections and their primary procedural principles, the right of majority rule and its limits (rights of minority), principles of equality and fundamental rights and freedoms and their protection, are discussed in legal terms. In addition to the primary and supplementary constitutional sources and the law of unions, the Associations Act and the Civil Code are the other sources that internal union democracy legally rests upon. Şahlanan gives a comprehensive list of each of these provisions related to union democracy and discusses each of them individually. These will be elaborated throughout the study whenever it is necessary to clarify the context of pre-1980 structural and procedural union democracy.

In the study, the compatibility of union membership acquisition and termination procedures with democratic conduct in the Turkish laws is discussed, followed by issues related to the management and organs of unions and the mechanisms or checking them. Accordingly, in the context, there are few means of formal control (checks) of the operations of the union management which are scattered among various different laws. Control is first of all done organically, through the internal control mechanism of the

union itself (by the board of auditors and by the general assembly), or by the higher organizations of which the union is a member. The second type of control is by administrative means of the state, through the examination of the statutes during the founding of unions, the examination of the general assemblies, and of the union accounts. The third type of control is judicial: the courts' control of the statutes, the formation and election of the administrative board, control of the general assembly, and their decisions may each be annulled, which may even lead to the termination of the union. Inconsistencies with union and association laws can be based on the regulations in the statutes and on individual decisions taken by union organs themselves. All of these control types have an impact on Turkish union democracy and will be examined in the following chapters.

In the same sense as Dereli, the procedures of delegation are elaborated extensively by Şahlanan, through which he claims that the most deviation from democracy is done in the Turkish context (ibid., p. 247). He argues that general principles on delegation procedures should be enforced by the law and not left solely to statutes, asserting that delegation should be proportionate with the member quantity of a union, and unless the number passes substantial amounts, no delegation should be made at all. The notion of natural delegation, in which certain roles and positions in the union administration hierarchy automatically become delegates, should either be banned altogether or be strictly limited, making delegation possible only through elections. He asserts that general assemblies should meet more frequently than once in three years as was enforced by the law, and that the procedures on agenda setting, decisions on assembly dates, and the distribution of activity reports to members should be regulated by the law

in detail in order to supplement union democracy. Practices of disciplinary actions by the administrative board inside unions should be abolished altogether and protective measures against arbitrary disciplinary decisions should be enforced by law.

Dereli and Şahlanan identify similar legal and procedural issues as problematic for Turkish union democracy in the 1961 Constitution era, and have put forth various recommendations for the amendment and extension of the laws on labor and unions. Several MA dissertations and academic articles in the post-1982 literature (Duman, 1987; Merinç, 1991; Saracık, 1995; Deren-Yıldırım, 2001; and recently Zorlutuna, 2016, in accordance with the new laws) examine the related laws (the late Acts No. 2821 and 2822 as well as the secondary sources) in order to evaluate union democracy that is in general based on the democratic criteria indicated in these two studies. However, the examination of democratic practices of specific unions or their statutes has thus far been a relatively unexplored area in both the post-1982 era and the previous eras of Turkish unionism. A large part of the focus of my study will be the examination and elaboration of the improvements and shortcomings of the current provisions based on the new constitution and laws, in a similar methodology to that of Dereli and Şahlanan, combined with an elaboration of ten sample union statutes and their other inner regulations on delegation and representation shaped by the contemporary Turkish legal system, which differs from past Turkish studies. Moreover, electoral analysis and participation in general assembly elections are two aspects also unexplored by previous studies, which I succeeded in conducting to a degree limited by the willingness of each union in our sampling to supply related data, as explained in the introduction and last chapter under the election titles.

CHAPTER II

HISTORICAL DEVELOPMENT, SOURCES, AND STRUCTURE OF TURKISH UNIONISM AND DEMOCRACY

As observed in the literature review of Chapter 1, sustained union democracy is a difficult achievement that requires several favorable formal and informal conditions in various respects. The participatory abilities of rank and file members and the effectiveness of electoral opposition may be substantially hindered by various organizational obstacles. Thus, a truly democratic union should possess a combination of well-considered organizational features. In the Turkish context, these features are shaped formally by the external (constitution, laws, and regulations) and internal (statutes and inner regulations) rules. This chapter first of all provides a brief history of Turkish unionism, presented through the events that have shaped the legal and structural environment, and then identifies and elaborates the sources of union legislation in the Turkish context. The current general provisions of the system forming the union democracy environment are explained. Finally, the organizational structure of Turkish unionism is examined in order to discuss the system of unionization provided by the Turkish constitution and related labor and union laws. These external rules, which are peculiar to Turkey, define the space in which all unions and their higher organizations are bound to exist, the extent of their powers, and their limitations.

2.1 A Concise Legal and Structural History of Turkish Unionism

Union democracy cannot exist unaccompanied and outside the borders of general unionization processes in the society. Legal and procedural developments in respect of union democracy have to be evaluated by taking into account the overall unionization process and the existence and rights of unions as social organizations (collective union freedom)[36] that have waxed and waned in each era of unionism in Turkey, for union democracy is a subject for unions that have the actual capacity (rights, liberties, and other qualities that create practical power) to function to the benefit of their members. Therefore, in the following sections, the right to unionize, the right to strike, collective labor agreements, the definition of the term 'worker', and other issues that determine unions' coverage and operational abilities in the Turkish structure are historically discussed, along with factors that directly affect union democracy, for a comprehensive understanding of the related processes. The development of unionism and union democracy in Turkey in respect of laborers' struggles for democratic rights, both internal and external to their organizing, are elaborated in order to understand the structural, legal, and procedural evolution of union democracy. It should be noted that instead of providing an overall short history of trade unions in Turkey, only the specific events that mark changes in the structure of unionism and union democracy are discussed: therefore some of the chronological events detailed here may not have a primary cause and effect relationship in the direct sense. As the scope of this study excludes trade union and political party relations in respect of the development of union democracy, so the power struggles of political parties and ideologies through their

[36] Tunçomağ (1985, pp. 14–15) conceptualized union freedoms as 'collective union freedoms' and 'individual union freedoms'. Individual union freedoms are elaborated extensively in Chapter 3.

influence or control over unions in the history of the Turkish labor movement—that deserve the utmost attention in studies on other aspects of Turkish unionism—are only discussed in broad terms and only when they are directly related to the issues of union democracy.

2.1.1 Late Ottoman Era: The First Sparkles of Organized Labor

Compared to the history of European industrialization and labor's long unionism struggle that dates back to the mid-seventeenth century, the Turkish experience of the organized labor movement is relatively short. Until the end of the nineteenth century, the sole organizations of the Ottoman work life were the guilds (Dereli, 1977, p. 47). The earliest event that marks the beginning of workers' organized movements in Turkish history is the founding of the Worker Fellowship Association (Ameleperver Cemiyeti) in 1871, which was more of a fraternity and solidarity association than a union in the modern sense.[37] The first strikes that followed the initial worker movements were carried out among the industries that produced military goods and services in 1872. These strikes, which took place in shipyard, railroad, post, and telegraph services and in the tobacco companies in Rumeli, came to a halt in 1880 with the oppressive regime marking the end of *I. Meşrutiyet* (the first period of the constitutional monarchy regime in the Ottoman Empire) (Baydar, 1998b, p. 5). In the period between 1872 and 1908, there was a clear momentum in workers' movements, in which the organization commonly addressed as the first Turkish union, the Ottoman Workers' Association

[37] Güzel (1996, p. 27, fn. 14), contrary to some authors of the labor literature, asserts that *Ameleperver Cemiyeti* is not a workers' organization but a charity association founded by Freemasons. In any case, even if not founded directly by workers, such associations have served to the benefit of the workers, making them institutions of minor importance in the organized worker movement.

(*Osmanlı Amele Cemiyeti*), was founded in 1895 by Tophane workers (Güzel, 1996, p. 27; Sur, 2011, p. 12). The Ottoman Workers' Association was founded while *Kanun-i Esasi* of 1876 (the first set of constitutional laws that guaranteed fundamental rights and freedoms comprehensively in the Ottoman society) was suspended, and with its semi-union and political character, aimed to democratize the Ottoman State as well as the labor movement, which resulted in its termination in the year following its foundation (Işık, 1995, p. 20). In those three decades, there had been a total of 23 strikes that were mostly conducted by public servants, the first by Beyoğlu telegraph workers. It is commonly acknowledged that all of these strikes emerged spontaneously among the rank and file workers instead of any organized initiative (Makal, 1997, pp. 260–261). Even under the despotic regime marked with espionage and other pressures between 1872 and 1908, a total of 50 strikes were organized (Güzel, 1996, p. 27).

By 1908, several unions that were mostly based on work branches (railroad, tobacco, loading, smithy, fiber, etc.) had been established. It is difficult to argue about the widespread existence of a working class based on industries in this period, as the overwhelming proportion of the Turkish economy was still composed of rural and agricultural activities. Even so, the beginning of *II. Meşrutiyet* (the second period of constitutional monarchy) in 1908—which was supported by workers and raised hopes among their ranks for a better future of work conditions and salaries—was swiftly followed by several strikes referred as the "July Strikes". From 23 July until the end of the year, with the attendance of more than 100,000 workers,[38] 111 strikes were

[38] Sencer (1969, p. 205) made this rough calculation on the approximate number of participants in the July Strikes of 1908. Although the number has been contested, it points out the widespread participation of workers in the strikes (Özuğurlu, 1994, p. 89).

organized in all branches of activity across the Empire, a phenomenon never encountered in such a short period before or after in the Turkish society (Güzel, 1996, pp. 31, 51). These strikes were mostly conducted by unorganized workers spontaneously in workplaces, and the *İttihat ve Terakki* government, disturbed by the irregular character of the strikes, recognized that a 'proper' method of unionization would serve better for the future (Özuğurlu, 1994, p. 90). The 1908 strikes prompted the government to pass the *Tatil-i Eşgal* Act on 9 August, 1909. This act is regarded as the first law that regulated labor directly and comprehensively in the Ottoman Empire (Işık, 1995, p. 30). The act prohibited the founding of unions by public servants (Art. 8) and drastically limited the right to strike in both the public and private sectors. It obliged workers to undertake other 'peaceful' means (mandatory representation processes to settle disputes) before being able to opt for strikes (Tuncay, 2010, p. 7; Sur, 2011, p. 14). Whether or not strikes were effectively banned by the act has been debated at length in the literature due to its vague language (Işık, 1995, p. 101). The Associations Act that came into force in the same year also posed immense limitations on both worker and other social organizations (Baydar, 1998b, p. 5). Article 2 of the Act stated that founding associations was not subject to prior permission, although a notification of the founding was to be provided to the respective state offices. This notification procedure was used in a way to prevent the founding, function, and activities of certain associations that displeased government officials (Güzel, 1996, p. 71). With their severe limitations, after the previous era that had disregarded capital- labor relations altogether, these laws recognized the existence of the labor movement, although aiming to solve the problem by means of features that were to the advantage of the capital, and are therefore often

regarded as modern and capitalist regulations (Işık, 1995, p. 30). It should be noted that, in a sense, these laws legitimized labor movements by giving them official recognition for the first time in Turkish history, while drastically limiting organizing and strikes and thus preventing the labor movement from gaining strength (Işık, 1995, p. 33). It has also been argued that with this Act, the exploitation schemes of foreign companies prior to 1908 were re-established (Güzel, 1996, p. 61). What *Tatil-i Eşgal* aimed to achieve has been a matter of debate, while its validity and effects remained intact in the 1876, 1921, and 1924 Constitutions (Işık, 1995, p. 33).

Though not a match for the vigor of the 1908 strikes, labor showed some activity, as new worker organizations were founded and some strikes took place until 1913's Committee of Union and Progress (*İttihat ve Terakki Cemiyeti*) dictatorship that halted the labor movement.[39] Between 1908 and 1915, workers organized unions in the branches of activity outside the scope of *Tatil-i Eşgal*, while organizing associations in those sectors within its scope within the rules of the Associations Act of 1909. This law continued to regulate worker organizations, even after the founding of the Republic, until the making of the Trade Unions Act in 1947, and political organizations (including political parties) until 1961.

At the end of World War I and during the occupation of Istanbul and the Liberation War (1919–1922) that marked the end of the Ottoman Empire, workers' movements again rose, with 19 strikes taking place in the period of four years (Güzel, 1996, p. 110). The first mass legal workers' organizations that were half political and half union-like were

[39] Between 1909 and 1915, 38 strikes took place, mostly in mining, nutrient, and weaving companies whose branch of activity were outside the scope of the *Tatil-i Eşgal* Act (Güzel, 1996, p. 62).

established in this period. Although not officially named unions, these worker organizations that had union-like functions and properties are a product peculiar to this period of foreign occupation (Baydar, 1998b, p. 5). The most striking aspect of this four-year period is the expansion and intense propaganda of communist and socialist movements that would have a causal relationship with the spread of these ideologies in the future of the Turkish labor movement, which is claimed to have a role in the establishment of the radical unions of 1940 and of Disk in 1967 (Güzel, 1996, p. 122).

It is difficult to argue on the various aspects of union democracy in the pre-republic era, simply because there is not enough revealed data at hand on leadership and management processes of the worker organizations in this period. It is also important to note that unions as organizations in the pre-Republic era lacked most of their fundamental functions on the basis of legal capabilities, and therefore also their collective freedom.

2.1.2 Early Republic Era: State Control over a 'Classless' Society

In the early Republic era (1923–1945), the ongoing lack of a true bourgeoisie in the society prompted the Turkish state itself to pioneer a corporatist industrialization movement in order to develop the economy and support entrepreneurs in the long term. The Constitution of 1924 had recognized the right to assembly and association, but lacked any specific provisions concerning unions and collective labor agreements. Between 1920 and 1925, railroad, printing, tram, and other transportation industry companies' workers had established several semi-union/solidarity associations. These organizations were mostly under the influence of socialism, even having the title 'international' in their official names (Baydar, 1998b, p. 8). Many of these organizations

across the country made failed attempts to form higher organizations between 1923 and 1925. It should be noted that the Turkish state aimed to control (sometimes directly) any organization that had the potential for opposition in the society, and strived to organize a labor environment in which the government could maneuver easily (Işık, 1995, p. 86; Güzel, 1996, pp. 131–134).[40] This pattern has continued in the following eras of Turkish unionism, and its effects, to a certain extent, are still felt in the contemporary system. Basically, state control over unions also implies that union democracy cannot be realized, as the decisions and actions of unions are ultimately not decided by their members but by their leaders, whose tenure of office largely depends on their dealings with the state institutions.

The Civil Code of 1926 also recognized the freedom of associations, and their official founding did not require special procedures. However, due to events of social unrest involving Kurdish revolts in Eastern Turkey, the response of the state through the *Takrir-i Sükun* Act (1925) and the Penal Code of 1926 brought several provisions that also prevented union organizing, collective labor agreements, and strikes. Although *Takrir-i Sükun*'s primary target was not workers' organizations, the rising labor movement, together with all organizations that could serve as opposition against the one-party regime, suffered greatly from its restrictive measures (Işık, 1995, p. 87).

A first labor law for the young Republic had been planned since the İzmir Congress on Economics (in which the right to found unions, strike, wages, and other social rights were recognized) back in 1923, but several factors in the following two decades resulted

[40] For instance, *İstanbul Umum Amele Birliği* was a labor organization founded by CHP itself, which supported the government in turn by controlling demands from the rank and file (Işık, 1995, p. 86).

in failed attempts to ratify a labor act, even though the 1924 Constitution (*Teşkilat-ı Esasi*) held no provisions against the founding of unions. The first draft for a labor act in 1924 included the right to strike, which was not ratified by the government, whose priority was to control social tensions and unrest. The eastern uprisings and the *Takrir-i Sükun* Act prompted the government to rule with an iron hand. The Progressive Republican Party (*Terrakkiperver Cumhuriyet Fırkası*), which had been established by 'permission' of the government and which had liberal aspirations, was shut down and the labor act draft was dismissed in 1926. The rise of the Workers Association (*Amele Teali Cemiyeti*) which strived for organizational autonomy and pushed for the ratification of the draft, was also closed and its law committee arrested (Işık, 1995, p. 90). By 1928, there were no surviving unions in Turkey.

The government continued to prepare drafts of a labor act in the following years, presenting another in 1928 which did not include the right to union or strikes. The Turkish Parliament again did not ratify the draft, as the 1929 world economic crisis came into effect. With the world crisis, liberal economic policies were abandoned in favor of the implementation of economic protectionism and state control. From 1924 until 1936, all debates and attempts to ratify a labor act in each legislation year failed for social and political reasons.[41] The continual debates on the making of a labor law were also shaped by the demands of employers and their organizations (most importantly, the İstanbul National Industry League, *İstanbul Milli Sanayii Birliği*), who claimed that the advancement of workers' rights and liberties would hinder the industrialization processes in the country (Işık, 1995, pp. 92–94).

[41] 1924, 1929, and 1932 saw three unsuccessful parliamentary attempts to ratify the given labor law drafts.

After Turkey joined the International Labor Organization (ILO) in 1932, general and liberal provisions of the Code of Obligations formed the framework of employment contracts until the enactment of the first labor law in 1936 (Turunç and Sur, 2010, p. 2). The first Turkish Labor Act (No. 3008), dated 1936, which was claimed to be modeled around ILO standards and brought certain social progress (ibid.), provided workers various rights and protections, but still did not include any provisions on unions. Act No. 3008 essentially covered manual (blue-collar) workers, leaving a large portion of the labor force out of its coverage (ibid.). Moreover, with this first labor-specific act, strikes and lockouts were totally banned and collective bargaining disputes were subject to a mandatory arbitration process.[42] The restrictions on work life that were enforced back in 1908 with *Tatil-i Eşgal* were thus once more enforced (with an explicit ban on all strikes, ending earlier debates on whether *Tatil-i Eşgal* did so or made them subject to state permission). It has been argued that it was an even more backward step in terms of rights and liberties (Işık, 1995, p. 91), and that the act aimed to prevent the development of class consciousness (Güzel, 1996, p. 135). A statement made by Recep Peker, Secretary-General of the Republican People's Party (CHP) that formed the government, illustrates the stance of the Turkish state on the labor movement in 1936: "This new law is a regime law. It is against liberalism, because liberalism pits the worker and the boss against each other. This law will prevent the stratification of citizens and therefore their separation. The new labor law will sweep away all false clouds that give birth and provide life to the awareness of classism" (Özuğurlu, 1994, p.

[42] Labor Act No. 3008 of 1936, Articles 72, 73, and 127.

125). ‘Turk does not exploit Turk’ is a famous motto summarizing the nationalist and statist policies serving the justification for banning strikes with the Labor Act of 1936.

Policies of state control that marked the early Republic era found body in the slogan "we are a classless, unprivileged, united mass", which defined the laws and regulations in the following decades. With the outset of social, economic, and political tensions prior to World War II, the Associations Act of 1938 prohibited the right to union altogether by stating that no associations of any kind could be formed based on family, religious community, race, gender, or class.[43] The Associations Act was a clear signal of things to come during the war. The National Protection Act of 1940 hindered the rights and liberties of the Turkish worker provided by the restrictive framework of the 1936 Labor Act even further, making working hours longer and tougher, drastically cutting salaries, enforcing compulsory work principles, and lifting bans on child and woman labor in previously prohibited sectors as workers lost weekly holidays and the right to leave jobs. The government obtained the right to enforce even longer hours of work when it was deemed necessary (Işık, 1995, pp. 105–107). Without doubt, prior to the end of World War II, there was no fertile ground for unionism to flourish in the young Turkish Republic, making internal union administration mostly an irrelevant concern.

2.1.3 1946–1961 Era: The Formal Emergence of Unions as Powerless Organizations

As the years following World War II marked a general shift in political and social tendencies across the globe, the Turkish state, aligning itself with the western block,

[43] Associations Act (28/6/1938) Article 9/h.

also opted for the advancement of rights and liberties that included a renewal of the general system of organization in the society as well as the adoption of multi-party politics.[44] In 1946, bans on associations based on class (provision of the Associations Act of 1938) and the arbitrary dissolution of associations by state institutions were eliminated (Sur, 2011, p. 15) through the ratification of a new Associations Act (Art. 9),[45] which also entailed the lift of bans on the founding of unions as well as other labor organizations. In the few months that followed, hundreds of unions were founded across the country by the initiative of both workers themselves and the leaders of various political parties that included socialists. Having miscalculated the situation and fearing the development could move beyond its control, the Turkish government (still under one-party rule), within martial law, shut down all of these unions as well as arresting their officials by December 1946 (Işık, 1995, p. 111). In February 1947, the Workers' and Employers' Unions and Union Leagues Act (No. 5018) was ratified, with motivations to please the labor movement to the extent that it would get closer to the CHP government; to be internationally more presentable (by showing that 'even we have unions' and that we strive to uphold ILO standards);[46] and, most importantly, to exercise more control over the unionization process (Baydar, 1998b, p. 8; Güzel, 1996, pp. 154–155). In this first union-specific law in Turkey, even though freedoms to establish and join unions and the possibility of multiple unions in the same branches of

[44] More specifically, the post Second World War era of labor movement in Turkey was without doubt influenced by the systematic intervention of the USA across the globe through the Truman Doctrine. In Turkish labor relations, the founding and development of the Türk-İş Confederation was one of the most striking outcomes of this endavour. For more detail, see Işıklı (1994, pp. 32–34) and Güngör (1994, pp. 132–143).

[45] Associations Act No. 6329, (5/6/1946) (Işık, 1995, p. 110).

[46] The Minister for Labor of the time, Sadi Irmak, during the discussion and ratification processes of the Act in the Turkish Parliament, spoke at length on the compliance of the Union Act with ILO Agreements. For a copy of the speech, see Güngör (1994, pp. 152–155).

activity (pluralist unionism) were legally recognized, functions and capabilities of unions were drastically limited, most significantly with a general ban on all political activities (perhaps the only issue agreed by both CHP and DP, the two major political parties of the time).[47] Founding unions and the definition of the term 'worker' were subject to Labor Act No. 3008, which regarded only "physical or both physical and intellectual laborers" as workers and therefore altogether disregarded others such as public servants, white-collar workers, and intellectuals.[48] It has been observed that not even a quarter of the Turkish work force was unionized, and it has been claimed that the Union Act's narrow scope was the primary reason for this outcome (Güzel, 1996, p. 155). Moreover, the general ban on strikes was still enforced by the new law, an issue that immensely hindered the functions of unions.[49] Union members and officials alike were left unprotected against arbitrary dismissal by employers, which became common practice in the private sector under the system of Act No. 5018 (Güzel, 1996, p. 157). The annual dues that unions could collect from their members were limited to a maximum of 120 Turkish Liras, creating greater financial difficulties for unionism and further reinforcing dependency on government and political parties. With the Act, the basic function of unions that consists of negotiating with the employers on behalf of their members and making agreements, were unsupported, and the related provisions

[47] This ban mostly aimed to prevent the natural relationship between the socialist parties established with the Associations Act of 1946 and the unions (Işık, 1995, p. 117).

[48] As explicitly stated in the General Reasoning of the Act, by defining 'workers' as manual laborers, the lawmakers aimed to keep "those outside the profession from seizing control of the union who may lead it towards the opposite direction from its real goal" (Güngör, 1994, p. 156).

[49] The DP PMs, who would not differ in opinion from CHP in most aspects of the law (i.e., ban on politics, prohibition of joining international organizations), defended the right to strike, though in a limited way. Fuat Köprülü, a PM from DP, championed the right to strike during the law discussion in the Parliament, claiming that without the recognition of the right, union freedoms would not exist in a democratic manner. Sadi Irmak, the Minister for Labor, would instead argue that the principle of statism that was in both of the parties' programs would demand the absence of the right (Işık, 1995, p. 113).

would only serve to express opinions on boards of arbitration in the case of labor disputes (Işık, 1995, p. 117). The first Unions Act was based on social control over labor instead of a free unionization movement. It was a "scant, anti-democratic and effectively limited law in terms of both spirit and provisions" (Makal, 2004, p. 130).

Although DP and CHP cooperated in banning political activities of unions in the first Unions Act of 1947, the two political parties strived vigorously to politicize the Turkish labor movement toward their own control. Both parties set up worker bureaus to oversee the labor organization processes. While CHP gathered workers under the Istanbul Workers' Unions League (*İstanbul İşçi Sendikaları Birliği*), DP, seeking to consolidate workers that demanded the right to strike at its side, formed the Istanbul Free Worker Unions League (*İstanbul Hür İşçi Sendikalar Birliği*) (ibid.). Within this process of guided unionism, between 1946 and 1960, the Turkish state and political parties continually and intentionally sought various measures to control and direct the numerous unions, federations, and confederations that were founded. In fact, many of the unions were founded and/or funded directly by the one party governments themselves.[50] Article 5 of the Unions Act (banning political activities), and other factors such as the annual due limit of 120 TL, further reinforced dependency upon the governments (Güngör, 1994, p. 176). The DP Government from its very first years 'interpreted' Art. 5 of the Union Act in a way that politicized unions toward its line, also banning every kind of union activity that it saw as a potential center of opposition in order to control the union movement (Güngör, 1994, p. 176). In particular, union

[50] Güzel (1996, pp. 158–162) gives a detailed list of the various methods and lists of funds CHP used in establishing both unions and higher organizations (union leagues) after 1947, such as transforming the associations it founded in 1946 into unions and directly setting up individual unions by tasking CHP sympathizer workers and funding their activities.

campaigns that demanded limitations on cotton imports (fearing that imports would cause unemployment), journalist unions' protests for freedom of journalism against the mistreatment of their colleagues by the police, and several other activities unions were deemed 'political' for various reasons and were prevented by their overall suspension (Işıklı, 1990, pp. 322–323). The financial restrictions imposed by the maximum membership due amounts of the Unions Act were eased by the government through the Ministry of Labor, which used 'punishment funds' (*ceza paraları*) to support the unions of their choosing. This was yet another control instrument over unions at the hands of the government. For instance, Türk-İş, in its first period of activity that lasted for approximately a year, received punishment funds from the government that amounted to more than triple its membership dues (Işıklı, 1990, p. 324). The relationship and kindliness between the labor ministers and Türk-İş officials—and therefore the amount of financial support rested in Türk-İş' choice of dissident or supportive political behavior—was constantly used as an important pressure factor over the Confederation (Güngör, 1994, p. 177).

Needless to say, when the right to strike was prohibited and mandatory arbitration mechanisms were in place, the Ministry of Labor's authority to dissolve labor disputes was a strong instrument to pressure unions. Thus, the relationship between union administrations and governments was a major factor in the settlement of disputes in this era (Güngör, 1994, p. 177).[51] Furthermore, the provisions regulating higher union organizations were used in an arbitrary manner by the DP government as another instrument of control. Local unions' higher organizations were terminated on the basis

[51] For more information on the subject, see Güngör (1994, pp. 177–178).

that they were not formed by workers of the same branch of activity, while those favored by the government were left out of the application of these provisions (Güngör, 1994, p. 178). Finally, the desire of union leaders to be parliamentary members in this period was another weakness to be used by the DP government.[52]

These factors undoubtedly had severe implications for union democracy. With these moves, a curious type of unionism emerged in Turkey, in which the union leaders, in order to secure their seats as union administrators, sought the approval and support of the political parties of the government instead of appealing to the needs and demands of the union rank and file members by striving to advance and protect their interests. In this context, it was not deemed necessary to fight for the rights of the workers in order to obtain and maintain leadership in trade unions. With the government parties' backing, incumbent union leaders could be secure in their offices indefinitely. The role of government parties, who would only tolerate union administrators they were close to and would get rid of the others one way or another, was immensely strong in this state of affairs. As a consequence, union administrators in Turkey developed the habit of political maneuvering and the use of political channels with governments. It is claimed that this process began in 1947, and the leaders, in order to maintain their material and other gains in the social hierarchy, developed a habit of being more compliant and more biased toward employers and governments as the first steps of forming permanent union bureaucracies were taken (Güzel, 1996, p. 161). Paradoxically, even though the law prohibited unions from political activities, unions emerged and grew inside politics. Pro-government policies and behavior, and the adoption of official state ideology, paved

[52] For instance, Naci Kurt, who won the presidency of the Türk-İş Confederation with the support of DP in 1953, later became a PM of Istanbul aligned with the DP (Işıklı, 1990, pp. 324–325).

the way for dependence on governments, employers, and parties that had the potential to control the government (Güzel, 1996, p. 160). The founding of the Istanbul Workers' Unions League in 1948 was a product of this process that created CHP-affiliated unions as union leaderships remote from the rank and file labor movement were established (Işıklı, 1990, p. 319).[53] Although distant from fulfilling the expectations of the rank and file, CHP's exclusive support of labor unions inside public economic enterprises (KİTs), the threat of job loss, employer paternalism, proper application of legal provisions, and relatively good working conditions in KİTs ensured the contentment of their workers. The public sector union officials perceived themselves public servants, and the 'father state' mentality paved the way for an accommodative type of unionism (Güzel, 1996, p. 161). Relationships and overlaps of functions between political parties and unions were not exclusive to the Turkish context. In contemporary Scandinavian countries and England, where union and party relations are highly developed, functions were clearly separated and dominance of one organization over another was in general non-existent. However, in many underdeveloped countries, political parties that take part in the establishment of unions or establish ties with them also dominate unionism, which in the long run harms both organizations (Dereli, 1977, p. 78).

Thus, as the Turkish industry was composed mostly of state-run establishments, unionism was also controlled and directed by the state in a parallel process. In this period, a union bureaucracy composed of relatively good working conditions was born in the public sector, in which union rights and freedoms were almost non-existent

[53] It has been noted in the literature that the Istanbul Workers' Unions League aligned itself with the government on various occasions where workers strived to organize protests against the problems of labor, such as unemployment (Güngör, 1994, p. 159).

(Baydar, 1998b, p. 6). Unionism in the rapidly growing private sector, on the other hand, was drastically limited, as the employers were against any kind of unionization and even the application of labor laws. This attitude resulted in the radicalization of workers and independent unions in the private sector, especially in the metal and weaving branches of activity (Güzel, 1996, p. 161). Consequently, in this era, unions more compliant with the government and employers in the public sector, and unions radical and independent of state control, co-existed.

The reactionary movements inside unions of the time eventually resulted in the labor movement's support for the Democrat Party (Işıklı, 1990, p. 320). As a reaction to the newly made Unions Act of 1947, DP's demeanor was in support of the right to organize and the right to strike. When DP won the governmental elections in 1950, this stance changed completely toward the oppression of such demands (Beşeli, 1994, pp. 201–202). In 1949, the Democrat Party, seeing that it could win the governmental elections, had also founded its own unions, forming a third category of unionization in terms of political alignment. The years that followed the victory of DP in general elections also marked the attempts of leftist parties to assert control over unions.[54] With these developments, union and membership numbers rose rapidly. In 1947, there were 49 unions and 33,000 union members, whereas by 1952, the numbers rose to 248 unions and 130,000 union members respectively (Güzel, 1996, p. 162). In spite of this, combined with social and economic factors such as the continuing high proportion of

[54] Güngör (1994, p. 170) elaborates leftist party politics, particularly the Turkish Socialist Party and Democrat Workers' Party. It is argued that the lack of tangible support from the labor movement for the Workers' Party was a result of unions being divided between DP and CHP, the prohibition of political activities by the Trade Unions Act Art. 5, and the context of the Cold War.

rural population in the society, unions remained weak organizations and the proportion of unionization was less significant in the private sector in this period.

The Istanbul Workers' Unions League, which had several members among Istanbul unions, formed the backbone of the founding of Türk-İş in 1952, a confederation of unions and the first large-scale worker organization in Turkey that is active to this day. It has been argued that the founding of Türk-İş was heavily influenced by the foreign policy of the United States through the Truman Doctrine and Marshall Plan (Güngör, 1994, p. 172) in order to secure the international interests of the USA overseas in the context of the Cold War.[55]

ILO Convention No. 87 of 1948 (Freedom of Association and Protection of the Right to Organize), which set up basic standards for unionism and democracy, would not be ratified by the Turkish government until 1992, in order to continue the exercise of state control over the unionization process.

2.1.4 1961 Constitution Era: The Birth of Free Unionism

The coup of May 27, 1960 that ended the DP government and the new constitution that followed, is a milestone not only in Turkish political life but also in Turkish unionism. The Constitution of 1961 extended basic human rights and liberties in various respects and provided freedom to organize unions, collective labor agreements, and strikes (Articles 46–48), normatively providing these rights on the highest legal level for the

[55] Although the ban on political activities of unions was strictly enforced even on their basic functional activities, Türk-İş, with the approval of the DP government, was able actively to take an anti-communist stance and organize related meetings. It is clear that the bans of Art. 5 served the purpose of government control over unions only. Also, for detailed information on the influence of American politics and Türk-İş in its founding phase and their relationship in the following years, see Güngör (1994, pp. 172–176) and Beşeli, (1994, pp. 246–250).

first time in Turkish history.[56] The first and foremost legal provision on Turkish union democracy was also provided with Article 46's second paragraph: union and higher organizations' statutes, management and functions cannot contradict principles of democracy. Based on these premises, with the laws of 1963 (Trade Unions Act No. 274 and Collective Labor Agreement, Strike and Lockout Act No. 275), all employees (and not exclusively manual workers) and employers were able to form unions and workers were provided the right to take part in collective bargaining, strikes, and lockouts for the first time in the history of Turkish unionism. Public servants were also provided the right to unionize.[57] Compared to the former law of 1947, which limited the functions for unions immensely, the 1963 acts did not treat unions as mere 'envoys' between workers, employers, and the state (Işık, 1995, pp. 182–183). Act No. 274, in order to protect and advance members' interests, provided unions the ability to conduct disputes and general agreements, to apply to related state offices on issues of labor dispute, to strike, and to organize educational and social activities. The right to found unions was provided extensively, wherein workers could come together to form unions freely in their specific workplaces or branches of activity.[58] It is commonly acknowledged that by the enactment of these two Acts, collective actions spread and gained vigor (Turunç and Sur, 2010, p. 118), and the general principles of union freedoms stated in the ILO Convention No. 87 were reflected by these acts (Işık, 1995, p. 181). It should also be noted that Acts No. 274 and 275, shaped by the related constitutional provisions, formed

[56] *Teşkilat-ı Esasi* of 1924's provision on the right to association (Article 79) is the only exception to a workers' collective constitutional right prior to the 1961 Constitution.
[57] The State Employee Unions Act (No. 624) that regulated the rights of public servants was ratified in 1965.
[58] It is commonly acknowledged that by keeping the number of branches of activity high (36 in the Act) in an arbitrary manner, the aim was to prevent the formation of quantitatively strong unions in each branch. For more details, see Güzel (1996, pp. 231–232).

the first comprehensive legal framework that regulated the system of industrial relations in Turkey in all its aspects, and is a major factor that strengthened unionism. Thus, the period marked unionism's true rise and organizing independent of governments in Turkey (Baydar, 1998b, p. 6), as well as the possibility for the realization of union democracy. In 1962, the industrial portion of the whole workforce in Turkey was approximately 9.8 percent, which, compared to industrialized western countries, was very much lower.[59] In that sense, it is argued that the Turkish labor movement's gain of collective agreement and strike rights had been realized in the very early stage of industrialization (Işıklı, 1994, p. 8).[60]

Within the Trade Unions Act No. 274, basic principles of the freedom to join unions on a voluntary basis, pluralist unionism, union autonomy, and protection for shop stewards were recognized and enforced. Bans on political activity did not exist, except for the prohibition on establishing organic and financial ties with political parties. Thus, the new union law, compared to the former regime, acknowledged the political aspirations of unions as pressure groups. As a matter of fact, Turkish unions' active involvement in politics between 1963 and 1980 has never been matched at any other time (Işık, 1995, p. 183).

The collective agreement and strike rights provided for the first time with Acts No. 274 and 275 were made within a broad framework which allowed the founding and functioning of unions in specific workplaces (workplace unionism) with the capacity to

[59] In contrast, British collective agreements became common at the end of the nineteenth century, when the industrial sector of the economy was 50 percent. A similar case is France, where collective agreements were advanced after 1919, when the industrial sector was at 31 percent. In the USA, collective agreements gained vigor in 1937, when the industrial sector was at 40 percent (Işıklı, 1994, p. 9).

[60] For the political dynamics of the drafting of the 1961 Constitution and the respective labor and union laws, see Beşeli (1994, pp. 215–225).

engage in collective agreements and strikes.[61] This has been constantly criticized by the capital [employers] on the grounds that the majority of workplace unions had militant characteristics (Işık, 1995, p. 185). By definition, due to its small, focused scale, workplace unions' organizational structure generally has more favorable conditions to push for its demands from employers (ibid., p. 186). Most importantly, a major hypothesis advanced by the studies elaborated in the previous chapter is that smaller scale union organizations that are less bureaucratized tend to be more democratic (Lipset et al., 1977, p. 414). Therefore, the preventive measures of workplace unionism practices in the following decades (which will be discussed in the sections on the post-1980 era and the organizational structure of Turkish unionism) were directly detrimental to union democracy.

With the new constitution, laws, and regulations, the number of unions rose rapidly in a short period of time. According to the records of September 1963, there were 611 unions across Turkey (Baydar, 1998b, p. 9). However, the process of rapid unionization was not paralleled by a tangible progress in the subject of union democracy. Although the Constitution Article 46 last clause stated that union statutes, management, and functions should not be in contradiction of democratic principles, under the 1961 framework of unionism, leadership changes seldom occurred in most federations, national unions, and even local unions, and the term 'union lords' (*sendika ağaları*) became a product of this era. In general, small minorities dominating the executive

[61] Although recognizing the right to strike, Act No. 275 provided it in a narrow form: (a) the scope of strikes was limited (public servants whose numbers reached 800,000 were excluded together with penal provisions: Article 56); (b) the aims and methods of strikes were set as measures for their legality; and (c) the law set the application of the right to strike into narrowly fixed processes. For more detail on the subject, see Güzel (1996, pp. 199–207).

offices of all levels of unionism permanently established oligarchies (Dereli, 1977, p. 14; Merinç, 1991, p. vii).

By the second half of the 1960s, the Turkish workers' and unionism movement took a more militant and independent stance, and there was a constant rise in the number of strikes. In this period, the private sector became stronger in various industries, and workers' movements and strikes shifted to these private companies. On the employers' side, in 1961, six employer unions came together to form the Istanbul Employers' Unions Association, whose name was changed the following year to the Turkish Employers' Unions Confederation (Tisk), its headquarters moving to Ankara. Tisk continues to be the top organization for employers' unions in contemporary Turkey. On the workers' side, four unions that opposed Türk-İş' declared policy of 'neutrality' toward political parties—to be remembered by the 'above party politics' slogan (mimicking the 'non-partisanship politics' of the American labor movement)[62]—founded the Confederation of Progressive Trade Unions of Turkey (Disk) in 1967. It has been argued that the founding of Disk was influenced by the lack of union democracy in Türk-İş, as well as the ambition of political parties to form their own union confederations. The founding of Misk in 1970 as a side organization to MHP, and of Hak-İş in 1976 with the support of MSP, were the results of this process (Beşeli, 1994, pp. 239–242).

[62] Although presented as a principle of neutrality toward political parties, the 'above party politics' policy served to side with the balance created by the incumbent social forces that were represented by the political parties through the acceptance of the existing political situation and order. In this sense, it has been claimed that it prevented the production of an independent political power based on the working class (Güngör, 1994, p. 180). It is also asserted that this stance, refusing the importance of the political struggle for workers' rights and freedoms, also had the function of legitimizing the view that unions are organizations that solely exist in the narrower scope of bargaining struggles for better collective labor agreements (Beşeli, 1994, p. 238).

The drop-outs from Türk-İş (of unions that would form Disk in 1967 and of the social democrat unions in 1973) essentially points out another dimension of union democracy in Turkey in the 1961 Constitution era. Different ideologies and opinions on policies were prevented from competition and co-existence within the same higher organization with those who stood in opposition by criticizing the 'above party politics' stance, finding themselves outside the administration and later outside the organization itself. It has been asserted that the lack of implementation of union democracy resulted in the fragmentation of the Turkish union movement (Beşeli, 1994, p. 249), which, combined with factors external to the union movement that affected union democracy negatively, hampered unions in their role for greater democracy in the society (ibid., pp. 253–254).

With the founding of Disk, rival unionism came to the fore, which also boosted the rise in strikes as well as radical, militant practices, such as the occupation of workplaces that prompted a state agenda to change the laws made in 1963. The deliberations in the Turkish Parliament for a new Act (No. 1317) to amend the Trade Unions Act No. 274, which would bring several prohibitions and limitations on union organizing, paved the way for the great worker protests of 15–16 June 1970 that started in Istanbul and spread across the neighboring cities, encompassing hundreds of thousands of workers. This was deemed the most important event in the history of workers' movement in Turkey (Baydar, 1998b, p. 10), being a widespread general political strike (Güzel, 1996, p. 222). The protests ended with the bloody confrontation of workers by the police and military forces in which thousands of workers lost their jobs and/or were arrested under martial law, prevailing until the coup of 1971. Act No. 1317 prohibited the founding of union leagues, made distinction between workers and public servants on the basis of

physical-mental labor, and required actively work for three years in the branch of activity of the union in order to be founded. In case there was a union that had the authorization for collective labor agreements in its branch of activity, only that union had the privilege of check-off.[63] Most importantly, a union that would operate nationwide had to represent as its members at least one-third of the workers in that branch of activity (Beşeli, 1994, p. 213).

Most of the provisions of Act No. 1317 did not have practical application, as TİP and CHP appealed to the Constitutional Court to resolve the issues of its constitutional validity. The Constitutional Court annulled the Act's provisions that had drastically limited the right to union in 1972 (Güzel, 1996, p. 224). However, the provision that prevented the founding of local union leagues was not annulled, which prevented union political practices on the local level (Beşeli, 1994, p. 214).

The military coup of March 12, 1971 pacified the militant cadres in unions and socialist organizations for several years. As mentioned above, in its original version, the 1961 Constitutional structure provided public servants the right to union.[64] However, by 1972, following several incidents of unrest, these rights were deemed undesirable by the lawmakers, and the unions that were formed on the basis of the State Employee Unions Act (No. 624) were shut down altogether (Tuncay, 2010, p. 8). Also in 1971, the Labor Act No. 1475, which encompassed both white-collar and blue-collar workers, was enacted (Turunç and Sur, 2010, p. 2). The rights and liberties provided by the 1961 Constitution were immensely hindered by the military regime. A period of bans on

[63] The membership dues system is elaborated under section 3.1.7.
[64] 1961 Constitution, Article 46, states that all employees have the right to union.

strikes and limitations on collective agreements and other worker rights lasted until 1974, as democratic processes were resumed with the end of the military regime on 14 October 1973. In the eight-year period until the 1980 coup, 1,021 strikes were carried out by 262,832 participant workers (Güzel, 1996, p. 241). The years between 1975 and 1980 were a special period for Turkish unionism. In this five-year period, many rights of unwritten character were won for unionism as unionism became further politicized and militant (Baydar, 1998b, p. 7), with a constant rise in union rivalries. Disk gained more members from both independent unions and other confederations. Strikes and the number of workers who attended them rose; protests and insurgencies took place; and, most vividly, aggression between the militants of Misk (the Nationalist Workers' Unions Confederation), Disk and Türk-İş turned into physical conflict and bloodshed. These years are marked by the general tension in politics between right and left-wing parties that were highly radicalized and militarized, resulting in constant violence and murders and, in the end, anarchy. Most of the violence and murders, including the massacre of May 1, 1977 in which 36 workers lost their lives, were devoid of proper investigation and their perpetrators remain unknown to this day.

Comparing the constitutional and legal systems of Turkish unionism until 1980, the 1961 Constitution era is undoubtedly the first period of Turkish unionism that had the potential to realize union democracy on its full scale in terms of the legal/procedural rights gained by the labor movement. Within the framework of the Constitution and the new laws, political parties and worker organizations alike possessed the formal ability to establish democratic internal administration. The freedom to organize and pluralist unionism principles were strongly implemented in this era. The official records state

that in 1980 there were 828 unions, of which 468 were independent of higher organizations [federations and confederations] (Baydar, 1998b, p. 11). However, the actual practice of union democracy continued to be feeble due to the external and internal factors described above and in the previous chapter under the studies of Dereli (1977) and Şahlanan (1980).

It has commonly been claimed that the rapid rise of union numbers and the social and political chaos of the late 1960s and 1970s had a causal relationship, in the sense that such a process of 'union inflation' either directly resulted in chaos and anarchy in the period, or at least served as fuel to the fire. The system of union organizing of the 1980s would be restructured with great restrictions under such justifications.

2.1.5 Post-1982 Era: Unionization in Decline

The social and political chaos of the 1970s that concluded with the 12 September 1980 coup d'etat paved the way for several restrictive measures with both short-and long-term effects on the characteristics of Turkish social and political life. The 1980 program foresaw a radical shift in economic and social policies to the disadvantage of the working class (Geniş, 1994, pp. 261–262), suppressing the political left and the union movement in the process. The very first decisions taken by the military regime included bans on several non-governmental organizations' activities, the suspension of the activities of Disk and Misk and their member unions, and the prohibition of all strikes.[65] The following day, the financial assets of Disk, Misk and Hak-İş were frozen, and all

[65] 14 September National Security Council (MGK) Decree No. 7 (shutdown of unions) and Decree No. 3 (strikes).

their properties and documents seized by martial law command.[66] On October 10, these documents were handed to trustees who would officially take over the administration of these unions.[67] The High Arbitration Board (YHK) was empowered to conduct all collective labor agreements that had expired, resulting in a system of mandatory arbitration. YHK became one of the primary instruments for the establishment of the new economic order, in which worker salaries were lowered and workers' social rights were hampered.[68] In the following two-year period, democratic processes and collective labor agreements came to a halt,[69] and even though Türk-İş—the largest confederation at the time and today—was not directly suspended or prosecuted, several of its member unions and other independent unions were suppressed through the prosecution and suspension of their activities.[70]

However, on the confederation level, the 'above party politics' stance of Türk-İş—which had served in compliance with the incumbent government's policies since its founding—yielded yet another period of support for the government that was this time the military regime which had taken a heavy-handed stance toward its fellow unions. Most notably for studies on the organizational structure of union democracy is that

[66] 15 September MGK Decree No. 8 (seizures).
[67] The trustee management system lasted a relatively short time for Hak-İş (until 1981) and Misk (until 1984), who were seen by the 12 September's political administration as alternatives to the leftist movement in unions. Such was not the case for Disk, which stood on trial for a long period of time. In 1981, a case was opened for the officials of Disk in which 85 people (in the initial phase) stood trial for violating the Turkish Penal Code No.146 Art. 1 and No. 141. Seventy-five people were prosecuted with a view to capital punishment. With the verdict of the case in 1986, Disk and its 28 member unions were shut down and 264 accused officials punished with sentences of between 5.5 and 15 years' imprisonment. In 1991, with the annulment of Article 141, Disk officials were acquitted. In 1992, with the verdict of the Contitutional Court, Disk and its member unions recovered their assets (Geniş, 1994, pp. 264–266).
[68] Geniş (1994) makes a lists of the changes, pointing out that these measures were taken in order to minimize production costs. For details, see pages 262–263.
[69] The collective labor agreement regime would not start refunctioning until 1984.
[70] The Yol-İş Federation and the Petrol-İş Union are primary examples. See Geniş (1994, pp. 267–268) for details.

Türk-İş established an organic tie with the 1980 government: the secretary-general of Türk-İş, Sadık Şide, with the authorization of the Confederation's administrative board, became the Minister for Social Security while maintaining his position in the Confederation. With this move, Türk-İş became a special case of unionism dependent on and attached to a military government that had forced itself into a democratic regime.[71] Later reactions of its members and of international labor organizations forced the Confederation to put the Secretary-General on leave in 1982.

The democratic regime and unionism processes were restored and restructured with the making and ratification of the Constitution of 1982, still in effect today after countless amendments. It is commonly acknowledged by constitutional scholars that the new constitution opted for a much less participatory and less pluralistic version of democracy compared to the former (Özbudun, 1991, p. 41). Legitimizing its restrictive and oppressive stance by the justification of restoring order in the society, the Constitution nevertheless provided the workers and employers the right to union, collective labor agreements, strikes, and lockouts, meanwhile giving a list of the limitations of these freedoms in great detail. It is generally agreed that freedom and rights gained by the workers' movement and unionism of the previous (1961 Constitution) era were lost by the great reactionary setbacks of the new prohibitionist constitutional and other legal provisions (Baydar, 1998b, p. 7). It is also claimed that the new stance was compatible with the goals of the 24 January 1980 economic policy of

[71] This period of organic attachment did not go unchecked in the international arena. In 1981, the International Confederation of Free Trade Unions (ICFTU) suspended the membership of Türk-İş and some of its members were also expelled from related international labor federations. Türk-İş reclaimed its membership in ICFTU in 1983 (Geniş, 1994, pp. 270–271).

‘stability’, in the sense that it would re-regulate or at least influence worker and employer relations (Güzel, 1996, p. 255).

Türk-İş’ ‘above party politics’ tradition—which was basically a pragmatic approach to securing gains by establishing good relations with governments—was to be altered toward the end of the decade during the ANAP government that further advanced the anti-unionist policies of the September 12 program in social and economic policies.[72] In the 1987 general elections and 1987–1988 referenda, Türk-İş, through the decision of its official organs, stood in open opposition to the government for the first time in its history. Such opposition would continue in the following years by both official and unofficial means. It has been argued that the impoverishment of the working class since the 1980 coup’s social and economic programs paved the way for unions and their higher organizations, including Türk-İş, to oppose the government and its policies. Moreover, the constant rise in mass union activities since 1987 that would peak in the 1989 ‘spring protests’ throughout the country was a direct effect of Türk-İş’ change of policy. The future role of Türk-İş was to be realized through the process of its reorganizing and change of leadership of its member unions. From 1987 to 1990, 48 percent of the branch presidents, 49 percent of the central officials, and 15 of the 32 general presidents had been changed in its member unions (Geniş, 1994, p. 282).

The decline of unionism in Turkey coincides with the general post-1980s decline of unionism across the globe. By the 1990s, the processes of globalization, privatization,

[72] Union regulations implemented by the ANAP government included the practice of contract staff, the authorization of internship without the right to union, the establishment of free zones in which union rights were almost non-existent and strikes were prohibited, the prohibition of the right to union among security staff, etc. For details, see Geniş (1994, p. 280).

and other economic factors, combined with de-unionization policies peculiar to Turkey, resulted in the loss of both trade union and union membership numbers and power in the Turkish society (Baydar, 1998b, p. 7). It is claimed that the Acts of 1983 intentionally aimed at, and succeeded in achieving, these particular results by embracing the 'end to union inflation' slogan (ibid., p. 12). By 1998, according to Ministry of Labor and Social Security records, there were four union confederations and a total of 111 trade unions (ibid.). Compared to the 1980 statistics (828 unions), these records mark an immense decline process in unionization. The prohibition of workplace unionism through the industry-based system, and the ten percent branch barrage combined with the union majority principle for authorization rights for collective bargaining and agreements, undoubtedly played a major role in the decline of union numbers. All of these features of the post-1982 Turkish unionism system will be discussed in the following sections in relation to union democracy.

Union freedoms and collective labor agreements were, for the three decades between 1982 and 2012, derived from the Constitution of 1982 and the following acts ratified in 1983 based on its provisions. These were the Trade Unions Act No. 2821 and the Collective Labor Agreement, Strike and Lockout Act No. 2822. Since these Acts were essentially reactionary in nature toward the social and political unrest of the 1970s, the contemporary notions of unionism, democracy, and freedoms contradicted its provisions that set rigid limits on the formation and activities of unions such as strikes and required strict procedures on collective labor agreements. Act No. 2821 of 1983 succeeded in solving several problems that arose from the different interpretations of the provisions of Act No. 274 of the previous era, and moved toward a very different stance on the

issue of union democracy. It has been argued that the formation and operation of union organs were set in immense detail in order to establish union democracy (Merinç, 1991, p. viii). However, the provisions for the acquisition and termination of union membership were changed greatly to the disadvantage of rank and file members, and union democracy suffered in several respects that will be extensively discussed in the following chapters.

These two acts have been criticized time and time again by the European Union (EU) and the Council of Europe and International Labor Organization (ILO) on the basis of ILO Conventions No. 87 and No. 98, the European Social Charter and EU norms and regulations, prompting Turkey to be an issue of concern on the agenda of the ILO's Application Committee during its annual conferences. The foremost domestic regulations that contradicted these conventions were as follows: the prohibition of workplace unionism; the qualification requirement for ten years of actual work for union officials; the termination of union office in the case of convictions for certain crimes; the transfer of union assets to the Treasury in case of shutdown of unions; and the double barrage system for collective labor agreements. Furthermore, it has been asserted that the ban on union politics was another issue that contradicted these conventions and Act No. 2821 will be repealed in that respect (Geniş, 1994, p. 287).

In the last two decades, the ILO has urged Turkish governments to change these laws on several occasions, and the European Union stated that the 19th Chapter would not be opened for accession negotiations unless these laws were revised (Önsal, 2013, p. 6). In late 2012, after several draft proceedings, the new Trade Unions and Collective Labor Agreements Act (No. 6356) was enacted with the justification of adapting to the

constitutional changes that followed the referendum of 2010, which changed articles on the rights and freedoms of unions; to narrow down the limits posed on the freedom of unionization; to reorganize these rights and freedoms on the basis of the principles of democratic and libertarian society; and to adapt to the provisions of ILO Agreements No. 87 and 98, EU norms and regulations, and European Social Charter Articles 5 and 6.[73]

The new Act No. 6356—officially aiming to adapt to the provisions of ILO Agreement No. 87 that asserts free internal organizing to unions—gave priority to unions' ability to regulate their founding and activities on their own terms. In that sense, many issues that were regulated by the laws in the previous system are now left to union statutes, as noted in the Act's General Reasoning, Para. 2. Specific issues that concern union democracy will be examined in the following sections.

The original 1982 Constitution had taken a backward step from the 1961 provisions by prohibiting public servants and other public employees from founding or joining unions. The constitutional changes of 1995 lifted this ban, providing public servants the right to establish unions and collective agreements, and giving unions the right to political activity. Consequently, in 2001, Public Workers' Unions Act No. 4688 came into effect to regulate these constitutional changes. Despite this progress of unionism in the public sector, public servants' unions do not have the right to strike to this day, limiting their functionality drastically. In the case that collective bargaining processes fail with these

[73] Act No. 6356, General Reasoning, pp. 1–2.

unions, a mandatory arbitration is conducted by the Public Services Arbitration Board, whose decisions are final and have the force of a collective agreement.[74]

The other related legislation concerning general employment and unions comprises Labor Act No. 4857 of 2003, Civil Code No. 4721, the Associations Act No. 5253 of 2004 and the Labor Courts Act No. 5521. I will delve into the peculiarities of these Acts extensively in the section on the organizational system of unionism and in the following chapters. The relationship between these laws and union administration will also be discussed in each section when relevant to the study.

2.2 Sources of Union Legislation on Democratic Administration in the Turkish System

2.2.1 Constitutional Sources

Several provisions in the Turkish Constitution have either direct or indirect implications for union democracy. Article 49 of the Constitution provides the state protection of workers for the improvement of work life and the formation of unions. Article 51, 'The Right to Organize Unions', is crucial for unionism: employees and employers can, without prior [state] permission, freely form unions and higher organizations, and can join and resign membership on a voluntary basis in order to safeguard and develop their social and economic rights in labor relations. No-one shall be forced to join or resign from union membership. The original 1982 Constitution followed these general liberties with specifications in great detail on how unions are to be founded, how membership rights can be exercised, and how statutes and administrations have to be formed. Article

[74] Constitution Article 53, paragraph added by Act No. 5982 on 12/9/2010.

52, titled ‘Union Activities’, which prohibited political activities and limited various others, was abolished altogether in 1995.[75]

Certain changes were made on the same issue by the amendment of Article 51 in 2001 (Act No. 4709) in order to clarify public servants' constitutional right to union and the function of related laws. Within the amendments of 12/9/2010 (Act No. 5982), new clauses were added to Article 53 (The Right of Collective Labor Agreement), providing public servants and other public employees the right to union and collective labor agreements with the state administration. If a disagreement arises during the process of a collective agreement, the parties may apply to the Public Servants Arbitration Board, whose decisions shall be final and have the force of a collective agreement.

A final paragraph added to Article 53 by Act No. 5982 explicitly states that the scope of, and the exceptions to, the right of collective agreement, the persons to benefit from and the form, procedure, and entry into a force of collective agreement, and the extension of the provisions of collective agreement to those retired, as well as the organization and operating procedures and principles of the Public Servants Arbitration Board and other matters, shall be laid down in law.

The last paragraph of Article 51 states that the regulations, administration, and functioning of unions and their higher organizations shall not be inconsistent with the fundamental characteristics of the Republic and principles of democracy. A similar clause existed in the previous constitution.[76] This provision is the first and principal constitutional pillar of union democracy, and was undoubtedly made for its

[75] Act No. 4121 of 23/7/1995.
[76] 1961 Constitution, Article 46/2 (last paragraph).

improvement, in the same way that Article 68 worked for democracy in political parties. Turkish constitutional law scholars argue that these two clauses aim to bring a democratic and social state to its proper functions by ensuring that trade unions are democratically governed (Şahlanan, 1980, pp. 14–16).

Each issue related to the enforcement of union democracy in the following two chapters will be discussed with regard to its legal validity due to this constitutional provision that stands at the top of the hierarchy of norms.

2.2.2 International Sources

Article 90 of the Turkish Constitution states that international treaties duly effected (through their ratification by the Grand National Assembly of Turkey) have the force of law. No appeal to the Constitutional Court can be made with regard to these treaties on the basis that they are unconstitutional.[77] In the case of a conflict between international treaties concerning fundamental rights and freedoms and other laws, the international treaty provisions will prevail over domestic law. This provision is in effect even if the domestic law in question was adopted after the treaty. The international treaty provisions can in certain cases also be directly applicable. The Constitution thus grants preemptive authority to treaties on fundamental rights (Turunç and Sur, 2010, p. 12).

Turkey is a party to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, the Council of Europe's (COE) 1961 European Social Charter and the 1996 Revised Social Charter. Turkey has also ratified 59 conventions of

[77] Sentence added on May 7, 2004 by Act No. 5170.

the ILO,[78] including all of the eight fundamental conventions, three of the four governance conventions, and 48 of the 177 technical conventions. Crucial among these for union democracy are Conventions No. 87 (Freedom of Association and Protection of the Right to Organize, 1948), No. 98 (Right to Organize and Collective Bargaining, 1949), No. 135 (Workers' Representatives, 1971), No. 151 (Labor Relations: Public Service, 1978), and No. 158 (Termination of Employment, 1982).

2.2.3 The Provisions of Union Laws and the General Status of other Laws

Unionism in Turkey in the 1982 Constitutional era until late 2012, was regulated by the Trade Unions Act No. 2821 and the Collective Labor Agreement, Strike and Lock-out Act No. 2822. On 18 October, 2012, after several months of draft evaluations, the current Law on Trade Unions and Collective Labor Agreements No. 6356 was enacted and Acts No. 2821 and 2822 were repealed. Neither the late Acts (No. 2821 and No. 2822), nor the current Act No. 6356 explicitly express the principles of democracy stated in the last paragraph of Article 51, as they refer to the Constitution's provision (Act No. 6356 Art. 31/1; Act No. 2821 Art. 6/6, Art. 37/1). However, it may be argued that through its various provisions that will be elaborated in the following chapters, the law implicitly aims to enforce democratic principles.

Even though the main legal foundations of unionism in Turkey are based on union laws, the Associations Act and the Civil Code also hold several provisions concerning union democracy. Basically, Article 63 of the late Trade Unions Act No. 2821 stated that all

[78] Out of 59 Conventions ratified by Turkey, of which 53 are in effect, four Conventions have been denounced and two have been ratified in the past 12 months, as of 14/04/2016, according to ILO sources. For details see http://www.ilo.org/ankara/conventions-ratified-by-turkey/lang--en/index.htm

trade unions and confederations of workers and employers shall be subject to the provisions of the Civil Code and the Associations Act that are not contrary to the Trade Unions Act on matters not provided by the Unions Act, which means that the Civil Code and Associations Act have general law status in regard to union acts. Similarly, the current Union Act No. 6356 Article 80/1 states that in cases where there is no provision in respect to workers' and employers' organizations in the Trade Unions Act, provisions of Civil Code (Act No. 4721) and the Associations Act No. 5253 that do not conflict with the Union Act shall apply. Furthermore, as the new union law also covers collective labor agreements instead of dealing with the subject in a separate act, as was done in the previous system with Act No. 2822, the second paragraph of Article 80 points out that collective labor agreements are also subject to the provisions of the Civil Code and Obligations Act as well as other laws regulating contracts of employment that do not conflict with the Union Law.

Article 35 of the current Associations Act No. 5253 (4/11/2004) states: "This Act's Articles 19, 20, 23, 26, 28, 29, 30 and 31 are in effect with their penal provisions in matters concerning professional organizations of public status and workers' and employers' unions and their higher organizations wherever their specific acts have no provisions", meaning that unions shall be kept in check by the state in parallel with associations in several ways, especially in terms of administrative control and state permission requirements for certain activities.

Compared to the previous system formed by the combined provisions of the Trade Unions Act, the Associations Act and the Civil Code, the new Associations Act plays a lesser role due to its revised and more limited nature. The new Civil Code No. 4721

dated 2001 has more coverage on associations (Articles 56–100), as the new Associations Act No. 5253 places more emphasis on administrative provisions instead of organizing, operations, and membership issues that were generally left to the provisions of the Civil Code (as indicated by Art. 36 of Act No. 5253). Thus, in the current system, when Union Act No. 6356 has no provisions on a subject, the Civil Code has more application than the Associations Act. Each of the referred provisions of these Acts, as well as the nature of the relationship between union and association laws on matters concerning union democracy, will be discussed further in the following chapters.

2.3 Organizational System of Unionism in Turkey

The organizational system of union signifies the general means of, and restrictions over, both unionism and unionization. Some of the most important limitations on the current system of unionism in Turkey were brought with the 1982 Constitutional regime and, even though the union laws have been changed in the past few years, the general framework of the system and its restrictive spirit are retained.

The organizational system of unionism and its properties are matters directly related to union freedoms. Workers' freedom to establish unions and their union membership rights rest on the legal conditions of the existence, functions, and operational abilities of unions and their higher organizations, which are called the ‘collective union freedom’ in the literature (Çelik et al., 2015, p. 566). One of the foremost elements necessary for the achievement of collective union freedom is the possible existence of multiple unions in a single branch of activity (pluralist unionism) (ibid., p. 563). In the case where

unionization permits the existence of only a single union in an activity branch, dissident members of the union have no choice to form a separate union and have to comply with the incumbent administration's choice of policies. As discussed in the historical legal background and individual union freedom sections, this fundamental characteristic of collective freedom has been basically fulfilled from the earlier days of the Turkish unionization process. However, the number of unions, and therefore the application of the pluralist unionism principle in practice, are greatly influenced by other features of the system (such as the authorization barrages). Furthermore, pluralist unionism is only one feature in the organizational system that shapes the collective union freedom in Turkey. The following subsections will examine the rest of the primary features.

2.3.1 Turkey-type Unionism

As mentioned in the Turkish union literature review with the studies of Dereli and Şahlanan, between 1961 and 1982, the structure of union organizing in Turkey was dual-based. Under the Trade Unions Act No. 274 regime (Art. 9/1), unions could either organize nationally from top to bottom by forming branches locally or regionally, or local unions could be founded independently which could opt to form union federations from bottom to top. Thus, national unions and local/workplace unions co-existed in the system.

In the post-1982 legal context, only the former type of unionization remains, which is called ‘Turkey-type unionism’ in the literature (Dereli, 1977, p. 68; Şahlanan, 1980, p. 11). In this system, unions shall organize nationwide within a specific branch of activity, and union branches do not have an independent legal personality. Consequently,

branches do not have the right to conduct collective labor agreements with employers. Furthermore, branches do not possess financial autonomy (Act No. 6356, Art. 11/2) and their administrative rights are limited by the powers of the national organization. Secondly, workplace unionism and occupational unionism and their higher organizing, which were practiced in the previous era, were prohibited by law (Act No. 2821 Art. 3/1) for 30 years until the ratification of the new Act No. 6356 in late 2012.[79] Combined with Turkey-type organizing, these have effectively centralized unionism across the country. The federal type of union organizing holds stronger democratic processes compared to the centralized, national unions (Dereli, 1998, p. 25).

However, as in the case of higher union organizations, when unions grow larger and more bureaucratized, union democracy tends to weaken, as explained in the previous chapter. Union branches in the Turkish context lack autonomy and cannot function as centers of countervailing power (Edelstein and Warner, 1979, p. 67) for potential organized opposition as strongly as local unions do, and therefore cannot contribute to democracy at the national union level. The factors summarized as the 'incompetence of the masses' in Chapter 1 is a primary cause of this outcome due to the rise of complex and more technical leadership practices which make the executive processes more difficult for the rank and file to grasp. This also paves the way for more member apathy, as they are physically more distant from the bureaucratic mechanisms that run the union affairs. It is also more difficult to support the opposition in a national union through financial and other means. This discussion deserves more elaboration. At the local level

[79] The motivations behind such measures have been discussed at length in the literature. The prevention of 'union inflation' in order to eliminate smaller unions and the confrontation of unions of different characteristics vs. the capital, as explained in previous subsections, is a common explanation for these measures (Işık, 1995, p. 186).

(be it a branch of a national union or a local union such as those established under the 1961 unionization regime), face to face contact and communication between the leaders and the rank and file members is the normal state of affairs. Members have the capability to know about each other, the standing leaders, and the contenders in the case that an opposition to the leadership arises. Thus, a local union leader has to engage in a more intimate struggle with possible opposition if a rivalry comes to life. However, in the case that such opposition arises inside a branch of activity at the national level, the contenders are physically more distant from union members and have few resources to run a campaign that will successfully spread and sway those among the rank and file. The monopoly of power in a national union and the control over means of communication elaborated by Lipset et al. in Chapter 1 further solidify the rise of an effective opposition in this regard.

Furthermore, the opportunities of a higher union organization's leader compared to local ones are much greater in terms both of power and status. Leaders of national unions are in many cases full time professionals who have acquired more advantage and prestige of the upper classes compared to local unions. This brings us to the issue of the motivation for the leaders to stay in office that I discussed under the subsections of Michels and Lipset et al. in the first chapter. The outcome of losing an election and returning to manual labor for the leader of a national labor organization is incomparable to a local one in terms of material and social benefits (Dereli, 1977, p. 43). Thus the incumbent leadership is prone to be more motivated to stay in office than in the case of a local union or branch.

Another issue that determines the framework of unionism is that of strikes. Lawful strikes are limited to disputes during negotiations to conclude a collective labor agreement (Act No. 6356 Art. 58/2–3). Although the new Act does not clarify the types of unlawful strike which were explicitly stated in the previous Act No. 2822 Art. 25, strikes that would take place outside the negotiation processes of collective labor agreements—such as rights strikes for the proper implementation of a concluded collective agreement and general, political, and solidarity strikes, work slowdowns, deliberate reduction of output, and any other resistance actions—are unlawful in the current context. Strikes in several specified work branches and establishments are unlawful altogether (Article 62/1), depriving a huge mass of workers across the country of the right to strike.[80] Moreover, the Council of Ministers may prohibit lawful strikes in the case of a natural disaster (Article 62/2) or suspend them for 60 days with a decree if they are 'prejudicial' to public health or national security. If an agreement is not reached before the expiry date of the suspension period, the High Board of Arbitration settles the dispute upon the application of either party within six working days.[81] Otherwise, the authorization of the workers' trade union shall be void (Article 63/3). These provisions theoretically give the government virtually unlimited power to suspend strikes by using any kind of security argument as a pretext to prevent them in a manner they desire through state arbitration institutions. In practice, these have been used on countless occasions and large strikes continue to be effectively prevented by the government

[80] These work branches and establishments include life- or property-saving, funeral and mortuary, production, refining and distribution of city water, electricity, natural gas and petroleum and petrochemical works, naphtha and natural gas-based production, banking services, Ministry of National Defense workplaces, General Command of Gendermerie and Coast Guard Command, firefighting, and urban public transportation services carried out by public institutions and hospitals.

[81] Also in the Turkish Constitution, Art. 54.

through these measures. Such formal control over basic union functions weakens union democracy indirectly, in the sense that union leadership may be pressured by the government against the interests of the union members.

The sole type of higher level organization that unions may form in the post-1982 Turkey are confederations. A confederation may be established by the association of at least five trade unions operating in different branches of activity (Law No. 6356 Art. 2/1–f). There are three major workers' union confederations (Türk-İş, Disk, Hak-İş)[82] and a single employers' confederation (Tisk) in contemporary Turkey that are active in the industrial arena. Union confederations, similar to union branches, do not possess the right to conduct collective labor agreements.

2.3.2 Industry-based Unionization

In the contemporary Turkish legal system, unionization is industry-based, meaning that a union shall only form in one specific branch of activity (textile, metal, etc.) (Law No. 6356 Art. 2/1–ğ and previous Union Act No. 2821 Art. 3). Thus, each union has to operate in a single pre-defined industry.[83] Twenty-six such branches of activity were defined in the Regulation on Sectors of Industry No. 83/7376, 11/11/1983. With the new Act No. 6356 of 2012, these have been narrowed down to 20 (Art. 4/1). Workers join unions based on the branch of activity in their workplaces (Art. 3/1), regardless of any other subsidiary activities outside the scope of the main industry (Art. 4/2). The

[82] Tüm-İş and Aksiyon-İş are minor active confederations that have a total of 13 members. These member unions are also minor in terms of size and none of them can fulfill the authorization prerequisites for collective labor agreements.

[83] An exception to this rule is that public employers' unions may cover different branches of activity (Act No. 6356 Art. 3/2).

previous Act No. 2821 had also stated that unions shall be formed to operate nationwide (Art.3/2) and shall not be formed on an occupational and workplace basis (Art. 3/3), which was a clear setback for unionism compared to the pre-1980 system provided by Act No. 274. With these provisions, strong local unions of the former era were forced either to join unions of their branch of activity or shut themselves down, which resulted in their imminent disappearance. The ILO Committee on Freedom of Association (CFA) stated in Court Decisions No. 997, 999, and 1029 that the third Article of Act No. 2821, which prohibits occupational and workplace unionisms, was in contradiction of the principle of freely founding and joining unions of workers' own choice. This contradiction was also noted in the CFA report ratified by the ILO Board of Directors in 1996 (Paragraph 57 cited in Koç, 1999b, pp. 29–30). Aiming to comply with these criticisms, the new Act No. 6356 does not explicitly state the obligations of unions to be formed to operate nationwide or the prohibition of occupational or workplace unionization. At a first glance, the elimination of such clauses gives the impression that the rules of Turkish unionization have been liberated from restrictions on freedom to organize (union collective freedom) under ILO standards. With the new law, unions that target a specific geography in which to operate may be founded. Also, technically, workplace and occupational unionization are not prohibited within the system of the new law: it is now possible to establish a workplace union as well as an occupational union by stating the branch of activity it will operate under in its statutes. However, by stating that unions are to be founded on the basis of industry combined with the enforcement of authorization barrages related to these industries, the emergence of unions based on workplace and occupation is prevented practically in an elusive

manner. The main issue arises from the authorization requirements for collective labor agreements that will be elaborated in the following subsection. Despite these practical difficulties, in the case that these requirements are fulfilled by a workplace or occupational union, it may undoubtedly operate legally and to the fullest capacity within the system, a phenomenon yet to be experienced in the current context outside the boundaries of theory.

In actual practice, as a result of the legal processes of the post-1982 era, the Turkish system of unionization for more than three decades has rested on nationwide operating, industry-based unions. As explained under the previous subsection, a potential contender for leadership of a national union has physical difficulty in communicating with the rank and file members, a disadvantage that is further reinforced by possession of the formal means of communication in the union by the incumbent administration. With the industry-based unionization rule, an unknown contender's contact with the workers of the whole branch of activity in order to win their support is very much harder. A theoretical example can be given as follows: a dissident worker in a large national union (e.g., with a hundred thousand members) in the ‘general affairs’ branch wants to challenge the incumbent leadership of the union. At the local level, the union branch of which he or she is a member lacks financial and administrative autonomy, as well as legal personality. This already gives immense power to the incumbent leaders of the national union to prevent the rise of opposition. Furthermore, the contender must communicate and run a campaign among a hundred thousand fellow rank and file members who may belong to numerous different workplaces (in this case, various municipalities) and therefore the contender is typically an unknown person to the vast

majority under the normal state of affairs. Even in the case of smaller unions, the industry-based unionization system gives similar results, as every union is forced to organize nationwide as opposed to local or workplace unions. Therefore, Turkey-type and industry-based unionization together have a combined detrimental effect on the rise of an effective opposition and, consequently, on democracy.

In the previous regime of Trade Unions Act No. 2821, the classification of all works under each branch of activity was to be laid down in statutes (*tüzük*) by the Ministry (Art. 60). The new Act No. 6356 Art. 4/3 changed this system based on statutes to lesser regulations (*yönetmelik*) by the Ministry, giving the government an instrument that is easier to utilize to define each workplace's branch of activity and therefore more power to control the operation of specific unions. The related Branch of Activity Regulations issued in Official Gazette No. 28502 on 19/12/2012 created controversies by permanently fixing the workplaces' field of industry in accordance with the latest authorized union's branch of activity, which was found to be in contradiction of the law (Şahlanan, 2013, pp. 112–113). These regulations were replaced in 2013 by providing the basis of re-determination of the branch of activity for workplaces.[84]

Industry-based unionization has other direct and indirect implications for union democracy, especially in terms of the qualification requirements for founding union members and union officials. These issues will be discussed extensively in the next chapter under union membership sections.

[84] Official Gazette No. 28719, 26/7/2013.

2.3.3 Double Authorization Barrage

Under the system of the Collective Labor Agreement, Strike and Lockout Act No. 2822 and until the ratification of Act No. 6356 in late 2012, only unions that represented ten percent of the workers across the country in the branch of activity in which their union operates[85] could qualify as the competent authority for the right to make collective labor agreements (Article 12/1, titled Authorization).[86] By doing so, the lawmakers aimed to prevent the so-called union inflation of the previous era of unionization, in which union numbers reached as high as 828 (Baydar, 1998b, p. 11). They succeeded in lowering the number of unions that had authorization for collective agreements to 41, leading to the emergence of only a single union in 15 branches of activity (out of 28) with the right of collective agreements by the end of 1990 (Merinç, 1991, p. 63). This first stage authorization barrage has effectively limited the number and variety of unions across the country. Within this system, even if every worker in a workplace is a member of the same union, they cannot benefit from collective agreements unless the union meets extremely high authorization requirements by operating on a larger scale.

It is commonly argued that these measures succeeded in strengthening unions by bringing them together in terms of membership numbers and providing greater power in their dealings with their employers. However, such barrages are detrimental to union democracy in terms of both collective and individual freedoms. Theoretically, the very

[85] The statistics published by the Ministry of Labor and Social Security in January and July of each year are the instruments used in calculating the number of workers engaged in a given branch of activity. These statistics cover the total number of workers in each branch of activity and the number of members in unions in that branch (Act No. 6356 Art. 41/5 and the previous Act No. 2622 Art. 12/3).

[86] The previous Act No. 2822 had excluded the branch of activity covering agriculture, forestry, hunting, and fishing from this requirement for authorization (Art. 12). This exception was based on the temporary and scattered character of labor in these branches, and the feeble level of unionization (Turunç and Sur, 2010, p. 126). The new Act No. 6356 removed this exception.

existence of any authorization barrage for the acquisition of collective agreement rights is questionable for the development of both independent and overall unionism in Turkey. A worker is practically deprived of the right to found a new union since it is immensely difficult to meet the authorization requirements and ensure the survival and growth of the union. Similarly, joining another union is problematic, since in several branches there is only a single one because of the unionization system. In this sense, resigning from union membership may result practically in the worker being left without a union. This causes further complications for individual union freedoms in terms of union democracy, which will be examined in the next chapter under membership sections.

In its original version, the new Act No. 6356 lowered the authorization barrage based on branch of activity from ten percent to three percent. This massive change, due to the ongoing process of de-unionization since 1980, would not suffice for union circles. Apart from the actual shrinkage in union sizes, another major problem for unions arose from membership statistics based on unions' lists, which were far from accurate and commonly maintained exaggerated numbers in order to reach authorization barrages by various methods, such as retaining deceased or resigned members on lists or even forgery of fake registration papers, which was common among Turkish unions for several decades. Within the new system brought by Act No. 6356, procedural measures were taken to prevent these practices. The new method is to use the e-State instrument for membership and Social Security Institution statistics to determine the real number of members of unions. With the increased accuracy of the new system, most unions that met the authorization barrages would lose their authorization rights. Even a reduction of

the barrage to three percent would not prevent this outcome. Therefore, the new law's Provisional Article 6 stated that until 1/7/2016, the authorization barrage should be applied as one percent, and from then on until 1/7/2018 as two percent instead of three percent.

With the recent amendment of the union law with Act No. 6652 on 10/9/2014, the barrage was permanently lowered to one percent, an immense change for Turkish unionism in terms of union freedoms, and pluralist and rival unionism potentials. Statistically, a shift from ten percent to one percent in the few past years is undoubtedly a considerable improvement for collective union freedom and union democracy. In practice, the number of unions that have the representative numbers for authorization rights has risen in a more limited manner than the law entails, due to the implementation of true union membership numbers in the calculations for authorization. In July 2015, according to Ministry of Labor and Social Security statistics, there were a total of 55 (out of 162) unions in Turkey that exceeded the first stage one percent authorization barrage. Compared to the statistics of 1990 (41 unions with authorization), it is a minor but noticeable improvement. Kutal (2014) argues that even though the first stage authorization barrage has dropped from ten percent to one percent, the ILO's objections to the authorization barrages on the grounds of breaching ILO Convention No. 98 will not disappear. As parties to the Convention have the obligation to promote and develop the collective agreement method, the double authorization barrage is certainly inconsistent with this rule (Kutal, 2014, p. 22).

As examined in the previous subsection, the new Act No. 6356 reduced the number of branches of activity from 26 to 20 (Art. 4/1) by bringing together some of the branches'

sectoral scopes. Fewer branches of activity means larger branches in terms of membership size. In the past decades, scholars of Turkish unionism have asserted that the general globalization process, along with internal political dynamics in Turkey, has resulted in less unionization, and a method to ensure strong unionism in this context is to combine some branches of activity in order to produce larger unions (Kutal, 2006, p. 124). While the new laws have adhered to these proposals, combined with the first stage authorization barrage, this reduction is partially detrimental for collective union freedom in the sense that it is harder for small unions to meet authorization barrages.

A second stage authorization barrage is also enforced in the Turkish system of unionism: only unions that represent more than half of the workers employed in a workplace and 40 percent of the workers in the enterprise to be covered by the collective labor agreement shall be authorized to conclude collective labor agreements with the employers (Act No. 6356 Art. 41/1).[87] Since the first implementation of this system with the late Act No. 2822, at the beginning of many collective bargaining processes, rival unions have vigorously challenged each other in tactical (winning over members of the rival union) and legal terms (going to court in order to annul a rival union's authorization) in order to become the authorized union in the workplace or enterprise. The procedures of authorization are heavily detailed in law,[88] and the processes for unions to contest the authorization and contest the branch of activity of a certain union have created lengthy legal disputes under this system which have occasionally been misused by rival unions (Turunç and Sur, 2010, p. 128).

[87] Article 12/1 of the previous Act No. 2822 did not distinguish between workplace and enterprise, fixing the barrages at 50 percent + 1 for both. The reduction of the enterprise barrage to 40 percent is an improvement in terms of union freedoms.
[88] Articles 41 to 45 in the new Act No. 6356 and 12 to 17 in the previous Act No. 2822.

The double barrage system under Act Nos. 2821 and 2822 was among the most criticized issues by ILO under the principles of pluralist unionism and as a breach of collective agreement rights (Işıklı, 1994, p. 275). Furthermore, the system provides governments yet another instrument to pressure unions through the determination of the total number of workers in a branch of activity, which can be altered in order to punish or reward specific unions by making them win or lose authorization for collective agreements.

Together, these three factors—Turkey-type unionism, industry-based unionization, and double authorization barrage—pose serious issues of concern not only for democracy but for the unionism movement itself. I will delve into each of these factors further in the rest of the study to clarify their direct and indirect effects on union democracy in all respects.

As elaborated in the first part of the chapter, the earlier Turkish labor movement went through several decades of continuous struggle to establish trade unions that had universal functions of making collective agreements and strikes, and these struggles were shaped to a large degree by domestic and international political conjunctures. The provisions of Trade Unions Act No. 274, while creating multiple unions that operated both nationwide and based on workplaces and occupations, did not provide adequate precautions to prevent the permanent domination of oligarchies in union administration. Rival unionism and political polarization turned the labor movement more militant, and the anarchy of the late 1970s was toppled by the military coup that directly interfered with the unionization system. Consequently, the Trade Unions Act No. 2821 and Collective Agreement, Strike and Lock-Out Act No. 2822 that followed the ratification

of the much more restrictive 1982 Constitution limited the system of unionism in ways that decreased both the number of unions and their membership. The new Act No. 6356 of 2012, while bringing several favorable provisions for both unionization and democracy, kept the basic union organization regime imposed by the Constitution. The next chapter will elaborate how the post-1982 regime has shaped union members' rights, protections, and powers within this system, which is one of the primary determinants of union democracy.

CHAPTER III

UNION MEMBERSHIP: INDIVIDUAL FREEDOMS, RIGHTS, AND THEIR LIMITATIONS

From structural and procedural perspectives, union democracy is primarily concerned with the democratic quality of the formal establishment and operation of the trade union itself. The main determinants of these processes are the rights and freedoms of the members, their formal ability to participate in decision-making, and the function and powers of the union organs and the system of unionism under which they operate. This chapter focuses on union membership issues concerning internal union democracy. Ordinarily, under a democratic unionism regime, workers shall freely join or leave unions and exercise their rights of participation through inclusive mechanisms of decision-making as equal members of the organization without the risk or fear of reprisal. Therefore, how individuals may acquire, sustain, and lose union membership according to legal and statutory procedures, and how these notions are related to union democracy, will be discussed. The relationship between the Turkish constitution, laws, and union statutes is elaborated on the basis of their influence on membership rights and liberties inside unions. In doing so, factors that shape members' identification with their organizations in the Turkish legal framework of unionism are also elaborated in order to evaluate their status in industrial life as well as in the wider society.

3.1 Individual Union Freedom

A person's right to found, join or not join, and leave a union are collectively known as ‘individual union freedom’ in the literature (Tunçomağ, 1985, p. 14; Esener and Gümrükçüoğlu, 2014, p. 32; Çelik et al., 2015, p. 562; Tuncay and Kutsal, 2015, p. 30). This freedom has dual characteristics: positive union freedom is the right to found or join unions or their higher organizations without prior permission, whereas negative union freedom is the right to not join or to resign from them. Combined, these encompass the freedom of the individual worker on the issue of union membership.

Before we delve into the intricacies of how union laws and statutes in Turkey support or hinder individual union freedom, some general remarks on common methods pertaining to its delimitation need to be addressed. These basic freedoms can and have been breached time and time again by both unions and the state through various practices across the globe, including American and western European countries.

3.1.1 Delimitations on Positive and Negative Union Freedoms

General reasons to delimit the right to found or join unions (positive union freedom) are the requirement for the person to have legal capacity to act and the absence of the person's prohibition from union membership. Apart from these, unions themselves may limit membership through certain measures. As a general rule, unions have the right to refuse membership applications in order to protect their wellbeing and interests in the case that they perceive a threat that may be harmful to the organization. However, on the basis of the principle of equality before the law and in accordance with the Constitution (Art. 10), no discriminations can be made on issues of union freedom

based on gender, race, religion, philosophical belief, political alignment, etc. (Çelik et al., 2015, p. 562). Employers may also delimit positive union freedom by making it compulsory for their workers to leave their unions in favor of another union or keeping the workplace or enterprise de-unionized.

The primary example that harms positive union freedom is 'yellow dog contracts' between employers and workers, in which the worker agrees as a condition of employment not to be a member of a trade union. This was a common method to prevent the emergence of unions in workplaces and enterprises throughout the USA until the practice was outlawed in 1932.[89]

Another method that limits positive union freedom is through the utilization of 'blacklists', by the employers in which lists of union members or labor leaders are published or communicated by employer organizations in order to prevent their employment. Since this damages both union freedom and personal rights, it has been asserted that no reasons for putting the names of individuals on a blacklist (such as past participation in an unlawful strike) shall deem the practice rightful (Şahlanan, 2013, p. 132).

From the perspective of the individual, negative union freedom is a fundamental right of abstention from union membership or of choice between multiple unions. The right not to join a union protects the individual against group oppression through disciplinary action. However, from the union management perspective, this contradicts the basic aims of increasing membership size and strengthening the union through rank and file

[89] Norris-La Guardia Act (1932).

numbers. Many practices in the earlier days of unionism actually adopted this latter perspective and made membership mandatory in several countries. Negative union freedom cannot be fully realized unless provisions (and other informal practices) on compulsory membership are absent. Historically, while the principle of pluralist unionism, and thus the fragmented nature of unionization, held roots in several European countries such as France and Italy, in other countries such as the USA, Britain and Germany, unionism developed in a unified form, producing single unions in each area of activity (Merinç, 1991, pp. 1–2). This has created strong unions based on industries, occupations, and workplaces. Consequently, such conditions that hinder individual union freedom have been experienced particularly in Anglo-Saxon countries in the name of union security (ibid., p. 11). The closed shop and the union shop are two systems that have been practiced in the past with such justifications.[90]

In the closed shop, the employer enforces the direct employment of members of the union taking part in the collective labor agreement and the dismissal of employees that do not become members of that union in due course. Therefore, the closed shop provides the maximum amount of work security and serves as an instrument against workers refusing to become members of the specified union. This system clearly violates the negative union freedom and effectively monopolizes unions in workplaces or enterprises.

In the union shop, unlike the closed shop practices, employers have the freedom to choose their employees, but the employees are obliged to join the union in the

[90] In the USA, closed shop was practiced under the Wagner Act (1935) and union shop was practiced under the Taft-Hartley Act (1947).

workplace in due time (e.g., 30 days in the case of the Taft-Hartley Act, USA). From the viewpoint of individual workers' freedoms, this results in a violation of negative union freedom as much as the closed shop.

A final common practice that hinders union freedom which has been adopted by workers' unions instead of the employers is that of work prevention, known in the French union literature as 'mise à l'index' (Şahlanan, 2013, p. 132). This serves as a kind of disciplinary instrument in the hands of the union organization. Accordingly, unions may pressure employers in order to prevent the employment of workers whose union memberships have been terminated. In some rare occurrences, unions also use mise à l'index against their existing members for dismissal from work. Although the practice has found common ground in French unionism and legitimacy in Britain, it was found to be in contradiction of negative union freedom and therefore unlawful in the German system (ibid.).

The Turkish Constitution and union laws alike prohibit the use of yellow dog contracts, blacklists, closed shop, union shop, and mise à l'index as security instruments by employers or unions. Article 51 of the Constitution states that employees possess the right to become members of a union or resign from membership, and that no one shall be forced to become a member of a union or to resign from membership. The current Act No. 6356 provides several protections for positive and negative union freedoms. Part Four of Act No. 6356 (Art. 23 to 25) is titled 'Protection'. Article 25 states that: (1) the recruitment of workers shall not be made subject to any condition as to their joining or refraining from joining a given union, their remaining in or resigning from a given union, or their membership or non-membership of a union; (2) the employer shall not

discriminate between workers who are members of a union and those who are not, or those who are members of another union, with respect to working conditions or termination of employment;[91] (3) no worker shall be dismissed or discriminated against on account of his membership or non-membership of a union, his participation in the activities of unions or workers' organizations outside his hours of work, or during hours of work with the employer's permission; (4) if an employer fails to observe these provisions apart from termination, he shall be liable to pay union compensation which shall not be less than the worker's annual wage; and (5) in case of termination of contract of employment for reasons of union activities, union compensation shall be ordered regardless of the requirement of application of the worker and the employer's granting or refusal of permission to restart work in accordance with Article 21 of Act No. 4857. Article 25 gives further details on protections against termination or discrimination of the worker on the basis of union membership. It should be noted that proving discriminatory treatment is difficult for workers, particularly in times of economic crisis. Nevertheless, with regard to terminations, the employer shall be under the burden of proof. When reaching a conclusion on the matter, Turkish courts take into consideration the circumstances and the stream of events, in some cases rendering the discriminatory cause obvious (Turunç and Sur, 2010, p. 120). Workers' need for protection arises the most when their employment contract is terminated due to their union memberships, which is a severe blow to positive union freedom. Dereli states that the new provisions on issues of contract termination are flawed with a "somewhat fuzzy

[91] The provisions of the collective labor agreement with respect to wages, bonuses, premiums, and money-related social benefits are exceptions (Art. 25/2).

loophole in the protection of the worker against acts of antiunion discrimination" (Dereli, 2013, p. 42).[92]

An important point for union democracy is that all of these provisions under the protection part of the Act provide guarantees of individual union freedom against the employer only, remaining silent on the issue of rank and file members' protection versus the union management. This subject will be examined extensively in the following subsections.

Negative union freedom can also be hindered in the case that non-members cannot benefit from the collective labor agreement that is in effect in the workplace or enterprise. To prevent this, special provisions are made through the force of law or in the labor agreements themselves. Article 39/4 of Act No. 6356 states that workers who are not members of the union that is a party to the collective labor agreement may avail themselves of the agreement if they pay a monthly solidarity due to the union concerned, and that the consent of the union shall not be required in this matter. The amount of solidarity due shall be determined by the union's statutes, provided that the amount is not above the membership dues. The existence of a fair solidarity due system undoubtedly reinforces negative union freedom, in the sense that workers may still benefit from collective agreement improvements without being coerced by the union management.

I will further examine the other specific measures on matters of individual union freedoms in the Turkish context in the following sections.

[92] For a comprehensive evaluation of the related provisions, see Dereli (2013, pp. 46–49).

3.2 Acquisition of Membership

One of the first and foremost legal criteria on the democratic administration of unions is undoubtedly the condition of how membership is acquired. As the strength of a union is primarily measured by its membership size, under normal state of affairs, unions are supposed to aim to gain more members. Therefore, rejection of a worker's application for membership and its effects on union democracy deserve examination. Unless for a just cause, such a rejection would more often than not mean the union management's motivation to eliminate potential dissent and opposition inside the union organization. Also, cumbersome processes for membership admittance hinder positive individual union freedom.

3.2.1 Acquisition of Membership by the Constitution and Laws

Examining the evolution of Turkish union laws, it is observed that from Act No. 274 to the late Act No. 2821, the procedural conditions for becoming a member have been increasingly burdensome for the individual worker. According to Act No. 274 Art. 5 of 1963, becoming a member required only a written application. Act No. 1317 Art. 22 of 1970 brought in further elements: "membership is acquired when the member registration paper or book is signed and the occupational organization's authorized organ accepts the application". In 1972, the Constitutional Court revoked the second part of this clause, abolishing the occupational organization's authorized organ acceptance procedure.[93] According to the Court ruling, this clause provided unlimited power to the union management for the admittance of applicants, which could be abused

[93] AYMK, 8–9/2/1972; E.1970/48; K.1972/3.

in order to reject workers whom the managers disliked or saw as potential contenders to their leadership. Consequently, this sort of unlimited authority hindered the Constitution's Article 46 that provided workers the freedom to join unions. At a first glance, with the revocation of the acceptance procedure, a worker who simply signed the registration book seemed to acquire union membership automatically. However, legal scholars have argued that the acceptance of such a procedure in practice would corrupt union democracy and alter the democratic balance in an illegitimate manner (Şahlanan, 1980, p. 73).

The late law of 1983 (Act No. 2821 Art. 22) made it much more burdensome for the applicant worker by requiring the forwarding of five copies of the membership registration form, duly completed and signed by the worker and certified by a public notary, to the approval of the union's authorized organ as specified in the statutes of the union. I will first discuss the latter, more fundamental part of this clause, which is the union's approval requirement for the acquisition of membership. We notice that the law-making authorities did not budge by the revocation of such procedures in 1972 by the Constitutional Court, which had created controversy in the literature. In defense of this system, it has been commonly referred to as legal person’s basic freedom to accept or reject membership according to its own right. This topic has been debated in the Turkish legal literature since the 1960s. The first group whose suggestions were referred to in some rulings of the Court of Cassation[94] claims that the individual who is refused membership has no fundamental right to object to the decision in court simply because

[94] In Çelik, p. 357, 9 HD 16.11.1964 T.; E.7563; K.7342, 2.HD. 20.5.1974 T., E.3152, K.3166, YKD 1975, S.7, pp.51–52; 2.HD 20.5.1974, 3152/3166 (RKD 1974/2, 291); 2.HD 5.3.1987, 614, 1811 (IKID 1978, p.5011) cited in Deren-Yıldırım (2001) without at an explicit reference.

trade unions are identical to associations as organizations and therefore have the freedom to decide on the matter (Deren-Yıldırım, 2001, p. 1705). This right is derived from the collective union freedom, and claiming that positive union freedom obliges unions to accept a membership application no matter what and that cases with justified reasons that pose obstacles to membership are present is contradictory to the aims of collective union freedom (Esener and Gümrükçüoğlu, 2014, p. 146; Tuncay and Kutsal, 2015, p. 31). In line with this argument, the second group, seeking an optimal balance between collective union freedom and positive individual union freedom, asserts that although unions (and, to some extent, associations) do not have to accept everyone to union membership and that membership shall not be automatic, they do not possess absolute freedom to accept or refuse membership applications, and therefore applicants who fulfill the requirements of the union law and the statutes of the union should have the right to appeal in court once they are rejected (Şahlanan, 1980, pp. 70–71; Deren-Yıldırım, 2001, p. 1706; Tuncay and Kutsal, 2015, p. 92), an aspect in line with the Constitution's Article 51 on democratic essentials. A third group of scholars argues that provisions which give union management the authority to reject membership applications aim to prevent the formation of opposition inside unions and constitute an instrument provided to union managements for the consolidation of their permanent leadership, which is a serious blow to union democracy (Güzel, 1996, p. 274).

In order to understand this debate fully, the relationship between union laws and association laws that have been presented in the previous chapter as secondary sources of legislation concerning unions should be clarified. From a legalistic point of view, unions resemble associations, in the sense that both are voluntary organizations based

on private law and possess legal identities. Even though these organizations may have different structures concerning their founding and functions, they belong in the same category of interest groups as the pioneers of freedom to assembly for a variety of purposes in our contemporary societies. Unions, like associations, are legal persons formed by private will, and founding or joining either is a basic exercise of collective freedom (Tuncay and Kutsal, 2015, p. 12). Consequently, legal systems have adopted mixed or even unified regulations in regard to these types of organization. For instance, in the German legal framework, no specific law exists for unions and therefore the provisions for political parties and associations also cover unions directly. As explained earlier, in the Turkish legal framework, the Associations Act has general law status on union matters when there are no specific provisions in the union law, and several articles in the Associations Act that have been noted in subsection 2.2.3 are enforced on union matters.

Considering the issue of membership, however, in the Turkish system, being prevented from joining unions holds greater implications than the same for associations. I emphasize the combined effect of the general aspects of unionism and special features of Turkish unions when such implications are considered: (1) the distinctive nature of unions among organizations; and (2) Turkish legal conditions of unionization (the external rules).

(1) Above all else, we should recognize the differences between unions and associations in terms of their social and economic function. Unions are exclusive in their ability to conduct collective bargaining and agreements with the employers and in performing activities such as strikes, which differs from the functions of associations. They

undertake public duties in order to balance work life between economically strong employers and economically weak workers, establish work order and discipline, and produce objective and general work rules through collective labor agreement regimes (Tuncay and Kutsal, 2015, pp. 12–13). A worker who is rejected from membership of a union would practically lose the means to participate in and potentially benefit from these activities over which the union has a monopoly.[95] Furthermore, as discussed in the introduction and Chapter 1, under the theories of political pluralism and mass society, the role of unions as multi-purpose organizations in the society cannot be disregarded. A ruling of the Turkish Constitutional Court states that "trade unions are establishments that operate in public interest, aiming to fulfill common and social needs of a large portion of the society in order to ensure their development, material and immaterial growth, to provide jobs and professions, to prevent the oppression of the worker and to set a balance to prevent the disruption of public order".[96] These roles of unions impose even more significance on the issues of membership acquisition and termination. Constitutional and labor law scholars have argued that the rejection of membership admittance would prevent workers from using related constitutional rights, and therefore a rejected applicant should have the right to appeal in court.

(2) Secondly, the Turkish system of unionization further reinforces the importance of union membership acquisition issues. As explained in the section on the organizational structure of unionism (2.3), in the Turkish legal system, (a) unionization is industry-

[95] The solidarity due system that is being used in Turkish unionism, in which non-members may benefit from collective labor agreements through the payment of dues to the union (Act No. 6356 Art. 39/4), eases this fundamental problem. It does not solve it completely, because the non-member worker still has no say on how the union itself operates.
[96] AYMK, 26–27/9/1967, 336/29, cited in Merinç (1995, p. 24).

based, meaning that it may only form in one specific field of industry; and (b) until late 2012, unless they did not have as their members ten percent of the workers of the industry in which they operate, unions did not have the right to make collective labor agreements (Article 12, titled Authorization). Unions have therefore been obliged to form and operate nationwide, and according to law could not be founded on specific geographies, occupations, or workplaces until recently. As elaborated in the previous chapter, this has effectively limited the number and variety of unions, as a union appeals to a potential member only when it can perform such essential functions. The result has been that the individual worker has few (in many cases, only one) options to choose from among the existing unions. Although this system of unionization has strengthened unions in some ways compared to the pre-1980 era of unionism, there is a higher likelihood that a worker will remain union-less in the case that his or her application is rejected. This has a direct detrimental effect on union democracy, as the worker has little (if any) practical freedom to choose among unions to join.

Although the new Act No. 6356 lowered the first stage authorization barrage to first three percent (in 2012) and more recently to one percent (in 2014), and although unions can now be formed according to specific geographies, occupations, and workplaces (provided that they still operate in one branch of activity), the process of unionization has practically remained within the boundaries of the previous system and the effects of the recent changes have as yet been marginal.

Moreover, only unions that possess more than half of the employees (50 percent + 1) as members in a given workplace may engage in collective bargaining and agreements

with the employers (Act No. 6356 Art. 41/1 and previous Act No. 2822 Art. 12/1).[97] Therefore, the workers' options get even thinner, because a union may have actually become an effective monopoly in the workplace, the enterprise, or possibly even in the whole industry. Together, these three factors, the industry-based unionization, the first stage authorization barrage, and the second stage (union majority) barrage, pose serious issues of concern not only for democracy but for the unionism movement itself.

Because of these two main aspects of unionism, the worker, once rejected as a member without a possibility to appeal to union organs or courts, practically loses the above-mentioned constitutional rights. Even with mechanisms such as solidarity dues (section 3.6) that provide the benefits of collective agreements to non-member workers, union democracy suffers in a direct manner, as the non-members have no say on how the union operates.

Taking basic positive law principles into consideration, it has been argued that the provision of the Constitution that refers to unions' function by democratic principles, together with the Civil Code, poses limits on a union's freedom to grant (or withhold) membership, and therefore the applicant should be able to seek a court appeal once rejected (Şahlanan, 1980, pp. 70–71). In accordance with such considerations, the late Act No. 2821 Art. 22/3 stated that a worker whose application has been refused without valid reason shall have the right to lodge an appeal with the local court of law having jurisdiction on labor matters within 30 days after receiving the notification of the rejection, and that the ruling of the court shall be final (meaning that the ruling cannot

[97] Act No. 6356 (Art. 41/1) distinguishes workplaces and enterprises for this second stage barrage by stating setting the authorization barrage to 40 percent for the enterprise to be covered by the collective labor agreement instead of the 50 percent required by the previous Act (Art. 12/1).

be appealed). These provisions, it has been argued, are in harmony with the special legal conditions of the Turkish unionization system (Deren-Yıldırım, 2001, p. 1706).

The new Act No. 6356 Art. 17/5 retains the court appeal procedures of the late Act No. 2821. In addition, it is stated that where the court decides in favor of the petitioner, membership shall be considered acquired on the date of the decision of expulsion.[98] These reflect a balance between individual (positive) union freedom and collective union freedom.

The method of handling a court case on membership rejection also holds importance. As unions derive their strength through rank and file membership size (especially in the case of Turkish unionism, in which collective labor agreement authorization is based strictly on membership numbers), it is considered an extraordinary act for a union to refuse a new member and the union shall be under the burden of proof for the applicant's rejection (Şahlanan, 1995, p. 166).

A second debate on the acquisition of membership has taken place on the former part of the late Act's obligation for ‘public notary certification’ of five copies of the membership registration form and their forwarding to the trade union (Act No. 2821 Art. 22/2), burdening the applicant further for admittance. In the General Reasoning of Act No. 2821, the justification for this process was through the listing of problems experienced during the 20 years of practice under Trade Unions Act No. 274 of 1964. It

[98] There is a discrepancy between the text of the act in the Official Gazette and its English translation in governmental and ILO sources, which states that "where the court decides in favor of the petitioner, membership shall be considered acquired *on the date the decision of the court has become final"*. The italicized part of the translation is wrong and completely changes the meaning of the original text. See Footnote 20 for details.

was explained that new measures were to be taken due to increasing allegations of forgery on the issues of acquiring and leaving union membership, and the threat such problems pose the collective labor agreement regime and therefore social peace. It was common practice among unions in the 1963 Constitution era under Act No. 274 to make fake membership registration receipts. Thus, the notary obligation brought by Act No. 2821 was a method to secure actual member lists and was upheld for many years with such justifications. Despite these motives, the notary obligation, due to limiting freedom of union membership and burdening the worker with material costs, has been criticized on several occasions by the EU and ILO. It has been found to contradict ILO Agreements 87 and 98, and it has been stated that it needs to be removed altogether.

The new Act No. 6356 has changed this system completely. According to Article 17/5, union membership shall be acquired via e-State, provided that an application for a membership has been filed on the electronic application system of the Ministry via e-State and the authorized organ of the union has approved it. The application shall be considered approved if it is not refused by the union within 30 days. Thus, the lawmakers did not seek an explicit approval for the acceptance of membership. Instead of the previous union act's procedure of presenting the union with five copies of application papers completed and signed by the applicant and approved by a public notary, workers are now obliged to use the e-State system. E-State is a relatively new internet-based system used for several Turkish official state procedures and for unionism, and has already created controversy. The Statement of Reasoning of the Act claims that the burden of the notary obligation has been lifted by bringing in a simple, easy, and economical procedure. Indeed, e-State accounts are purchased from postal,

telegraph, and telephone services (PTT) by an easy procedure and for only two Liras. In theory, this would undoubtedly boost individual freedom as well as union organizing. However, there have been critics of the e-State and sceptics on its operation since the drafting and ratification of the new law (Önsal, 2013, p. 45). Dereli (2013, p. 45) states that the concept of e-State itself would cause unintended consequences for union freedom, and a tripartite institution instead of an exclusively state mechanism would better serve as a membership system. It has been argued in the literature that while the change to e-State simplifies the procedures of membership, there are also possible dangers such as forgery made incognito by using a worker's personal data (Esener and Gümrükçüoğlu, 2014, p. 146). Union law scholars have claimed that the forgery of union memberships—a phenomenon that could not be prevented since the start of free unionization in Turkey—will rise even more with the new system (Tuncay and Kutsal, 2015, p. 90). In line with this argument, several unions have opposed this provision, claiming that employers would be able to obtain the accounts and passwords of employees and themselves select the union membership to be applied for (ibid.). Even the largest Turkish union, Türk Metal, has claimed that since the implementation of the e-State system, on numerous occasions, employers have seized the account information and passwords of their employees in the workplace that are/will be members to their union in order to alter their memberships as they please.[99] Employers abusing this system may coordinate with specific unions which may acquire members in the workplace through completely undemocratic and illegitimate means.

[99] See subsection 3.8.2 for Türk Metal's claims on the same issue based on the withdrawal from union membership.

There are also formal problems caused by the e-State system. Individuals who are officially employees working under contracts other than labor contracts (Act No. 6356 Art. 2/4) are excluded from the e-State system altogether. Furthermore, only workers who have been registered in SGK (the Social Security Institution) may apply for union membership. It is also asserted that for workers who do not even know how to read and write, the electronic system cannot be described as simple or easy. Thus, the e-State system seem to have created its own problems (a narrower scope of workers) while solving others (burdens of notary authorization) or sustaining them (membership forgery).

Another issue on the acquisition of membership is the general restrictions Turkish Constitution and laws have put on who may qualify as union members. The previous Trade Unions Act No. 2821 Art. 20/1 stated that a person who is over 16 years of age may join a trade union and persons under 16 years of age may join unions with the written consent of their parent or guardian. Although Art. 22 of the Act stated that acquisition of membership is free, Art. 21, in its original version, specified several professions and personnel belonging to the branches of activity that cannot found or become member of a union. This long list included military personnel,[100] students and workers who continue their education, teachers working in private education, retired workers, and those receiving social income from social security. During the three decades in the execution of this act, two law amendments eliminated all of these restrictions except for those on military personnel.[101]

[100] Excluding workers defined by the Act who are employed in establishments attached to the Ministry of National Defense, the General Command of the Gendarmerie, and the Coast Guard Comman (Art. 21).
[101] Act No. 4101 Art. 15 (4/4/1995); Act No. 3349 Art. 17 (25/5/1988).

The new Act No. 6356 lowered the age of union membership from 16 to 15 (Article 17/1). Furthermore, the late Act Art. 21's list of those unqualified for union membership has disappeared altogether.

Art. 19/11 of Act No. 6356 states that the procedure and principles regarding the acquisition and termination of membership shall be laid down by a regulation to be issued by the Ministry. This clause is unsuitable in the sense that it leaves important aspects of membership issues in the hands of the state bureaucracy and has already been criticized on the basis of political unrestraint and tutelage (Önsal, 2013, p. 50).

3.2.2 Acquisition of Membership by Statutes

It is crucial to examine unions' internal rules of membership embodied in their respective statutes in relation to union democracy. Unions, as legal entities based on private law, may freely regulate their statutes within the framework of the union laws and provide further conditions on union membership in their statutes. This right is based on freedom of association and protection of the right to organize, as explicitly stated in ILO Convention No. 87 (Şahlanan, 1980, p. 74).

However, if becoming a member is made too exclusive through the prerequisites in a union's statutes, positive union freedom, and therefore union democracy, would in practice be hindered directly. According to the Turkish Constitution Article 51, statutes of unions and their higher organizations cannot contradict ‘democratic essentials’. The previous Act No. 2821 Art. 7/5 stated that the acquisition of membership is an obligatory provision in statutes. Even though the Constitution's premise of democracy is general and vague, it has been argued that related regulations of statutes have to be

examined thoroughly in accordance with this commanding constitutional provision for a proper evaluation of union democracy (Deren-Yıldırım, 2001, p. 1706).

Unless stated otherwise, the union organ that decides on the membership application of a worker is the general assembly. However, the primary practice among Turkish unions is to grant this authority to the administrative boards (Esener and Gümrükçüoğlu, 2015, p. 411). All of the ten trade unions covered by the study explicitly state in their statutes that their central administrative boards decide on membership applications (Banksis, Art. 7/b; Birleşik Metal-İş, Art. 6/b; Çelik-İş, Art. 6/1; Genel-İş, Art. 6/b; Güvenlik-Sen, Art. 7/a; Hizmet-İş, Art. 16/11; Öz Toprak-İş, Art. 6/3; Tes-İş, Art. 21/11; TGS, Art. 5/b; Türk Metal, Art. 7/b).

Union statutes may explicitly state the conditions for the rejection of membership applications. In the case that these conditions are justified and the applicant appeals to the court for the union's decision of rejection (in accordance with Act No. 6356 Art. 17/5), the court shall rule in favor of the union. However, the judge shall not be bound by the statement of the conditions for rejection in the statutes, and shall evaluate the matter first-hand and decide whether or not such conditions are indeed just.

There is no consensus in the Turkish union literature on the validity of some types of membership prerequisites in the statutes. In general, it is accepted that regulations on age limits, political orientation, or seniority in a profession shall be null and void. While regulations preventing the membership of those who are already members of other unions are in general seen as democratic (Şahlanan, 1980, p. 75; Tuncay and Kutsal, 2015, p. 85), there is controversy over issues such as the rejection of those who have

committed ‘shameful crimes’ and the requirement of recommendation of standing members. Şahlanan (1980, pp. 75–77), as a general rule, argues that prerequisites of high membership and entrance dues, seniority, or recommendation from standing members in the statutes would be in contradiction of ‘democratic essentials’. Tuncay and Kutsal (2015, p. 85), contrary to Şahlanan, claim that the statutes may state the rejection of applicants who have committed ‘shameful crimes’, as well as seek the recommendation of standing members for new memberships.

None of the sample trade unions in the study states any explicit conditions for membership approval in its statutes. Thus, all of the sample unions are normatively open for membership to any worker fulfilling the prerequisites of Act No. 6356. In general, the statutes repeat the provisions of the Act in respect of the acquisition of membership with few or no additions. A minor exception to the ‘copy and paste’ repeating of the law in the statutes is in one of the smallest unions in the study sampling, Banksis (Art. 7), whose regulations only refer to the provisions of Act No. 6356 in name instead of restating them exactly.

More importantly, two of the sample unions that are both members of Disk (Birleşik Metal-İş and Genel-İş) differ from the rest of the samples in the study by explicitly stating in their statutes that the reasons for rejection of membership applications are to be notified to the applicant in written form (Birleşik Metal-İş, Art. 6/c; Genel-İş, Art. 6/c). As examined earlier, according to Act No. 6356, unions are not obliged to notify the applicants of approval or rejection, let alone give an explanation in case of a rejection. By stating that applicants shall be officially notified in written form with the

reasons for rejection, these two unions formally act in a more accountable and transparent way, which serves union democracy positively.

3.3 Multiple Union Memberships

Another matter related to positive union freedom is the restriction on joining more than one union. This has been regulated differently in each period of unionism. During the 1961 Constitutional era, Trade Unions Act No. 274 did not hold any provisions on the matter, and statutes themselves held related regulations. In general, it was argued that such restrictions in statutes did not contradict union freedoms, and it has been claimed that they are actually a necessity in terms of union democracy essentials (Şahlanan, 1980, p. 75). Within the system set by Act No. 274, for instance, unless the union statutes held a specific regulation on the matter, a metal worker who was also a novelist could become a member of both a union in the metal industry and the Authors' Union (Güzel, 1996, p. 273).

The original 1982 Constitution prohibited this practice. Article 51/5 stated that workers shall not be members of more than one union. ILO CFA's report (Para. 58), which was ratified in 1996, found the prohibition of multiple union to be contradictory to ILO Agreement No. 87 (which Turkey has ratified), stating that if workers are employed in various professional activities, they should be able to join unions of their choosing based on those branches of activity (Koç, 1999b, pp. 32–33).

The provisions of Act No. 2821 Art. 22, in line with the 1982 Constitution (Article 51), stated that no worker shall be a member of more than one union in the same branch of activity at the same time. Furthermore, Article 22/1 stated that in case a worker is a

member of more than one union in the same branch of activity, all of the memberships are considered null and void. The Law Amendment No. 3449 (of 1988) eased this provision by stating that in the case of membership of more than one union, any later memberships shall be void.

There has been controversy in the Turkish union literature on the issue of multiple union memberships in the case of working in different branches of activity. Güzel (1996, p. 273) states that Article 22 of Act No. 2821 effectively prohibited this practice, which was possible in the 1963 Constitutional era of unionism. Şahlanan (1995, pp. 158–159), on the other hand, concurs with the majority of the literature, asserting the absence of any legal prohibition, for instance, for a worker to join multiple unions due to part time jobs in different workplaces and belonging to different branches of activity. Accordingly, although the Constitution does not explicitly seek the 'same branch of activity' requirement for the prohibition of multiple union memberships, the Act's statement properly reflects the aim of the Advisory Council[102] to eliminate authorization disputes. He further asserted that the rule of having membership of a single union operating in the same branch of activity does not pose a limit to union freedom. Although the principle of pluralist unionism is a part of union freedom, multiple union membership is not a natural and indispensable component of it. If pluralist unionism is not hindered, the requirement of the worker to choose a single one among them does not conflict with individual union freedom (Şahlanan, 1980, p. 75).

[102] The Advisory Council was one of the two organs of the Turkish Assembly (with the National Security Council) created by the 1980 military coup for the making of the 1982 Constitution.

With the 2010 referendum that amended the Turkish Constitution, the clause that prevented multiple union membership was abolished. The related provision of the new Act No. 6356 was made in order to adapt to this constitutional amendment, which changed the system. Article 17/3 states that no worker shall be a member of more than one union in the same branch of activity at the same time. However, workers who are employed in the same branch of activity but in the workplaces of different employers may be members of more than one union. As with the previous Act No. 2821, when a worker is a member of more than one union as a violation to this provision, their subsequent membership shall be void. Also as before, workers employed in different branches of activity can be members of unions that belong to these different branches. Thus, the constitutional amendment of 2010 and Article 17 of the new Act No. 6356 have paved the way for multiple union membership in the same branch of activity (provided that the worker is employed in multiple workplaces of different employers), a new phenomenon in Turkish unionism. Although the need for multiple union memberships is marginal, it should be noted that the reinforcement of positive union freedom nevertheless contributes to union democracy to a small extent.

3.4 Founding Members

The right to found a union is a part of individual union freedom as much as collective union freedom. Therefore, conditions for founding members that are required by law should also be examined in relation to the limits of individual freedom in the Turkish system of unionism. Originally, Act No. 274 of 1963 required three years' professional seniority for founding members (Art. 2/2), which was revoked by the Constitutional

Court in 1972.[103] The late Union Act No. 2821 Article 5 had sought numerous prerequisites which raised concerns. Accordingly, founding members were obliged to be Turkish citizens, be able to read and write Turkish, and be actively employed for at least one year within the branch of activity in which the union will be established. Also, the Act made a long, detailed list of the crimes and acts that prohibit union founding. The list of conditions drew the attention of and criticisms from both ILO (on Agreement 87 by Committee of Experts, Para. 120 and CFA Para. 27 (cited in Koç, 1999b, p. 31) and the EU. The amendment of 1988 (by Act No. 3449) revoked the one-year activity requirement, but literacy and citizenship requirements remained, as well as the crimes and acts that prevent union founding. The requirement of being active in the profession or branch of activity that remained in the Act after the amendments, according to the ILO Committee of Experts, was a breach of ILO Agreement No. 87 (Committee of Experts, Para. 117, cited in Koç, 1999b, p. 36).

Compared to the older union laws, the new Act No. 6356 Art. 6 has provided a considerably shorter list of requirements for founding members. While the list of crimes and acts of the previous law remains mostly intact,[104] no other special requirements are sought for founding members. Being a Turkish citizen, being able to read and write in Turkish, and being actively employed in the union's branch of activity are no longer required to be founding members.

[103] AYMK 9/2/1972, 19/10/1972, 14341.

[104] Act No. 6356 Art. 6 did not include some of the crimes listed in Act No. 2821 Art. 5, namely: having been sentenced to a term of imprisonment for one year or more for a wilful crime; crimes committed against the consitutional order and its operations; crimes against national defense; crimes against state secrets and of espionage.

Some of these changes can be explained by aiming to adapt to ILO Agreements. The Statement of Reasoning of the Act explicitly states that Article 6 has harmonized the law with the evaluations carried out by ILO in regard to the requirement of being a Turkish citizen, which was deemed inconsistent with ILO Agreement No. 87. However, the abolition of Turkish citizenship and literacy requirements have caused issues of debate for other reasons. As also discussed in the next chapter, Article 9/3 of Act No. 6356 states that the conditions required in Article 6 that regulate the requirements for founding members should be fulfilled in order to be eligible for union organ membership (other than the general assembly). Thus, within the new system, foreigners who do not read or write Turkish can found unions and become union officials. How they can fulfill these roles by the use of foreign languages is a practical concern (Önsal, 2013, p. 24). While more individual freedom is undoubtedly consistent with union democracy, the adoption of impractical regulations may create problems in other aspects of unionism (e.g., effective administration).

The second issue causing concern is that being actively employed in the union's branch of activity is no longer necessary for founding members or, consequently, for members of the union organs other than the general assembly. People who have not experienced the particularities and problems of the industry first-hand can now be founding members and union officials, which provides professionals who are not of working class origin the right to become union leaders. The common perception that these changes were made in order to ‘rescue’ some unions whose founders do not fulfill the previous Act No. 2821 requirements as indicated by court decisions has caused controversy in the literature (Önsal, 2013, p. 24). Instead, the sole requirement of the new Act No. 6356 is

being actively employed. Moreover, it is argued that this prevents the retired, housewives, and students from founding unions, which poses limits on the right to unionize (ibid.).

3.5 Membership Dues

One of the basic obligations of union members is the regular payment of membership dues to their organization. A union's strength rests on its membership size, which in turn supplies the necessary finances for its operations. The type, amount, and method of payment to the union is a concern for union democracy. For instance, high amounts of dues or the implementation of other compulsory fees would hinder individual union freedom by making it harder for workers to maintain their membership, which would also be detrimental to unionism in general.

The provisions of 1947 had set the upper limit of annual membership dues to 120 TL, and since unions were being newly established in the country, they came to face financial difficulties. Trade Unions Act No. 274 (of 1963) stated that union general assemblies were the sole authority with complete freedom in the determination of dues and similar issues (Güzel, 1996, p. 232). Combined with the check-off system that is elaborated in the following subsections, the financial strength of unions had an enormous boost, as well as reinforcement of their autonomy.

The late Act No. 2821 Art. 23 stated that membership dues are to be determined by union statutes, and that the dues cannot be more than the worker's basic daily salary on a monthly basis. Moreover, it also forbade unions from having any regulations requiring any other fees to be paid by their members. In the period prior to 1980, some Turkish

unions in collective labor agreements would extract certain portions of members' gains for the union or even for other organizations. This article aimed to prevent such exercises. Nevertheless, provision regarding the maximum amount of dues has always been criticized by ILO on the basis that it intervenes with union and member relations through the force of law. ILO suggests that these matters should be handled freely by internal union regulations instead of laws. These criticisms rest on the notion that membership dues are basically a part of collective union freedom and therefore should be determined by the workers themselves.

The new Law No. 6356 has countered such criticisms. Article 18 of the Act states that the amount of membership dues shall be fixed by the general assembly in accordance with the procedures and principles identified in their statutes. Moreover, the fourth clause states that the procedures and principles regarding membership dues shall be laid down in regulations to be issued by the Ministry. The monthly due limit brought by the late Act No. 2821 has completely disappeared in the new law, along with the prohibition of other types of fee.

It is observed that the lawmakers have somewhat adhered to ILO suggestions by giving complete freedom to determine membership (and therefore solidarity dues) to the unions themselves. Prohibitions on the requisition of other types of fee have also been abolished. However, scholars of Turkish unionism have stated that the new provisions are open to misuse and conflicts with the necessity for the protection of workers against the union (Esener and Gümrükçüoğlu, 2014, p. 160; Tuncay and Kutsal, 2015, p. 95). There is always an issue of balance between collective union freedom and individual union freedom. Although providing space for the autonomy of unions is crucial for

unionism, unless the member worker is protected against arbitrary action, individual union freedom suffers and therefore union democracy also suffers.

The change of due fixation by the general assembly in accordance with the statutes (Act No. 6356 Art. 18) instead of directly by the statutes (previous Act No. 2821 Art. 23) is a democratic improvement in the sense that members (or delegates) may change the amount with a decision by the general assembly. To change the amount of dues by changing the statutes themselves is cumbersome, and direct change by the general assembly is more practical, provided that the general assembly operates with proper representation and procedures.

Sample unions in the study state their membership dues as follows:

- Banksis Statutes Art. 8/b states 1.25 percent of the basic gross monthly salary.
- Birleşik Metal İş Statutes Art. 39/a states three percent of the basic gross monthly salary.
- Çelik-İş Statutes Art. 46/a states one day of basic gross salary.
- Genel-İş Statutes Art. 50/a states one day of basic salary.
- Güvenlik-Sen Statutes Art. 66 states as determined by the administrative board but not exceeding one percent of the gross minimum wage.
- Hizmet-İş Statutes Art. 42 states the daily salary.
- Öz Toprak-İş Statutes Art. 7 states one day of basic salary.
- Tes-İş Statutes Art. 7 states 3/4 of one day of the gross sum of the basic salary.
- TGS Statutes Art. 38 states two percent of the monthly gross salary.

- Türk Metal Statutes Art. 43/a states one day of basic salary. Also, the administrative board has the right to lower the dues.

Although the new act gives complete freedom to unions to determine their membership dues, all of the sample union statutes stay within the limits of the late Act No. 2821, which stated that the dues cannot be more than the worker's basic daily salary on a monthly basis. In this sense, sample unions do not burden their members with high amounts of dues and stay within reasonable limits.

The new Act, contrary to the previous Act No. 2821, does not prohibit dues and contributions other than membership and solidarity dues. However, none of the sample union statutes indicates any other dues to be collected in any other conditions in their respective regulations on incomes and dues. While this is plausible on the grounds that members are not burdened further, it also reflects the new provisions that give complete freedom to unions in determining their membership dues, as unions do not need an indirect mechanism or other schemes of membership contribution in order to boost their finances.

The new Act No. 6356 Art. 18/4, which states that the procedures and principles regarding membership dues shall be laid down in regulations to be issued by the Ministry, is improper in the sense that the government may singlehandedly alter the dues system that is vital for all unions. During the drafting phase of the Act, although all worker confederations and the employers' confederation (Tisk) alike adopted the view that the system under Act No. 2821 Art. 23 and Art. 61 was already adequate and therefore should be preserved, the Ministry of Labor and Social Security succeeded in

obtaining the right to shape the issue as they see fit by their own initiative (Önsal, 2013, p. 47).

3.6 Solidarity Dues

The existence of a solidarity dues system for non-member workers who wish to benefit from a successfully concluded collective labor agreement in the workplace or enterprise is vital for positive and negative union freedoms alike. Unless such a mechanism exists, in the case that a union has a majority in a workplace or a monopoly in the branch of activity the worker is in, the worker would be informally forced to join the union in order to benefit from the collective agreement. Furthermore, in the case that the member is left out of the union due to a rejection of membership by the union or the member's resignation or expulsion from membership, the worker cannot practically exercise his or her constitutional right to union. Union managements and rank and file members alike may not sympathize with non-member workers or coerce them for various reasons, primarily when workers themselves wish to remain unionless or to join a rival union. Therefore, it should be emphasized that a solidarity dues system needs to be strictly enforced by the laws and not by the union statutes themselves, which may be biased toward non-member workers. I will first examine the provisions and union statutes on this issue.

Act No. 6356 Art. 39/4 states that workers who are not members of the trade union that is a party to the collective labor agreement at the date of signature, or those subsequently recruited to the workplace who do not join the union, or those who are members at the date of signature but who resign or are expelled from membership later,

may avail themselves of the collective agreement if they pay solidarity dues to the trade union concerned. The consent of the union shall not be required in this matter. The amount of solidarity dues shall be determined in the union statutes, provided that the amount is not above the amount of membership dues (Art. 39/5). The difference from the provisions of the previous Act No. 2822 is that, under the old system, the dues were to be two-thirds of the union membership dues (Art. 9/4), an issue now left to union statutes with a higher limit for the amount.

Thus, the new union law with its strict provisions on solidarity dues serves union democracy in the sense that the individual union freedom is protected versus the authorized union in the workplace or enterprise and its administration. With the existence of a solidarity dues scheme that is unalterable to the disadvantage of the non-member by the union, the worker may opt to become a member of a rival union (positive union freedom) or remain unionless altogether (negative union freedom). However, within the new system, solidarity dues may be as high as membership dues themselves. As membership dues are now to be determined by the union statutes without any limitations on the amount (Art. 18), solidarity dues might also become a burden. In the literature, some union scholars have objected to this scheme on the grounds that it may force workers to join the union and therefore should be considered as unconstitutional (Esener and Gümrükçüoğlu, 2014, p. 161). Although the possible equality of membership and solidarity dues may deem the choice of workers to remain non-members less desirable, claiming that negative union freedom disappears under such conditions might be a far-fetched conclusion.

Sample unions in the study state their solidarity dues as follows:

- Güvenlik-Sen and Öz Toprak-İş Statutes give no statement on solidarity dues.
- Banksis Statutes Art. 8/b states the same as membership dues (1.25 percent of the basic gross monthly salary).
- Birleşik Metal-İş Statutes Art. 39/b states the same as membership dues (three percent of the basic gross monthly salary: Art. 39/a).
- Çelik-İş Statutes Art. 46/b states the same as membership dues (one day of basic gross salary: Art. 46/a).
- Genel-İş Statutes Art. 50/a states the same as membership dues (one day of basic salary).
- Hizmet-İş Statutes Art. 42 states the same as membership dues (the daily salary).
- Tes-İş Statutes Art. 7 states the same as membership dues (3/4 of one day of the gross sum of the basic salary).
- TGS Statutes Art. 38 states the same as membership dues (two percent of monthly gross salary).
- Türk Metal Statutes Art. 43/a states the same as membership dues (one day of basic salary).

The data show that although the amount of membership dues varies from union to union, all of the sample union statutes (except for Güvenlik-Sen and Öz Toprak-İş, who do not regulate the solidarity dues explicitly in their statutes) have equalized the amount of solidarity dues with membership dues. As explained, under Act No. 2822, the solidarity dues were fixed as two-thirds of the membership dues for all trade unions. After the ratification of Act No. 6356, although unions could opt freely in the determination of solidarity dues, sample union statutes were amended by fixing them to

the highest amount possible. In other words, unions decided that in the case that a non-member worker wishes to benefit from the collective agreement in the workplace or enterprise, they have to pay the exact amount of financial contribution as the union members themselves. This way, the non-member worker has little motive to remain outside the union, and is strongly persuaded to join the union. This undoubtedly boosts the incumbent authorized union's position in the workplace or enterprise, as well as its membership size.

3.7 Check-Off System

In the check-off system that has been exercised in Turkey for more than fifty years, union membership dues are drawn at the source of workers' salaries and transferred into union accounts. The union, authorized by the Ministry of Labor and Social Security, has the right to collect membership dues and solidarity dues directly from the employer through a deduction from workers' wages. Although adopted originally in the USA, the check-off system spread mainly to South American and Middle Eastern countries. In western European countries which were historically the pioneers of unionism, however, check-off never ceased to be an issue of debate, even being prohibited in France through the force of law. The adoption of this system is controversial in some respects. On the one hand, it has proven to enhance the financial assets of unions greatly and therefore strengthen them economically wherever it is undertaken. With such purpose, this system was first adopted in Turkey in 1963 with Act No. 274 (Art. 23) in order to give unionization momentum. It has been claimed that the application of western unionism procedures such as check-off in Turkey facilitated a strong unionization process that is disproportionate with the actual strength of the workers' movement in terms of size and

fighting capacity (Işıklı, 1994, p. 9). As elaborated in Chapter 2, one of the main reasons that Türk-İş, the first and biggest workers' confederation, had to align itself with the policies of the DP Government in the pre-1963 era of unionism is that unions were financially dependent on government assistance due to the collection of membership dues on a voluntary basis. The provisions of 1947 had set the upper limit of yearly membership dues to 120 TL (Güzel, 1996, p. 232). Thus the first young union organizations of the Republic that were yet to be institutionalized faced financial difficulties, resulting in practical dependence on governmental assistance. Consequently, the early stages of Turkish unionism were 'contained' by the government (Işık, 1995, p. 190). Therefore, the adoption of the check-off system served union democracy indirectly in the sense that unions, by gaining independent financial strength, could create their own policies freely to the benefit of their members and the workers' movement on the whole.

On the other hand, however, it has been argued in the literature that check-off has negative implications for union democracy. Dereli claims that while this system rapidly strengthened unions financially, it loosened relations between their members (Dereli, 1977, pp. 130–131). Although union financial autonomy is a prerequisite for union democracy, as it secures independence from third parties, Kutal (2012) argues that union officials, once securing a stable source of income through the implementation of check-off, have less need of communication with the ordinary members. The fee being automatically received by the union without any effort replaces the necessary contact between the union administration and the members for its collection, therefore weakening the relationship between the rank and file and the leaders, and consequently

lessening internal democratic conduct. Kutal suggests that check-off should be an issue of debate instead of being taken for granted in Turkey, suggesting certain changes such as requesting workers' consent or leaving the check-off issue to collective agreements (Kutal, 2012, p. 25).

The new Act No. 6356 has adopted similar provisions compared to the previous laws in respect of the check-off system, except for the payment procedures. Article 18/2 states that membership and solidarity dues shall be deducted from the wage of the worker and shall be paid to the relevant trade union upon the written request of the competent workers' trade union to the employer. Article 18/3 protects unions against employers in the case that the employer does not deduct the dues or transfer them to the related union, by obliging them to pay the dues together with highest interest rates without requirement of further notification.

3.8 Termination and Suspension of Membership

A union member's loss of membership against his or her own will or by resignation may have complex implications for union democracy through direct hindrance of collective and individual union freedoms or arbitrary disciplinary actions. In the case that individual members or groups disagree with the policies of the union administration and cannot change the incumbent leadership through democratic processes inside the union, they may choose to leave the union to form or join another organization. As elaborated in section 2.3, a dissident individual's or group's right to form a new union to rival the other is hindered by the organizational system of unionism in Turkey. A newly established union must recruit a tremendous number of members before being able to

acquire authorization rights for collective labor agreements and therefore to strike, which indirectly weakens union democracy. The formal conditions of membership suspension or expulsion, on the other hand, shall be evaluated by taking into account both the organization's right to defend itself against members that harm its operations and the members' right to oppose the incumbent administration and its policies in a democratic manner.

3.8.1 Automatic Termination and Suspension of Membership

Certain events or changes on behalf of the union members or unions themselves may result in the automatic end or suspension of their membership. Some of these causes in the related articles (e.g., death, retirement, disappearance) do not have any relevance to issues of union democracy, whereas some legal provisions and regulations of union statutes do and shall be examined.

Act No. 6356 and state regulations in accordance with the law point out several conditions that cause automatic termination or suspension of membership, which are based on the loss of membership conditions themselves. These include loss of worker status, certain occurrences prohibiting membership (e.g., becoming a professional soldier), starting employment in another branch of activity (Art. 19/7), or the shift of the workplace itself into another branch of activity. The sole condition stated for suspension of membership rights and obligations is in the case of conscription to military service for the service period (Art. 19/10). Article 19/6 states that any worker who leaves employment to receive retirement or disability benefits or lump-sum payments from the Social Security Institution (SGK) shall lose his or her membership. However,

membership of persons who continue to work and membership of trade union officials who receive retirement or disability benefits or lump-sum payments during their terms of office in the administrative board, board of auditors, and disciplinary boards of the organization or branch shall continue as long as their terms of office continue and are renewed. Article 19 also explicitly states the conditions that shall not result in the automatic termination of membership. Taking office in the union organs and its branches shall not terminate membership (Art. 19/8). Unemployment of the member of the workers' trade union shall not affect his membership, provided that it does not exceed one year (Art. 19/9). Therefore, not working between seasons does not pose a legal obstacle that precludes seasonal workers from the right to union (Tuncay and Kutsal, 2015, p. 113).

As in the case of the acquisition of union membership, Article 19/11 states that the procedure and principles regarding the termination of membership shall be laid down by a regulation to be issued by the Ministry. The Ministry released the Regulations on the Acquisition and Termination of Union Membership and the Collection of Membership Dues on 9 July, 2013. These further clarified the position of members who leave employment by receiving monthly payments from SGK, stating that in case these members are re-employed in the branch of activity in one year, their membership shall not be automatically terminated (Art. 12/4).

The automatic termination of membership due to a change of branch of activity, retirement, or unemployment for more than a year cannot be regarded as undemocratic. In the case that these conditions are reversed, there is no prohibition on the worker applying to the union for re-membership.

It is critical to examine union statutes' provisions on causes of automatic termination, simply because such provisions of the statutes may become an effective instrument in the hands of the administration to expel members without hassle. As stated in the literature, statutes regulating automatic membership issues may actually be a simplified method of expulsion, such as in the case of automatic termination when membership dues have not been paid (Tuncay and Kutsal, 2015, p. 112). Therefore, it has been claimed that, in such a case, the worker should be granted the right to object to the general assembly, and in the case that the general assembly rejects the objection, the worker shall be able to apply to the court of labor on the basis of democratic conduct (ibid.; Deren-Yıldırım, 2001, p. 1709).

Sample union statutes state the following regulations regarding automatic termination of membership:

- Banksis and Genel-İş Statutes state no regulations regarding the issue.

- Birleşik Metal İş Statutes Art. 8/a states that those who leave their jobs due to being elected to compulsory union organs keep their membership.

- Çelik-İş Statutes Art. 8/a states that workers' representatives keep their membership. Art. 8/c states that temporary unemployment does not affect membership status.

- Güvenlik-Sen Statutes Art. 10/a states that those who leave their jobs due to being elected to compulsory union organs keep their membership. Art. 10/b states that workers' representatives keep their membership.

- Hizmet-İş Statutes Art. 7/4 states that those who get old age or disability pensions from SGK or who leave jobs with lump-sum payments have their membership terminated. Art. 7/5 states that those who change their branch of activity have their membership terminated. Art. 7/7 states that unemployment for less than a year does not affect membership status.

- Öz Toprak-İş Statutes Art. 9/1 states that those who leave their job due to being elected to compulsory union organs keep their membership. Those who get old age or disability pensions from SGK or leave jobs with lump-sum payments have their membership terminated. Art. 9/4 states that unemployment for less than a year does not affect membership status.

- Tes-İş Statutes Art. 9/a states that those who leave their job due to being elected to compulsory union organs keep their membership. Art. 9/b states that workers' representatives keep their membership. Art. 9/ç states that unemployment for less than a year does not affect membership status. Art. 9/d states that those who get old age or disability pensions from SGK or leave jobs with lump-sum payments have their membership terminated. Art. 9/e states that those who change their branch of activity have their membership terminated.

- TGS Statutes Art. 7/a states that those who leave their job due to being elected to compulsory union organs keep their membership. Art. 7/c states that temporary unemployment does not affect membership status.

- Türk Metal Statutes Art. 9/a states that those who get old age or disability pensions from SGK or leave jobs with lump-sum payments have their membership terminated.

Art. 9/c states that unemployment for less than a year does not affect membership status. Art. 9/d states that those who change their branch of activity have their membership terminated.

According to the sample data, none of the union statutes holds any subjective or restrictive regulations on undemocratic conduct for the automatic removal of workers in the union or their membership suspension that could be used arbitrarily by the union administration. Most of the regulations actually focus on the conditions that shall not result in an automatic termination of membership instead of specifying the conditions for it to take place. All of these conditions are basically restatements of the law provisions and have no additional implications in terms of legal conduct, but may assist the rank and file members in understanding their individual and collective rights and obligations. In sum, positive union freedom and the position of dissident members inside the union are not formally hindered by the sample union inner regulations through the suspension and automatic termination mechanisms.

3.8.2 Termination of Membership by Resignation

Withdrawal from union membership on a voluntary basis is undoubtedly a fundamental right in terms of union democracy. As explained at the beginning of the chapter, in the union literature, freedom to leave and freedom not to join a union are jointly called the negative union freedom, which is protected by Article 51 of the Constitution and Articles 17/3 and 19/1–2 of Act No. 6356, and by Article 22 of the late Act No. 2821.

Şahlanan (1995) argues that the right to freely leave a union rests on two basic aspects. Firstly, members shall not be coerced to resign, otherwise the union freedom has no

application in practice. Secondly, the worker's right to resign shall not be hampered. The worker shall not be forced to remain in the union in an indirect manner. Provisions that protect the right to withdraw from union membership are related to public order, and regulations that violate these provisions shall be null and void. In the literature, these include practices and conditions that restrict resignation, such as requirements for union approval or workers' declaration of commitment not to leave the union, or compensation or punishment schemes in the case of resignation (Şahlanan, 1995, p. 192). Such regulations that violate personal rights or make it very difficult or impossible to leave the union are not only a breach of the negative union freedom but also of union democracy. With the right to free resignation, those who do not approve the activities of the union and who fail to shape union policies or change the incumbent leadership through popular elections may opt to leave in order to found or join another union. This way, member workers are protected against group hegemony (ibid., p. 193).

In order to evaluate the resignation system in regard of union democracy, the legal procedures of resignation from union membership shall themselves be examined with regard to basic democratic rights. In Act No. 274 Art. 6 of 1963, resigning freely had few procedural components. Accordingly, "every member can resign from the membership of a professional organization at any time. Resignation is done in written form". Further elements were brought in with Act No. 1317: "[...] resignation is done through the individual's identification and the authorization of the signature of the person by the notary". Thus the practice of notary authorization was required for the first time by the laws of 1970. Supporters of the idea claim that notary authorization on the acquisition and termination of membership is a necessity to prevent corruption

(Deren-Yıldırım, 2001, p. 1711). Furthermore, according to the law, the notary procedure shall be done individually, a measure taken in order to prevent the mass coercion of workers who were taken to notaries to resign from unions and the recruitment of others in their stead through "signature validation" mechanisms (Çelik, 1976, p. 256).

With similar justifications, during the regime of Act No. 274, the Constitutional Court ruled that "[...] where resignation from membership is not through strong procedures there is confusion in practice for the members who have not resigned, resulting in untimely or no benefits from rights they would normally acquire through union activities. Therefore, unions that have noticed the vices of such conditions have made provisions similar to those in the examined laws. It is observed that public good and order necessitates union resignation issues to be regulated by laws on union activities and on the issues of remaining members and resigned members".[105]

It is observed that, with this ruling, the Constitutional Court acknowledges as a general rule that the notary obligation does limit freedom of resignation, but justifies the reasons for its existence. As clarified in Chapter 2 as a fundamental feature of the organizational system of Turkish unionism, in addition to the first stage authorization barrage, only unions with the majority of the workers as members in the workplace have the right to make collective labor agreements (second stage authorization barrage). According to this ruling of the Court, confusion on determining the unions that possess authorization rights for collective labor agreements in a given workplace shall be prevented through strict resignation procedures, an idea that had priority over general negative union

[105] AYMK 8–9.2.1972, 1970/148, 1972–3, RG. 19.10.1972–14341.

freedom. We can see that the main issue of concern here is to determine the correct size of each union and therefore the authorization to conduct collective agreements. Rival unions in Turkey have frequently challenged each other on legal terms during collective bargaining processes in order to win authorization rights in workplaces. Resignation is one of the key processes in this regard, as the resigning members during collective bargaining talks often do so in order to join a rival union in the workplace or enterprise. Therefore, resignation procedures have practical importance on both the determination of the authorized union in a collective bargaining process and the application of a collective labor agreement once it has been concluded. Financial terms of collective agreements apply only to those who are members of the union at the date of conclusion of the collective agreement and apply as long as union membership is maintained (Turunç and Sur, 2010, pp. 121–122).[106] In the literature, it has been emphasized that this method, which was expected to help in determining the accurate number of members in unions, did not work out as planned, and that collusions and mass resignations could not be prevented (Deren-Yıldırım, 2001, p. 1711). With similar justifications of the older system, the late Act No. 2821 Art. 25 also allowed resignation through identification of the person and the authorization of the resigning member's signature by the notary. Deren-Yıldırım argues that the notary authorization that is sought to prevent the above-mentioned problems does not restrict the right to free resignation and that the issue does not have a direct relationship with union democracy (ibid.).

[106] The solidarity dues system elaborated in section 3.6 provides the exception to this rule.

ILO had also expressed concerns on this system. Just as in the case of membership acquisition, the existence of the notary authorization procedure on resignation in Turkey has been criticized as a potential breach of the individual's union freedom. In the Freedom of Association Court Case No. 631 (filed following the amendment of Act No. 274 with Act No. 1317 in 1970), Paragraph 32 states the conclusion thus:

> "[...] the Committee [CFA] considers that a requirement such as that laid down in Section 6 of Act No. 274, as amended, would not in itself constitute an infringement of trade union rights provided that this is a formality which, in practice, can be carried out easily and without delay. However, if such a requirement could, under certain circumstances, present practical difficulties for workers wishing to withdraw from a union, it may restrict the free exercise of their right to join organizations of their own choosing. In order to avoid such a situation the Committee considers that the Government should examine the possibility of introducing an alternative method of resignation from unions which would involve no practical or financial difficulties for the workers concerned. In accordance with the rule of procedure established by the Committee at its 59th Session in November 1971 (127th Report, Para. 251), the Committee recommends the Governing Body to invite the Government to indicate prior to the Committee's November 1973 session, the steps which have been taken, or which it is proposed to take, to introduce an alternative system for withdrawing from membership of a trade union".[107]

The new Act No. 6356 Art. 19/2 states that any member may resign from membership in a trade union by application via e-State, countering the criticisms stated above. The notification for resignation carried out by e-State shall reach the Ministry and the trade union at the same time. Resignation shall be effective one month after the date of notification to the trade union. In the case of acquisition of membership in another trade union during the period of one month, the new membership shall be considered valid as

[107]http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2899340

of the date of the end of this period. It is stated in the General Reasoning of the Act that the one-month period and related procedures aim to protect union safety and the accurate updating of official records.

As in the case of acquisition of membership, resignation is to be done by e-State, and in the same way, its application in practice should be examined closely. How workers' free will is to be protected and how much the system is vulnerable to abuse are issues of concern in both joining and leaving unions. In this regard, the reliability of the e-State procedures is in question (Önsal, 2013, p. 49). As clarified in subsection 3.2.1, the system is vulnerable to the outside intervention of third parties. Türk Metal has reported that employers in certain workplaces demand the personal e-State information and passwords of their new employees as soon as they start their contract in the workplace, which they use to terminate their union membership by withdrawing them via e-State. Accordingly, in some cases, employers follow the e-State processes of their workers regularly and frequently through the personal data they have obtained and pressure them if they become members of any union or of unions which they disfavor. With such methods, employers de-unionize the workplace, or make certain unions lose their majority and therefore their authorization rights for making collective labor agreements. Türk Metal officials state that their organization has made several pending appeals to the Ministry for the re-evaluation of authorization calculations based on state inspectors' report on such abuses of the e-State mechanism.[108] Since Türk Metal is the largest and arguably the strongest Turkish union in the current context in terms of its operative capabilities, it is safe to assume that other employers also undertake such abuse of the e-

[108] Interview with Secretary General of Türk Metal, 11/10/2016.

State system against smaller and weaker unions with even less concern over the potential repercussions.

As in the case of membership acquisition, Article 19/11 states that resignation from membership procedures and principles shall be laid down by a regulation to be issued by the Ministry. This further reinforces doubts as to arbitrary conduct on behalf of the state, which raises more concerns over the operation of such vital issues that have a direct impact on union democracy.

Another aspect of resignation to be examined in terms of democratic conduct is its timing. As a general rule, rights and responsibilities of union membership are forfeit at the time of resignation. However, Act No. 274 Art. 6/2 stated that union statutes shall not hold regulations that provide payment of dues by the resigned member for more than three months, meaning that under Act No. 274, unions were allowed to receive membership dues for three further months after their resignation through the regulations provided in their statutes.[109] These provisions created extensive discussions and controversy both during the legislation and in the literature following the ratification of the Act (Şahlanan, 1980, pp. 90–91). The basic criticism rested on the idea that members were being punished for resigning from unions, which was in contradiction of the constitutional principle of free withdrawal from unions (ibid.). As a counter-argument, it has been asserted that strong unionism demands the effective operation of collective agreements and use of strikes, which is only possible through financial stability and strength. In the event that members, due to external interventions or for other reasons, withdraw from a union that has decided to go for a strike, the union may

[109] It should be noted that Act No. 274 Art. 6/2 had made some exceptions to this general rule.

experience major difficulties once it is deprived of membership dues. Even the pioneers of union democracy in the Turkish union literature such as Şahlanan asserted that this should be prevented for the proper functioning of the collective agreement regime provided by the constitution (ibid.). With such justifications, the French system of unionism, in order to protect unions from financial losses in the case of mass resignations, took similar legal steps by regulating the continuation of payment of dues for six months after resignation (ibid.). Thus, during the regime of Act No. 274, if union statutes held regulations stating that the resigned member should pay membership dues for a period up to three months, membership would be considered terminated at the end of that period (ibid., p. 94).

In accordance with similar justifications of union protection, Act No. 2821 had originally stated that resignation takes place three months after the application for resignation instead of leaving the regulation of the issue to union statutes. Due to criticisms in the literature on the basis of union democracy (Deren-Yıldırım, 2001, p. 1712), an amendment was made to Act No. 4101 in 1995 that shortened this period. Thereafter, resignation came into effect one month after the application to the notary (Art. 25/2).

Similar to these amended provisions, the new Act No. 6356 Art. 19/3 states that resignation shall be effective one month after the date of notification (by e-State) to the trade union. In the case of acquisition of membership in another union during the period of one month, the new membership shall be considered valid at the end of this period. From a strict viewpoint of union democracy, the enforcement of a one-month period has reinforced the principle of free withdrawal from the union, and compared to the

previous regimes of Act No. 274 and the original version of Act No. 2821, is more favorable for individual union freedom while maintaining a balance with principles of union protection.

The authorization barrages that have been discussed in Chapter 2 also pose other, more fundamental problems in respect of the right of resignation. With Act No. 2822 on Collective Labor Agreements, Strike and Lockout, only unions that possessed ten percent of the workers in their branch of activity could have the right to make collective agreements. In a regime that restricts unionization by preventing fundamental functions in accordance with such prerequisites based on size, to resign from a union in order to establish a new union or to become a member of another, a common practice in the 1961 constitutional era of unionism, was made immensely difficult. Industry-based unionization and the ten per cent authorization barrage made it much more difficult for unions to survive and, once resigned from membership, workers had a high chance of being left unionless due to the existence of a single union in several branches of activity. This practice might have created stronger unions, but from the perspective of union democracy, it hindered the negative union freedom immensely, as well as other freedoms.

With the decrease of the authorization barrage from ten percent to three percent and now to one percent, this problem has been eased. Although the difference between the ten percent and one percent barrages is undoubtedly great, the rate of unionization across the country has also waned compared to the statistics of pre-1980 era, as explained in subsection 2.3.3. In this regard, unions' ability to fulfill the first stage

authorization barrage is still an ongoing concern for most existing unions, indirectly limiting the negative union freedom.

As discussed above, members resigning from the union may weaken the organization in various respects: therefore the union administration may attempt formally to take preventive measures through regulations in statutes that contradict negative union freedom. The constitutional and union law provisions that protect the freedom of resignation have already been elaborated. As the right to free resignation is also a matter of personal rights, the Civil Code also prohibits union statutes from regulations that make withdrawal impossible or excessively difficult on the basis of violating personal rights and freedoms (Şahlanan, 1995, p. 194).[110] Regulation of resignation via the payment of certain dues, prevention of re-membership once withdrawn, the authorization requirement from a union organ, and mechanisms further burdening the member by requiring the statement of a reason for resignation or other similar processes, have been considered undemocratic in the Turkish union literature (Deren-Yıldırım, 2001, p. 1710).

Sample union statutes state the following regulations regarding resignation:

- Banksis Statutes Art. 10/1 states that the resignation procedure is done via e-State. Art. 10/2 states that resignation is effective one month after the date of notification, and that membership rights and obligations, including the payment of membership dues, continue in this period.

[110] Civil Code No. 4721 Art. 23 and the previous Civil Code No. 743 Art. 23.

- Birleşik Metal-İş Statutes Art. 7/a states that the resignation procedure is done via e-State, and it is effective one month after the date of notification. Art. 7/b states that the worker pays membership dues for one more month after the resignation procedure.

- Çelik-İş Statutes Art. 7 refers to the union law provisions and related regulations with regard to resignation.

- Genel-İş Statutes Art. 7/1 states that the resignation procedure is carried out via e-State, and that it is effective one month after the date of notification. Workers are obliged to pay membership dues in this period. Art. 7/2 states that in the case that the worker withdraws his or her membership application to another union and again becomes a member of the union in this period, the membership continues uninterrupted.

- Güvenlik-Sen Statutes Art. 9/a states that the resignation procedure is done via e-State, and that it is effective one month after the date of notification. If the worker becomes a member of another union, the new membership shall be considered valid at the end of this period. Art. 9/b states that membership obligations towards the union continue during this period.

- Hizmet-İş Statutes Art. 7/2 states that the resignation procedure is done via e-State, and Art. 7/3 states that it is effective one month after the date of notification. If the worker becomes a member of another union, the new membership shall be considered valid at the end of this period.

- Öz Toprak-İş Statutes Art. 8/1 states that the resignation procedure is done via e-State, and Art. 8/3 states that resignation is effective one month after the date of notification. If

the worker becomes a member of another union, the new membership shall be considered valid at the end of this period.

- Tes-İş Statutes Art. 8/a refers to the union law provisions in respect of resignation. Art. 8/b states that the resigned member is under obligation to pay dues until the end of membership.

- TGS Statutes Art. 6/a states that the resignation procedure is done via e-State, and Art. 6/b states that the worker pays membership dues for one more month after the procedure.

- Türk Metal Statutes Art. 8 states that the resignation procedure is done via e-State. Resignation is effective one month after the date of notification. If the worker becomes a member of another union, the new membership shall be considered valid at the end of this period. The worker is under obligation to pay membership dues for one more month after the procedure.

Although varying in terms of reflecting different parts of the related law provisions, just as in the case of automatic termination of membership, sample union statutes basically restate the provisions of the union law which hold no difference in legal implications for any of these unions. The regulations state no restrictive conditions that would limit or prevent free resignation. Therefore, all of the sample union regulations are democratic in the sense that they do not hinder the negative union freedom of workers by formal means.

3.8.3 Termination of Membership by Expulsion

One of the most important issues regarding union democracy is how expulsion from union membership is formally handled. A trade union should be able to maintain its unity in order to be an effective organization, and expulsion of a member can be a necessity for the union's protection. However, unless there is a just cause, expulsion may harm or prevent the realization of union democracy. Expulsion is, without a doubt, the most severe disciplinary action against union members. It can be a very effective instrument in the hands of the administration in order to control dissent, silence the opposition, and establish an undisputable oligarchy in the union. Therefore, it should be decided through mechanisms that favor individual union freedom as well as union democracy and cannot be left to the sole decision of the incumbent leadership or to arbitrary union regulations.

Article 19/4 of Act No. 6356 states that the decision to expel any member of a union shall be taken by the general assembly. The decision shall be communicated electronically to the Ministry by e-State and in written form to the expelled member. Within 30 days following notification of the decision, the member concerned may appeal against the said decision to the court. The court shall take a final decision within two months. Membership shall continue until the decision on expulsion is final. As with the issue of acquisition and withdrawal of membership, the conditions of expulsion from membership shall be included in the statutes of the unions (Art. 8/d).

A debated issue in the Turkish union literature is the possibility of expulsion without any statement as to the reason from union organs. Certain union scholars assert that

since expulsion without a statement of reason is possible for associations (Civil Code Art. 65/1), the same provisions shall also apply to trade unions (Deren-Yıldırım, 2001, p. 1714). However, union members' social and economic interests differ from associations' and therefore this argument is opposed on the same grounds that have been discussed in the section on acquisition of union membership (3.2). Şahlanan (1995, p. 202) states that where the reason is not stated in the notification of expulsion to the expelled member, the court may judge that the expulsion is inconsistent with the union statutes or done without just cause.

Reasons for expulsion can be categorized into two general groups: those that are explicitly stated in the statutes, and those that are not. Before Act No. 2821 came into force, this separation held more importance, as Act No. 274 had not determined a specific organ for handling expulsions. During this period, when statutes held regulations on the reasons for expulsion, it was generally accepted that a member could not be expelled for any reason that was not explicitly stated in the statutes (Deren-Yıldırım, 2001, p. 1713). If certain conditions which made membership insupportable arose, it was accepted that the union had the right of expulsion under the principle of fairness in accordance with the Civil Code Art. 65/2 (Şahlanan, 1980, p. 97). Within the current system and according to Civil Code Art. 67/3, in the case that the statutes do not state the reasons for expulsion, the organization can expel a member under just cause according to general provisions (Şahlanan, 1995, p. 199; Tuncay and Kutsal, 2015, p. 116). It has been argued that if there are no regulations on reasons for expulsion in the statutes, expulsion can only be done based on important causes (Esener and Gümrükçüoğlu, 2014, p. 155).

As in several union doctrines, in order to expel a member on the grounds of actions contradicting the aims of the union, statutes shall hold provisions clarifying the aims of the union. This is argued to be essential for union democracy, because any member who stands in opposition to the leadership can be expelled on a whim without such measures. Therefore, provisions of statutes that state reasons for expulsion should be examined thoroughly. Acting contrary to the common interests, or insulting members of union organs through speech or action, are among reasons for expulsion in statutes that are too subjective, and pose serious issues for democracy (Şahlanan, 1980, p. 96). It is most commonly during strikes that expulsion for disregarding the union administration's orders happen. This kind of expulsion should only take place in case of clear and concrete violations if we are to ensure an opportunity to voice dissent and opposition to leadership and their policies, not to mention fairness.

The late Act No. 2821 Art. 25 was different in some respects from the older Union Act No. 274 Art. 8, which had not determined a specific organ for handling expulsions and members had the right to appeal to the general assembly if expulsion was made by another organ. With Act No. 2821, the general assembly became the sole union organ on the decision of expulsion, and continues to be under Act No. 6356.

Taking certain principles into account during the expulsion procedure at the general assembly is important for union democracy. For example, the agenda of the assembly should not be altered for sudden expulsions, and there should be fair conduct in general (due process/fair hearing). According to Tuncay, "if we are to argue that a decision is taken under the rule of fairness, the general assembly shall meet in accordance with correct procedures, investigations done through correct procedures, the members to be

expelled given the opportunity for self-defense, and an objective decision be reached in good will".[111] The general assembly meetings are basically bound by their agenda. An expulsion decision that is not included in the agenda, or that is added during the assembly at the request of a number of members that does not meet the minimum legal requirement for the extension of the agenda (as elaborated in next chapter under subsection 4.1.3), contradicts the law. A ruling made by the General Assembly of Court of Cassation of Law rests on such premises.[112]

For the operation of expulsion to be carried out under democratic norms, members to be expelled should be given the opportunity for self-defense, and this right of defense shall not be hindered by any means. In the doctrine, it is argued that expulsion needs to be revoked if the expelled members are not given the opportunity to defend themselves (Deren-Yıldırım, 2001, p. 1715; Esener and Gümrükçüoğlu, 2014, p. 155). The General Assembly of Court of Cassation has repealed the expulsion decision in an old case on the basis that the expelled member had not been given an opportunity for defense.[113] The rules for the defense process should also be under democratic norms. For instance, the member should be notified in advance of the accusations in written form and given due time for the preparation of a defense (Şahlanan, 1995, p. 201). Statutes that claim false procedures for expulsion contradict the constitution and related laws on democratic conduct and therefore shall be null and void (Deren-Yıldırım, 2001, p. 1715). Furthermore, leaving a reason for expulsion untouched by any disciplinary action

[111] Cited in Deren-Yıldırım (2001, p. 1715) without an explicit reference.
[112] YHGK, 14/5/1969 in Şahlanan (1995, p. 202).
[113] YHGK, 10/3/1958, 3913/1264 in Şahlanan (1995, p. 201).

and using it at a much later date to expel the member contradicts the principle of fairness (Şahlanan, 1995, p. 202; Esener and Gümrükçüoğlu, 2014, p. 156).

Court appeal is possible for decisions of expulsion by the general assembly. The previous Act No. 2821 Art. 25/3 stated that the expelled member or the authorized regional labor office for the workplace could appeal the decision within 30 working days following written notification of the decision at the local court of law. The court would reach a final decision within two months, and union membership would be retained until the decision of expulsion is final. The new Act No. 6356 retains these provisions, except for the Ministry's notification procedures[114] and the right of appeal of other parties, which has disappeared altogether. According to Act No. 2821 Art. 25, as well as the older Act No. 274, the district offices of the Ministry of Labor and Social Security could also appeal to the labor courts on the decision of expulsion as well as the expelled members themselves. In the literature, while the new article has been found appropriate by some, others have criticized it on the basis that state protection of expelled members who for some reason cannot appeal to the court themselves has been removed (Esener and Gümrükçüoğlu, 2014, p. 157). Appealing to the labor court can be a burden for expelled workers, especially for the unskilled. To claim that state intervention hinders the personal rights of the expelled worker—an argument put forth by some unions in the past—is unreasonable because in the case that the worker does not want to rejoin the union, resignation is always possible (Şahlanan, 1995, p. 206).

[114] The late Act No. 2821 Art. 25/3 stated that the decision of expulsion shall be communicated by the union in writing to the concerned parties, which are the regional directorate of the Ministry of Labor and Social Security and the Ministry itself. Act No. 6356 Art. 19/4 changes the notification procedure to the Ministry, which is to be done via e-State.

Therefore, the previous provisions, by protecting the individual union freedom through potential state intervention, were more compatible with union democracy.

It is also important to examine how courts are to handle the expulsion process. A vital question is to what degree the courts shall evaluate the decision taken by the general assembly. Although there are no provisions in the union laws on this matter, the rulings of the Court of Cassation that refer to the related decisions of associations provide a basis for the discussion. Accordingly, if the statutes explicitly state the reasons for expulsion, the judge shall only identify the existence of the reason and the decision taken according to the procedures and not evaluate the reason for the expulsion itself (Şahlanan, 1995, p. 204). In the literature, those who argue that the judgment of the court is restricted to these features of expulsion basically apply the principle of autonomy of associations to unions (Deren-Yıldırım, 2001, p. 1716). However, as elaborated in the acquisition of membership section (3.2), due to the social and economic functions of unions and other differences from associations, the court should take the case of expulsion more elaborately than cases of expulsion from associations. The examination of the expulsion regulations in the statutes is a necessity for union democracy on the basis of the constitutional provision, stating that the regulations of unions shall not be inconsistent with principles of democracy (Art. 51). Therefore, it has been asserted that even if the reason for expulsion is explicitly stated in the statutes, the judge shall evaluate whether or not these reasons have just cause (Şahlanan, 1995, p. 205). Otherwise, the external checking mechanism over union democracy is hindered immensely due to the potential power of expulsion as an instrument to prevent the emergence of opposition. Thus, the judge shall first of all examine the material facts

(proofs). If the expulsion is done without enough evidence, or if the evidence is not fully verified, a proper assessment has not been made by the general assembly while taking the decision. Secondly, the judge shall check the allegations written in the statutes. This is both the most difficult and the critical aspect of judgment. The reason for expulsion in the statutes shall be evaluated in terms of whether or not it has just cause, and if the written allegation is unclear, in terms of whether or not the decision of expulsion has been taken in an objective manner (ibid.). Thirdly, the judge shall take into consideration the principle of proportionality of the crime and punishment. Although judges do not have the authority to change the decision of expulsion into a lesser disciplinary punishment, they may under certain circumstances find the expulsion an excessive punishment (disproportionate to the allegation) and may repeal it (ibid., p. 206).

A problem arising from the e-State system is that after the union's notification of expulsion via e-State, in the case that the expelled member appeals to the court, membership officially continues until the decision of expulsion is final. On the e-State system, however, the expulsion process remains concluded. Thus, the notification of expulsion on the e-State system may have unintended consequences during the appeal phase (Esener and Gümrükçüoğlu, 2014, p. 157; Tuncay and Kutsal, 2015, p. 117).

It should be kept in mind that according to Article 19/11, the procedure and principles regarding the acquisition and termination of membership shall be laid down by a regulation to be issued by the Ministry. This regulation and its application procedures may have an important effect on the resignation and expulsion processes. The currently

issued Article 11 regulations basically repeat the provisions of the Act (Çelik et al., 2015, p. 624), therefore posing no immediate concerns.

Instead of examining each sample union's list of reasons for expulsion stated in their statutes one by one, I categorize them into two groups: 1) objective reasons (written in standard font); and 2) subjective reasons (*italicized*). It should be noted that not all of the articles are stated identically in each of the statutes: some of them have minor differences that do not significantly change their intended premises.

1) Objective reasons.

a) The emergence of a condition that prevents union membership (Tes-İş, Art. 10/e; Öz Toprak-İş, Art. 10/3; TGS, Art. 8/c; Türk Metal, Art. 10/e).

These are basically the legal conditions an individual shall possess to acquire union membership, such as qualifying as a worker, working in the same branch of activity as of the union, etc. The loss of these qualities is actually the cause of automatic termination of membership. From a strictly legal perspective, these regulations are unnecessary for the termination of membership to take place, which shall still happen in their absence.

b) Not paying membership dues for three/six months without proper excuse (in some statutes, not applicable to members with a service contract but not working and to the temporarily unemployed) (Tes-İş, Art. 10/d; Güvenlik-Sen, Art. 11/d; Öz Toprak-İş, Art. 10/4; TGS, Art. 8/d).

Even though it is not a vital matter of concern in current Turkish unionism due to the practice of the check-off system, in the union literature, the non-payment of membership dues is argued to be one of the objective reasons for expulsion (Deren-Yıldırım, 2001, p. 1714).

c) Embezzling union funds or property and causing material damage to the union (Tes-İş, Art. 10/f; Öz Toprak-İş, Art. 10/5; TGS, Art. 8/e; Hizmet-İş, Art. 8/7; Türk Metal, Art. 10/c).

This is yet another objective reason in the event that such allegations rest on solid evidence.

d) Acting contrary to strike and collective labor agreement provisions, written decisions and instructions of union organs (Tes-İş, Art. 10/b; Öz Toprak-İş, Art. 10/2; TGS, Art. 8/b; Türk Metal, Art. 10/b).

Although not as objective as the previous reasons, strike and collective agreement provisions and other written decisions of the union organs are in general precise directions to the members' specific behavior. However, if the actions of members are not interpreted under the principle of fairness, this article may also serve as an instrument for arbitrary expulsion. Deren-Yıldırım (2001, p. 1714) states that these types of regulation refer mostly to administrative decisions during strikes, and expulsion should be exercised only in the case of serious violation. The articles in the sample union statutes exclude any unwritten instruction as a reason for expulsion, which reinforces the objectivity of these regulations, as members may defend themselves more easily against accusations regarding their violation.

2) Subjective reasons.

e) Failure to comply with union statutes, regulations set in accordance with the statutes, general assembly and administrative board decisions (Çelik-İş, Art. 10/b; Tes-İş, Art. 10/a; Banksis, Art. 11/1; Genel-İş, Art. 8/a; Güvenlik-Sen, Art. 11/b; Öz Toprak-İş, Art. 10/1; Birleşik Metal-İş, Art. 9/a (compliance with statutes only); TGS, Art. 8/a; Hizmet-İş, Art. 8/2; Türk Metal, Art. 10/a).

All of the sample union statutes include this article in their regulations on expulsion. Comparatively, this article is more subjective than article (d) in the sense that proving or disproving a failure to comply with the whole of union statutes, related regulations, general assembly and administrative board decisions is very much harder due to the general and vague nature of some of the articles of the statutes and other union organ decisions.

f) Undermining the realization of union aims and activities/development (Çelik-İş, Art. 10/c; Genel-İş, Art. 8/b; Güvenlik-Sen, Art. 11/c; Hizmet-İş, Art. 8/3; Türk Metal, Art. 10/f).

g) Revealing union secrets or endangering the future of the union through actions and activities (Çelik-İş, Art. 10/g; Genel-İş, Art. 8/d; Hizmet-İş, Art. 8/6).

In regard to (f) and (g), the union administration and/or disciplinary board should clarify the ‘undermining’ or secret that was revealed and should be under the burden of proof in each case. Otherwise, these two articles can be used arbitrarily.

h) Failure to comply partially or entirely with the aims of the union/acting incompatibly with the aims of the union (Çelik-İş, Art. 10/a; Banksis, Art. 11/1; Güvenlik-Sen, Art. 11/c; Birleşik Metal-İş, Art. 9/a; Hizmet-İş, Art. 8/1; Türk Metal, Art. 10/d).

The aims of the union are stated in the union statutes and are in general defined as broadly as possible. Therefore, a just cause is necessary for the expulsion of the member in relation to the aims of the union.

i) Acting against the legal personality of the union (Birleşik Metal-İş, Art. 9/a).

This is a vague provision that can be unjustly used by the leaders against members that actively oppose the administration and its operations.

j) Making public statements in ways that would harm the legal personality of the union (Öz Toprak-İş, Art. 10/7).

The same as (i).

k) Making false, incorrect, subversive or divisive statements, insults or activities against the legal personality or the officials of the branch, union and higher organizations/baseless denunciation and complaint about officials (Çelik-İş, Art. 10/f; Tes-İş, Art. 10/c; Hizmet-İş, Art. 8/5; Türk Metal, Art. 10/h).

Şahlanan emphasizes this kind of expulsion and its negative relationship with union democracy (1980, p. 96; 1995, p. 199). Although it is accepted that excessive criticism can be a reason for expulsion in the literature, it is difficult to determine whether or not criticisms are just as there is no general measure. Therefore, each case should be

examined individually. While doing so, the factors to be considered are the importance of criticism for the development of unions; the fact that members are not obliged to approve the policies, actions, or inactions of the union officials and organs; and the constitutional provision (Art. 51) and union law provisions (Act No. 6356 Art. 31/1; Act No. 2821 Art. 6/6, Art. 37/1) stating that the regulations, administration, and functioning of unions shall not be inconsistent with the principles of democracy (Şahlanan, 1995, p. 199).

l) Acting or speaking in ways that disrupt unity, solidarity, and cooperation among members (Öz Toprak-İş, Art. 10/6; Türk Metal, Art. 10/g).

This is one of the most controversial articles of expulsion in the sample statutes. There may always be groups or individuals in any type of organization, including unions, that strive to take part in the formation of union policies and contest the position of the union administration itself. In the case of voicing dissent, any opposition, whether organized spontaneously or as factions, may be punished through this article with ease. A very strong case against the accused should be required if union democracy is to survive under such premises.

m) Using the union for personal interests (Çelik-İş, Art. 10/e; Genel-İş, Art. 8/c; Hizmet-İş, Art. 8/4).

This is yet another vague reason for expulsion. Where common interest ends and personal interest starts is debatable. From a certain point of view, all professional officials, as well as contenders for leadership in a large union, have a personal interest as much as a collective interest in running for office. As elaborated in Chapter 1, the

income and prestige of an upper class member, provided by leading a nationwide union, are clearly matters of personal interest for union leaders. The rank and file members who have no desire for union office may also have a personal interest in the formation and implementation of union operations, such as the outcome of a collective agreement that directly affects them. Therefore, each related matter should be examined individually to reach a fair conclusion.

n) Becoming a member of other unions operating under the branch of activity of the union or the branch of activities of the unions that are members to the Confederation, taking office in these unions, being a founder of these unions or supporting such unions (Çelik-İş, Art. 10/d).

Although the prohibition of multiple union memberships is an objective element, this article explicitly states that supporting another union is a reason for expulsion, which is an all too severe excuse that can be exploited by the union with ease and therefore is directly detrimental to union democracy. In this regard, going to another union's meeting or joining another union’s activity (even a union in another industry) for various reasons such as working class solidarity can be seen as supporting another union, which automatically gives the organization formal power to expel the member. In my opinion, in cases where the worker openly supports a rival union in the workplace in ways that can harm the union organization, the expulsion of the member in reference to this article may have just cause. However, in other cases, this regulation may be used by the administration in ways that breach the individual union freedom and principles of democracy in accordance with the constitution and union law provisions.

I have categorized articles (a) to (d) as objective. Except for (d), these articles are completely clear and precise reasons for expulsion that shall rest on solid evidence. However, (d) is not as objective as the others because strike and labor agreement provisions, the written decision of union organs, and their practice are more complex matters. Despite this, under a normal state of affairs, these provisions and decisions specifically point out clear directions for the implementation of adopted policies. Therefore, in the case that a member is expelled according to the article, the member has a stronger position to disprove the allegations. Comparatively, article *(e)* is more subjective because proving or disproving a failure to comply with the whole of union statutes, related regulations, general assembly and administrative board decisions is very much harder due to the more vague nature of some of the articles of the statutes and administrative board decisions. Thus, *(e), (f), and (g)* are partially subjective in the sense that while it is possible for the union administration to act arbitrarily and find vague elements on the basis of expulsion, they have to rest on some evident material restricted to the related issues pointed out in each article.

Articles from *(k)* to *(n),* however, are so broad and subjective that union administrations may use them for arbitrary expulsion with little difficulty, especially in the general assembly environment, where the majority of the members/delegates generally support the incumbent administration and therefore have little motivation to investigate the allegations made by the leadership thoroughly.

Sample union statutes have adopted the following regulatory articles on expulsion:

Banksis: *(e), (h)*

Birleşik Metal-İş: *(e), (i), (j)*

Çelik-İş: *(e), (f), (g), (h), (k), (m), (n)*

Genel-İş: *(e), (f), (g), (m)*

Güvenlik-Sen: (b), *(e), (f), (h)*

Hizmet-İş: (c), *(e), (f), (g), (h), (k), (m)*

Öz Toprak-İş: (a), (b), (c), (d), *(e), (j), (l)*

Tes-İş: (a), (b), (c), (d), *(e), (k)*

TGS: (a), (b), (c), (d), *(e)*

Türk Metal: (a), (c), (d), *(e), (f), (h), (k), (l)*

Taking into account the different levels of subjectivity and openness to arbitrary action in each of the articles, the TGS, Banksis, and Tes-İş statutes perform better in terms of objectivity on the issue of expulsion, whereas others (especially Çelik-İş and Hizmet-İş) have multiple subjective regulations in varying degrees. It should be noted that while it is possible to normatively sort union statutes in terms of objectivity and democratic conduct on the issue of expulsion, the actual practice through the existing norms may vary greatly, as most of the reasons for expulsion have at least some degree of subjective quality.

In each specific case, the reasoning of the union for expulsion can be more subjective and arbitrary than the articles I have identified as completely subjective and open to

abuse. Furthermore, although unlikely, articles I have categorized in the objective group can also be abused, such as (d). It is also important to underline that expulsion based on these subjective articles does not necessarily mean arbitrary action on behalf of the union. In the case that there is clear evidence that these articles are breached, related expulsions may have just cause under the principle of fairness. Therefore, to rank the sample unions based on how many objective and subjective articles they possess in their statutes would be misleading in relation to their actual performance of democracy in individual cases of expulsion. What it does is reflect the structural quality of the union internal rules, as well as pointing out the existence of some regulations that are highly dangerous to union democracy in the statutes, such as *(n)*.

A final problematic expulsion procedure exists in the statutes of Güvenlik-Sen on the basis of 'violence' against women, which will be examined in the disciplinary board section (4.4).

Membership rights and freedoms are primary determinants of union democracy. In this chapter, the concept of individual union freedom was elaborated and common methods to restrict the positive and negative union freedoms have been identified. Although the Constitution and union laws normatively prevent any restrictions on joining, not joining, or withdrawing from unions, the characteristics attributed to the contemporary Turkish system of unionism, together with the specific provisions based on the referred laws and union internal regulations, have both positive and negative impacts on these freedoms. It is observed that the new Act No. 6356, compared to the former Acts No. 2821 and Act No. 2822, provides more individual freedom on the issues of union founding, membership acquisition, withdrawal, and expulsion, as well as stronger rights against

the arbitrary actions of the leaders. These are among the fundamental, indispensable conditions to produce organized opposition, leading to democratic contention. In the next chapter, I will elaborate the second group of primary determinants of democratic organizing in unions, which are the qualities of the formal structure of union organization, which is composed of each specific union organ, its powers, its responsibilities, and its interaction processes.

CHAPTER IV

UNION ORGANS: A DYSFUNCTIONAL FORMAL SEPARATION OF POWERS

The formation of union organs is crucial for union democracy, as they are expected to establish a separation of powers inside the organizational structure that provides the basis for political pluralism. In this chapter, each union organ in the current Turkish system of unionism will be examined in accordance with its composition, functions, and powers. The rights and interaction processes of union members and organs will also be examined for a participatory evaluation of the official decisions taken by the organization and their enforcement. Procedures on lawsuits in courts of labor and appeals in respect of each of these processes are also elaborated in order to clarify the protections of both individual members and the union organization itself.

According to Act No. 6356 Article 9/1 (as well as the previous Union Act No. 2821 Art. 9/1), the mandatory organs of unions, union branches, and confederations are the general assembly, the administrative board, the board of auditors, and the disciplinary board.[115] Also, unions may set up other organs as needed, which is a part of collective union freedom (Esener and Gümrükçüoğlu, 2014, p. 110). However, in order to prevent the reoccurrence of some improper practices of the past, the new law explicitly states that the functions and powers of the mandatory organs cannot be transferred to these organs (Art. 9/2). The organs, apart from the general assembly, their compositions,

[115] Within Trade Unions Act No. 274, the board of auditors and the disciplinary board were not explicitly stated as compulsory organs, which caused controversy regarding their status in the union literature until Act No. 2821 came into effect.

functions, powers and responsibilities, procedures and principles of work, as well as the quorums for meeting and decision-taking, shall be included in the statutes of the organizations (Art. 8/1–f).

Even though the powers of organs may converge with one another in various ways within different systems of unionism, in broad terms, the general assembly is the legislative, the administrative board is the executive, and the board of auditors and the disciplinary together with are the judicial organs of trade unions.[116] Procedurally, union democracy depends on the formation and interaction of these organs as much as the individual membership rights and protections that have been elaborated in the previous chapter. Democracy does not solely rest on individual union freedom and systems of elections, but also on a constant check and control over the leaders that is to be exercised by the union organs and other posts inside the union hierarchy, such as the shop stewards and delegates. Theoretically, unless majority domination is balanced with freedoms of minority and a system of checks and balances, democracy may easily transform into oligarchy or one-man rule. A minority's right to call for an extraordinary general assembly or to add items to its agenda are among such rights that are provided by the force of law. Furthermore, the successful separation of powers in a union organization is as problematic as it is in state administration, where a dominant party may take control over both executive and legislative branches. Likewise, in the case of unions, a group that holds the majority in the general assembly can easily dominate the other union organs, most importantly the board of auditors and disciplinary board.

[116] It should be noted that although the board of auditors and disciplinary board have judicial qualities, some final decisions of judgment in the union shall only be taken by the general assembly, such as union member expulsions, as provided by Act No. 6356.

Neither separation of powers in actual practice nor opposition can survive in a union unless basic freedoms are secured and provisions properly distribute power among the organs.

The formation and operations of union organs in Turkey in relation to union democracy will now be discussed according to the external rules (laws) and internal rules (statutes) of unions.

Act No. 6356 Article 9/1 states that the number of union organ members other than the general assembly shall not be less than three or more than nine;[117] the number of administrative boards of confederations shall not be less than five or more than twenty-two; and the branch organs other than the general assembly shall not be less than three or more than five. A number of substitute members equal to the main members shall be elected to the organs other than the general assembly. The Turkish laws on unions have always set minimum and maximum member number requirements for each union organ. ILO asserts that such decisions should be regulated by the statutes and other decision-making mechanisms of the unions. CFA explicitly states that the number of leaders of an organization should be a matter at the discretion of the trade union organizations themselves (CFA, 2006, Para. 402; also see 1996 Digest, Para. 364). In a broad sense, this restricts the members' capacity for self-governance and therefore democracy.

[117] The article referred to in the law text in the Official Gazette and its English translation in governmental and ILO sources do not match. The translation states that "the number of the *executive [administrative] board members* apart from those in the general assembly shall not be less than three or more than nine" (my italics). The italicized part in the translation is wrong, giving a completely different meaning to the text. See Footnote 20 for the problems of these translations.

In the event that the members of the organization/branch administrative board, board of auditors, or disciplinary board are elected as parliament members or mayors, their office shall automatically terminate (Act No. 6356 Art. 9/6).[118] Incidents of direct organic ties with the government or parliament that were experienced in previous decades are therefore partially prevented by the force of law. However, there are no restrictions on taking office in the administration of political parties. Therefore, union officials may also become political party members or officials.

4.1 General Assembly

One of the foremost basic principles of classical democracy theories is popular sovereignty. In this regard, the rule of the union organization by its members, either directly or through their representatives, is an indispensable component of union democracy. The functions and formation of the general assembly, which serves as the legislative body of unions, should therefore be evaluated in this respect. The general assembly is the supreme (highest authorized) decision-making component of the union (Civil Code No. 4721 Art. 73). It elects the union administrative board and the other boards, determines the basic policies of the union, opens or shuts down branches, approves the budget and accounts, and decides on certain issues such as the expulsion of members. Theoretically, the general assembly, due to its various functions, takes a central role in the realization of democratic conduct. Thus, the procedures for how the

[118] The law text in the Official Gazette and its English translation in governmental and ILO sources again stand in contradiction in relation to this article. The translation states "*the executives [administrators] of the organization or its branch*" (my italics) instead of "members of the organization/branch administrative board, board of auditors or disciplinary board", which would come to mean the administrative board members instead of all mandatory union organs' members. Note that in the translation, the term "administrative board" in my study is used as "executive board", which in turn makes the meaning of term "executive" a member of the administrative board. See Footnote 20.

general assembly is formed and how it operates are of primary importance for union democracy.

The new Act No. 6356 Art. 10/1 states that the general assembly shall be composed of its members or delegates, in accordance with their statutes. Although most Turkish unions have been using a delegation system for general assemblies for several decades, as sanctioned by union laws, the aim of the previous laws was that a delegation system was an exception to the general rule, and there were strict limits, both on minimum and maximum numbers on membership and on delegation procedures. The delegation system and elections according to the laws and statutes for union and branch general assemblies are examined extensively in relation to union democracy in the next chapter.

4.1.1 Call and Quorum for General Assembly

The call for the meeting of the general assembly as a general rule is done by the administrative board (Act No. 6356 Art. 12/5). It is also possible to call for or request an extraordinary general assembly, which has been regulated differently in each Turkish union law regime. Act No. 274 of 1963 did not hold any provisions on the subject; therefore Associations Act Art. 18 was applied in a comparative manner. The late Act No. 2821 stated that the general assembly shall meet when deemed necessary by the administrative board or the board of auditors or at the written request of one fifth of the members or delegates (12/4). The new Act No. 6356 Art. 12/4 went into more detail, stating that the extraordinary general assembly shall meet within sixty days when deemed necessary by the administrative board or the board of auditors or upon the written requests of one fifth of the members of the general assembly or the delegates in

order to address primarily the issues specified in their written requests. Although the law explicitly states that the board of auditors and one fifth of the members or delegates have the right to request a meeting, they do not have the right to directly call for the convention of the general assembly. Their right is limited to a demand for a call from the administrative board, as the call for meetings of the general assembly shall be made by the administrative board (12/5). This right cannot be removed from the administrative board by the regulations in union statutes, but another organ (mandatory or established by the statutes) may be given the same right to call for a meeting of the general assembly. It has been stated in the literature that this does not conflict with Article 9/2, which states that the functions and powers of the mandatory organs cannot be transferred to organs set up by the statutes. By being granted the same right for the call, the organ is not empowered to the disadvantage of the administrative board (Tuncay and Kutsal, 2015, p. 60).

In the case that the administrative board does not call the meeting of the general assembly in due time, any union member or the Ministry of Labor and Social Security may apply to the labor court, which in turn removes the administrative board of the related branch or organization from office. The court appoints between one and three trustees in accordance with the Civil Code No. 4721 in order to convene the general assembly in the shortest time possible and manage the organization until a new administrative board has been formed in accordance with the provisions of the law and the statutes (Act No. 6356 Art. 12/6). Unless union members/delegates convene as general assemblies, most of the basic democratic rights of membership cannot be exercised. Theoretically, without such a provision, administrative boards could abolish

union democracy by preventing the meetings of general assemblies. Article 12/6 therefore guarantees that members/delegates can use their rights to control or change the incumbent union leadership through the force of law.

There are no provisions in Act No. 6356 regarding the method of call and location of the general assembly meetings. Consequently, in accordance with Art. 80/1, the provisions of Civil Code No. 4721 and Associations Act No. 5253 shall apply in these matters. According to Civil Code Art. 78, general assembly meetings shall be held where the central office of the organization (or the branch/confederation) is located, unless provided otherwise in its statutes. The Regulation on Associations No. 25772 Art. 14/1 states that the call shall be announced in at least one newspaper or in written form, via e-mail or message to the contact number of the members at least fifteen days prior to the meeting. The announcement shall also include the date of the second meeting in the case that the first meeting cannot be held due to lack of quorum. The absolute majority of the total number of members or delegates constitutes the quorum for the meetings (Act No. 6356 Art. 13/1 and previous Act Nos. 2821 and 274 Articles 13/1). A higher quorum can be determined in the union statutes.

All of the sample union statutes in the study require the quorum for the general assembly meetings to be the absolute majority of the total number of members or delegates, matching the minimum requirement of the law (Banksis, Art. 15/b; Birleşik Metal-İş, Art. 12; Çelik-İş, Art. 13/c; Genel-İş, Art. 12/b; Güvenlik-Sen, Art. 20/c; Hizmet-İş, Art. 11; Öz Toprak-İş, Art. 14; Tes-İş, Art. 15/4; TGS, Art. 13; Türk Metal, Art. 15). Although ensuring high amounts of participation would undoubtedly reinforce democratic conduct in the general assembly, the enforcement of such a regulation

through statutes would be meaningless in the case that the first meeting cannot be held and is followed by a second meeting with a considerably lower quorum that is determined by the law as one-third of the members/delegates.

In the case that the first meeting cannot be held due to a lack of quorum, the second meeting shall be held within fifteen days. Since the Trade Unions Act does not state the possible earliest date for the second meeting, the Regulation on Associations (Art. 14/1) that states the period between the two meetings shall not be less than seven days is to be applied. The second meeting's quorum has been arranged differently with each union law. Trade Unions Act No. 274 Article 13/1 originally did not seek any quorum for the second meeting. This was amended by Act No. 1317, and no explicit provision on the quorum of the second meeting was enforced in the law. Therefore, Associations Act Art. 21/2, which states that the second meeting quorum shall not be less than twice the number of the total of administrative board and board of auditors' full members, was applied for unions. Both the original and the amended versions of Act No. 274 were inadequate in terms of union democracy. A general assembly with no or very low quorum may result in too low participation of members or delegates, which in turn would put democracy in jeopardy. The new Act No. 6356 Art. 13/1 and the previous Act No. 2821 Art. 13/1 aimed to prevent such problems by stating that the second meeting quorum is a minimum of one-third of the total number of members or delegates.

Another provision important for union democracy is that the activity and account reports, certified public accountant report, and board of auditors report covering the term between the two general assembly meetings and budget proposal for the next term shall be forwarded to the participants of the general assembly fifteen days prior to the

date of the meeting (Art. 12/3). This way, the law ensures the opportunity for the members or delegates that will attend the general assembly to examine the referenced documents and form their opinions beforehand. They can check how the membership dues are spent and the degree of consistency of the administration's operations in accordance with the aims and activities of the union organization, as indicated in the union statutes and Parts Five and Six (activities, revenues and auditing) of the Act. Most importantly, the presentation of these documents in due time assures that elections are held in light of the elaborations presented in these reports (Şahlanan, 1980, p. 153).

If the general assembly is postponed for any reason other than a lack of quorum, the situation and its reasons shall be communicated to the members in the same method as the first call for the meeting. Consequently, the general assembly shall meet within six months at the latest after the postponement (Regulation on Associations Art. 14/2). Moreover, general assembly meetings cannot be postponed more than once (Art. 14/3). Thus, a possible arbitrary and indefinite postponement process of general assembly meetings is prevented by these regulations. In the case that elections will be held in the general assembly meeting, the lists determining the names of the members or delegates and a document indicating the agenda, place, date, hour of the meeting, and related information on the second meeting in case the necessary quorum is not reached shall be forwarded to the competent electoral board at least fifteen days prior to the date of the meeting of the general assembly (Act No. 6356 Art. 14/2).[119]

[119] In the most commonly used translation of Act No. 6356 that is also in ILO sources, the statement "in the case that elections will be held in the general assembly meeting" is absent, which would mean that every general assembly is under the scope of this article. This is yet another clear mistake. See Footnote 20 for details on translation errors.

4.1.2 Extraordinary General Assembly

Union/branch/confederation general assemblies may convene outside the ordinary general assembly intervals if important circumstances arise, such as the resignation of the administrative board or a petition for an amendment in the union statutes. Even if the administration itself does not initiate the process, the board of auditors or a group of union members/delegates that may be a minority in the organization can formally demand an extraordinary general assembly. As clarified in the next subsection, most of the trade unions ordinarily meet with four-year intervals in the current Turkish context. In the case of some unexpected events (such as serious allegations of fraud among administrative board members), unless there are democratic mechanisms to convene the general assembly, a very long period will pass until the problems can be debated and decided on. Therefore, conditions of extraordinary meetings and the related procedures are directly related to union democracy.

It is virtually impossible to make a list of all conditions that would require an extraordinary general assembly meeting. However, union statutes may explicitly state conditions that necessitate them, such as the resignation of the administrative board, petition of changes in union statutes, etc. In spite of this, conditions of extraordinary assembly cannot be restricted in any way by the union statutes and other regulations. The extraordinary general assembly shall meet within sixty days when deemed necessary by the administrative board or the board of auditors, or upon the written request of one-fifth of the members or delegates (Act No. 6356 Art. 12/4). Although the board of auditors and a one-fifth minority of the members/delegates have the right to call for an extraordinary general assembly, as in the case of ordinary general assemblies,

this petition shall be directed to the administrative board which shall call for the meeting. The 1/5 proportion is a mandatory provision, meaning that it cannot be increased by union statutes. However, it is accepted in the literature that this proportion can be lowered by regulations in union statutes (Tuncay and Kutsal, 2015, p. 63).

It is also accepted in the literature that the administrative board is obliged to call for an extraordinary general assembly when the board of auditors or one-fifth of the members/delegates petition for it, unless there is an abuse of rights (Çelik et al., 2015, p. 630). In the case that the union/branch/confederation administrative board refuses to call the extraordinary general assembly contrary to the union law and statutes, all union members and the Ministry of Labor and Social Security have the right to appeal to the court of labor for the removal of the administrative board from office. The court shall also appoint one to three trustees in the manner pursuant to the provisions of the Civil Code No. 4721 (Act No. 6356 Art. 12/6). There is no explicit statement on the time allowed to institute a law suit in accordance with the article. It is generally accepted that Civil Code Art. 83's one-month period (after the notification of the administrative board's decision) shall be applied here (Tuncay and Kutsal, 2015, p. 64).

How the court shall handle a law suit that has been filed due to the administrative board's rejection of a petition for an extraordinary general assembly meeting has been a matter of debate in the literature. The Court of Cassation has made conflicting decisions on whether the labor court shall decide on the existence of the formal aspects required by Article 12/4 or shall also examine the reasons for the call for the meeting. The dominant position in the literature is that the court is authorized to examine the reasons for the petition thoroughly, and in the case that the right to call for an extraordinary

general assembly is abused by the petitioners, shall reject it in accordance with Civil Code Art. 2/2 (Tuncay and Kutsal, 2015, p. 64). Likewise, union administrative boards shall have the right to reject a petition made by a minority of members/delegates or board of auditors in the case that the call conflicts with the union aims or good faith, even in the case that the petition fulfills formal requirements (ibid).

Furthermore, an older ruling of the Court of Cassation states that if the number of petitioning members/delegates falls below the 1/5 proportion after the petition, the administrative board is not obliged to call the general assembly.[120] However, the Court of Cassation in another ruling states that in the event of a law suit, since the court can decide on the matter, taking into account the situation at the date of the filing of the law suit, the withdrawal of the petition of members/delegates other than the plaintiff during the law suit shall not lower the required proportion already established by the case. The court shall examine and decide whether or not the call for the general assembly is legitimate (Çelik et al., 2015, p. 630).[121]

Two more recent decisions of the Court of Cassation elaborate the current practices further. In the first case, the call for an extraordinary general assembly due to the resignation of four members of the administrative board (who were replaced by substitute members, as indicated by the law) had been refused by the administrative board. The Court decided that an extraordinary general assembly should convene only for objective and serious reasons and therefore refused the appeal.[122] In another case, the Court stated that unless the appeal for an extraordinary general assembly was

[120] YHGK, 12/10/1988, E. 9-304 K. 774.
[121] Court of Cassation 9. HD., 22/1/1998, E. 1997/21626 K. 1998/403.
[122] Court of Cassation 22. HD., 17/2/2014, E. 3515, K. 2500.

concretely disproven to be in good will and compatible with the union aims, the majority would suppress the will of the minority.[123]

The provisions of Act No. 6356 and related jurisprudence regulating the extraordinary general assembly and other aspects of general assembly meetings with several specific procedures enhances democratic conduct by protecting minority rights against majority rule. While doing so, the system also aims to prevent the abuse of minority rights. In order to prevent unfair practices on calls for extraordinary general assemblies, Act No. 6356 Art. 12/4 states that when there is less than six months at the time of the submission until the convening date of the ordinary general assembly, an extraordinary general assembly shall not be held; however, the issues in the submission shall be included on the agenda of the ordinary general assembly. As indicated in the Act's General Statement of Reasoning, groups that have lost elections in general assemblies in Turkish unions have time and time again striven to call for extraordinary general assemblies without any explicit reasoning. In order to prevent such abuses of the system, the lawmakers aimed to provide extraordinary general assemblies only on the basis of rightful reasons and in good will.

As democracy is primarily put to practice in the meetings of general assemblies that hold several functions in terms of decision-making, the conditions of extraordinary meetings are also of primary importance to union democracy. The current provisions and jurisprudence on union extraordinary general assemblies and their comprehensive scope promote union democracy by ensuring minority rights and right of opposition while preventing their abuse.

[123] Court of Cassation 9. HD., 28/4/2009, E. 14525, K. 12013.

4.1.3 Agenda of General Assembly

How the agenda of the general assembly is determined and notified with the call for the meeting is an important issue directly related to union democracy. The agenda of the general assembly is primarily set by the administrative board. In the case that the agenda-setting process (both before and during the general assembly) is in the total control of the administrative board, the rights and demands of members/delegates attending the general assembly would be limited by the leaders' own preferences. To debate and decide on general policies and specific issues under such conditions would harm democratic conduct.

Moreover, unless the attendants to the general assembly are well-informed about the agenda beforehand, the decision-making mechanism in the meeting will be immensely hampered. In the call for the meeting of the general assembly, specification of the issues shall be included in the agenda. This way, the members or delegates are given the opportunity to prepare for the agenda beforehand in order to have the issues debated appropriately. The agenda should also be written in a clear and precise form in order to be easily understood by the attending members/delegates. It has also been asserted in the literature that if the union statutes are to be amended, the related articles should also be listed in the agenda (Şahlanan, 1980, p. 152).

As in the previous Union Acts No. 274 and No. 2821, Act No. 6356 has no provisions on how members/delegates may make additions to the agenda. In the previous eras, the Associations Acts (No. 1630 Art. 23; No. 2908 Art. 25) were applied. Accordingly, the general rule is that only the issues in the agenda shall be discussed in the general

assembly meeting. This is called the "principle of adherence to the agenda" in the literature (Şahlanan, 1995, p. 81). In a sense, this aims to improve democratic conduct by preventing the sudden discussion of issues that have not been indicated in the call for the meeting to the surprise of the members of the general assembly. What is also necessary is to protect the rights of the minority in order to secure inclusive democracy. Therefore, the related articles of the laws also aimed to find a balance between the principle of adherence to the agenda and the rights of minorities, by stating that it was mandatory to add issues to the agenda in case of a request by one-tenth of the members (or delegates) participating in the meeting. Within the current system, an article similar to Civil Code No. 4721 rather than the Associations Act is applied, with one small difference: it is explicitly stated that the request is to be made in written form (Art. 79). This article provides the right for minorities and opposition in the union to bring issues to the attention of the general assembly and therefore is indispensable for democratic conduct. All of the sample unions in the study except for Çelik-İş and Hizmet-İş refer to this article identically in their statutes (Banksis, Art. 15/c; Birleşik Metal-İş, Art. 12; Genel-İş, Art. 12/g; Güvenlik-Sen, Art. 20/h; Öz Toprak-İş, Art. 14; Tes-İş, Art. 15/5; TGS, Art. 13; Türk Metal, Art. 15). Hizmet-İş Statutes Art. 12 states that one-tenth of the delegates participating in the general assembly can make additions to the agenda. However, it also adds that two-thirds of the participating delegates may remove items from the agenda. In practice, this may effectively be used to prevent minorities from securing discussion of the items they bring to the attention of the general assembly. On the other hand, Çelik-İş Statutes Art. 13/d state that while delegates may appeal for modification of the agenda, the appeal must first be accepted by the absolute majority in

the general assembly. This regulation implies that making additions to (or removals from) the agenda is only possible when the majority approves, and is in clear contradiction of the provisions of the Civil Code Art. 79 as it stands. In practice, the referred regulations of both Hizmet-İş and Çelik-İş are undemocratic in the sense that a majority of participants may effectively obstruct the discussion of issues brought forth by minorities.

Şahlanan (1995) argues that in the case of an extraordinary general assembly, the principle of adherence to the agenda should be enforced more strictly and no other issues apart from the reasons for the extraordinary meeting should be discussed, even in the case of a request by one-tenth of the attending members. As extraordinary general assembly meetings are called by one-fifth of the members/delegates, the addition of new issues to the agenda during the meeting by one-tenth of the participants could be abused and should be prevented (Şahlanan, 1995, p. 82). All of the sample union statutes in the study except for Banksis state that no additional issues outside the agenda can be discussed in extraordinary general assemblies (Birleşik Metal-İş, Art. 14; Çelik-İş, Art. 13/a; Genel-İş, Art. 13; Güvenlik-Sen, Art. 22/c; Hizmet-İş, Art. 11/3; Öz Toprak-İş, Art. 16; Tes-İş, Art. 17/2; TGS, Art. 15; Türk Metal, Art. 17). This does not necessarily imply a restriction on democratic conduct, and reflects a balance between minority rights and union protection.

4.1.4 Procedures and Functions of General Assembly

As clarified above, meetings of the union general assembly are conducted periodically as ordinary general assemblies and under special conditions as extraordinary general

assemblies in accordance with the related laws and statutes. If the general assembly is to meet for the first time, the provisional administrative board, which is in general composed of the founders of the union, shall organize the meeting as soon as possible in order to initiate basic democratic mechanisms inside the union through elections. Union democracy is delayed as long as the first general assembly is delayed. Thus Act No. 6356 Art. 12/1 (and the previous Act No. 2821 Art. 12/1) states that the first general assembly of the union shall meet within six months of the date on which legal personality is acquired, and branch general assemblies shall meet within six months following their establishment. Union statutes shall include the members of the provisional administrative board authorized to represent and administer the organization until its organs are duly formed (Act No. 6356 Art. 8/1-k; Act No. 2821 Art. 7/16).

As explained in Chapter 1, the frequency of ordinary general assembly meetings is directly related to union democracy, and short intervals between the meetings are suggested to ensure an adequate decision-making process (e.g., local general assemblies at least once every two years: Dereli, 1977, p. 198). Contrary to these suggestions, Turkish union laws have increasingly lengthened the intervals. Act No. 274 originally required ordinary general assemblies to meet once every two years. During this period of practice, it was claimed that such short intervals caused financial and practical difficulties for the organization and prevented the efficiency of union activities (Merinç, 1991, p. 72). With such justifications, the amendment to Act No. 1317 of 1970 stated that the meetings were to be carried out once every three years. Act No. 2821 of 1983 had originally retained this provision, but the interval was later increased to four years in 1995 with the amendment of Act No. 4101/5. In addition, union statutes can provide

for more frequent meetings (Article 12/2). The new Act No. 6356 Article 12/2 has kept the same provisions intact: the ordinary general assembly shall meet once every four years at least. Many Turkish union scholars find such long intervals inadequate (Şahlanan, 1995, p. 63; 1980, p. 133; Deren-Yıldırım, 2001, p. 1720; Esener and Gümrükçüoğlu, 2014, p. 115), and the current union law compared to the former has made no improvement on the issue in terms of democratic conduct.

Although there are several examples of long periods between ordinary general assemblies in the union laws of western democracies such as the United Kingdom (a maximum of five years), Sweden (a maximum of four years) and USA (a maximum of five years for national, four years for regional, and three years for local unions), it is doubtful that a period of four years between meetings is adequate in terms of democratic participation in the Turkish context, in which other factors examined throughout the study reinforce political apathy and distance from union affairs. Basically, the actions of the administration are left unchecked within such long periods. Both rank and file members and delegates are separated from union operations and are potentially left uninformed about union affairs (Şahlanan, 1980, p. 133). Furthermore, decision-making is delayed over issues that shall be taken exclusively by the general assembly, such as elections and expulsion of members. More specifically, it has been asserted that a period of four years is incompatible with the periods of bargaining for collective labor agreements that generally take place once every two years (Tuncay and Kutsal, 2015, p. 59).

Not surprisingly, union administrations in Turkey seldom object to such long intervals between general assembly meetings. It has been asserted that in order to keep their

offices longer, union leaders strive to put into the union statutes the maximum interval period between ordinary general assembly meetings allowed by the law, and commonly achieve it (Dereli, 1977, p. 126).

The study confirms this hypothesis. Most of the sample unions in the study have opted for the longest interval between ordinary general assembly meetings made possible by the law. All of the sample union statutes indicate that the ordinary general assembly meets once every four years (Banksis, Art. 15/a; Birleşik Metal-İş, Art. 12; Genel-İş, Art. 12/a; Güvenlik-Sen, Art. 20/a; Hizmet-İş, Art. 11; Öz Toprak-İş, Art. 14; Türk Metal, Art. 15) except for TGS (once every three years: Art. 13); Çelik-İş (four years at most: Art. 13), and Tes-İş (not before three years and four years at the latest: Art. 15/1). Çelik-İş and Tes-İş regulations do not have a practical difference from the former group of statutes in terms of democratic conduct since their administrative boards have the right to organize the meeting of the general assembly at the longest interval possible under the law. The ability to opt for an earlier ordinary general assembly does not have much significance, because the union law already provides union administrative boards the right to call an extraordinary general assembly. By making an exception of three year intervals between meetings, TGS, as the smallest union in the sampling of the study, proves to be the more democratic on the issue of frequency of ordinary general assemblies and consequently on the frequency of periodic elections, too.

Taking into account that the general assembly is the most important arena for the actual practice of union democracy in terms of control over the administration and participation in union matters, the shortening of the interval between ordinary general assembly meetings through the force of law would be the surest method to reinforce

democratic processes. In the case that this is not accomplished, union members/delegates should either be more persistent about shortening the period between general assembly meetings in their statutes, or develop other measures to counteract such long periods of general assembly inactivity. For example, it has been suggested that apart from the general assembly, an organ can be specifically formed by the union statutes to effectively check whether or not the decisions taken in the general assembly are enacted (Deren-Yıldırım, 2001, p. 1720). Accordingly, what is targeted by democratic essentials is not the realization of a separation of powers, but mutual checking between the powers. In this sense, other union organs that are established by unions themselves through statutory regulations may serve as an additional formal checking and balancing institution in the organizational hierarchy, separate from the mandatory organs provided by the union law. Such organs will be examined in detail in section 4.5.

The provisions on the frequency of general assembly meetings are also applied to both confederations and union branches. Furthermore, the meetings of branch general assemblies shall be concluded two months prior to the union general assembly (Associations Act No. 5253 Art. 7). This provision ensures that the delegates elected in the branch general assembly that are to attend the union general assembly have the opportunity to gather information and opinions on issues that are to be debated in the meeting of the central organization. Under the previous union law regime, and in accordance with the previous Associations Act (No. 2908 Art. 33/2), branch general assemblies were to be concluded fifteen days prior to the union general assembly. The change of law from fifteen days to two months means that the delegates shall have more

time for deliberation and reflection on the issues, and is therefore more adequate in terms of democratic participation.

Article 11 of the new Act No. 6356 makes a detailed list of the functions and powers of the general assembly. Compared to the older Act No. 2821, the slight change in the list is that the determination of the salaries, compensation, allowances, and travel pay to be provided for the members of the administrative board, the board of auditors, and the disciplinary board and their social rights are now made by the general assembly instead of being determined in the budget. As indicated in the Statement of Reasoning of the Act, the purpose is to give transparency and strength to the internal checking and control mechanisms of the organization.

After the quorum of the general assembly is determined in the meeting, one chairman and an adequate number of deputy chairmen and clerks are elected to conduct the meeting (Civil Code Art. 79). There are no provisions on the method of these elections. All of the sample unions have adopted an open voting procedure in their statutes (Banksis, Art. 15/d; Birleşik Metal-İş, Art. 12; Çelik-İş, Art. 14/1; Genel-İş, Art. 12/i; Güvenlik-Sen, Art. 20/g; Hizmet-İş, Art. 12/1; Öz Toprak-İş, Art. 14; Tes-İş, Art. 15/7; TGS, Art. 13; Türk Metal, Art. 15). An old ruling of the Court of Cassation states that the reason the general assembly is conducted by a council separate from the administrative board is to ensure the general assembly is unaffected by the members of the administrative board during the auditing and ratification processes and free decision-making.[124] The existence of a board separate from the administration to conduct the general assembly strengthens democratic conduct by reinforcing fair operation through

[124] YHGK, 18/8/1969-4-486/632. RKD, 1969/8, p. 234.

countering the domination of incumbent leaders in the related processes, at least on a formal basis.

The legitimacy of general assembly decisions rests on the fulfillment of two basic quorums: the quorum for the meeting, and the quorum for decisions in the general assembly. The quorum for meetings has already been elaborated in the previous subsections. The quorum for decisions in general assemblies is the absolute majority of the members or delegates that participate in the general assembly. This number shall not be less than one fourth of the total number of members or delegates. A quorum higher than the absolute majority is required in some decisions of the general assembly. Statute amendments, dissolution, joining, merging, founding, or withdrawing from higher organizations or international organizations requires the absolute majority of the total number of members or delegates (Act No. 6356 Art. 13/3). This quorum may be raised as provided in the statutes, but cannot be lowered. The previous Act No. 2821 had similar provisions (Art. 13/4; 26/1: joining or withdrawing from higher organizations; 26/3: founding higher organizations; 27/4: merging).

Sample union statutes have provided various regulations on the quorum for amendments in statutes, dissolution, joining, merging, founding, or withdrawing from higher/international organizations:

- Banksis Statutes Art. 16/c and Çelik-İş Statutes Art. 14/3 require the absolute majority of the total number of delegates on each of these issues.

- Birleşik Metal-İş Statutes Art. 12 requires two-thirds of the total number of delegates on each of these issues.

- Genel-İş Statutes Art. 12/l requires the absolute majority of the total number of delegates for decisions on dissolution, joining, merging, founding, or withdrawing from higher/international organizations. Art. 71 requires amendments in statutes by two-thirds of the participating delegates in the general assembly.

- Güvenlik-Sen Statutes Art. 70/a requires the absolute majority of the total number of delegates for each issue. Amendments in statutes require two-thirds of the participating delegates in the general assembly (Art. 70/b).

- Hizmet-İş Statutes Art. 50 requires the absolute majority of the total number of delegates for amendments in statutes. Art. 13/3 requires two-thirds of the total number of delegates for joining, founding, or withdrawing from higher/international organizations. While Art. 13/2 states that dissolution of the union is decided by at least two-thirds of the total number of delegates, Art. 51 states that two-thirds of the participating delegates in the general assembly in which two-thirds of the total number of delegates are present (twice the total number of administrative board and board of auditors in the case of a second meeting) is required for the dissolution. The two articles in the statutes conflict with one another.

- Öz Toprak-İş Statutes Art. 15 requires the absolute majority of the total number of delegates on these issues except for amendments in statutes, which are to be made by the general assembly with two-thirds of the total number of delegates present in the meeting (twice the total number of administrative board and board of auditors in the case of a second meeting). The decision shall be taken by two-thirds of the total number of participants in the general assembly (Art. 49).

- Tes-İş Statutes Art. 55 requires two-thirds of the number of delegates of the general assembly for amendments in statutes. The higher/international organization memberships are fixed by the statutes (Art. 48).

- TGS Statutes Art. 50 and 51 requires the absolute majority of the total number of delegates on issues of amendments in statutes and dissolution. It is stated that these decisions shall not be taken by less than one quarter of the total number of delegates. The two articles conflict with the union law's minimum requirement of fifty percent on these issues. The higher/international organization memberships are fixed by the statutes (Art. 44).

- Türk Metal Statutes Art. 55 and 56 requires two-thirds of the participating delegates in the general assembly for amendments to statutes and dissolution. The higher/international organization memberships are fixed by the statutes (Art. 48).

With a qualified majority quorum such as two-thirds of the general assembly that has been adopted by some of the sample unions (Genel-İş, Güvenlik-Sen, Hizmet-İş, Öz Toprak-İş, Tes-İş, Türk Metal), the incumbent administration is obliged to seek the approval of a greater majority of members/delegates in order to make important changes to the union organization. In principle, this serves democratic conduct positively in the case that two-thirds in the general assembly constitutes a higher number than the absolute majority of all members of the general assembly. One union, Birleşik Metal-İş, stands out as an exception by stating a quorum of two-thirds of the total number of general assembly delegates (regardless of attendance) on each of these issues, seeking a greater consensus on such matters of primary importance.

As in the case of the quorum for general assembly meetings, the newer two union laws have brought changes vital for union democracy on the quorum for decisions compared to Act No. 274 of 1963, which had regulated the quorum of establishment of higher organizations, merging, and withdrawals only (Art. 13). Therefore, unless union statutes regulated the issue, Civil Code No. 743 Art. 60 was to be applied in that era of unionism. Accordingly, the absolute majority of the members/delegates participating in the general assembly, unrestricted by any minimum requirements, constituted the quorum for decisions. Combined with the provisions on the quorum of general assembly for second meetings (Associations Act No. 1630 Art. 21) that stated the minimum requirement as not less than twice the number of administrative board and board of auditors, an extremely low number of members (i.e., a minimum of seven) in these general assemblies could take decisions. The possibility of such a small number of members controlling the highest decision-making organ of the union that will determine each aspect of the organization directly contradicts democracy. Act No. 6356, as well as the previous Act No. 2821, by providing a minimum of one quarter of the total members/delegates as a compulsory requirement, ensured that the administrators alone, or any other minority that is statistically marginal in the union organization, cannot legally seize total control of the general assembly processes.

As democratic conduct based on equality dictates, each member/delegate in the general assembly shall have one vote, and their participation and voting shall not be obstructed (Act No. 6356 Art. 13/2). The method of voting adopted for decisions in the general assembly may be by both open and secret ballot, except for elections to union organs that shall be done by secret ballot. The statutes of the organization may regulate the

voting and decision-making procedures of the general assembly (Act No. 6356 Art. 8/e; Act No. 2821 Art. 7/8). Only one of the sample union statutes, Hizmet-İş, explicitly states that the decision-making in the general assembly other than elections for the union organs shall be made by open voting (Art. 12/2), while the rest of the sample statutes remain silent on the issue. The general assembly itself may decide on the method. Otherwise, open voting shall be the norm (Merinç, 1991, p. 88). Open voting can be conducted by raising hands or cards indicating the vote for or against or abstention on the proposal. In principle, votes of abstention are counted as against the proposal. There are no legal provisions that indicate the procedure in cases where there is a tie of votes. Şahlanan (1980) argues that while there are conflicting opinions on the issue, the will of the union has not yet manifested in case there is a tie and the voting should continue. In the literature, it has been commonly accepted that the statutes may also regulate the issue, such as the double vote of the president to break the tie (Şahlanan, 1980, p. 167).

A final aspect of general assembly meetings related to union democracy is the members/delegates' right to appeal to labor courts in the case that the meeting has been conducted unlawfully or contrary to the union's statutes. All members of the union are bound by the decisions of the general assembly. Therefore, unless they have the possibility to appeal to courts due to breaches of the law or statutes in the general assembly meeting, there is always a danger of undemocratic practices in general assembly processes that constitute the core of decision-making in the union.

No provisions regarding the annulment of decisions taken in the general assembly or the meeting itself as a whole existed in Act No. 274 or in the late act No. 2821. In these

periods, in accordance with the jurisprudence of the Court of Cassation and Article 83 of the Civil Code No. 4721 (Art. 68 in the previous Civil Code No. 743), any member or delegate could appeal to the court within one month (Esener and Gümrükçüoğlu, 2014, p. 122), and the delegates absent from the meeting could appeal within three months (Çelik et al., 2015, p. 632). Although Article 83 regulated the right of the member who attended the meeting and was against a decision contrary to the law and statutes, it was accepted in the literature and the related jurisprudence that the annulment of the general assembly meant the annulment of all decisions taken in the meeting, and therefore Article 83 should be applied accordingly (Tuncay and Kutsal, 2015, p. 67).

The new Act No. 6356 Article 15 brought clear and explicit rules on the matter of annulment. It states that the Ministry, members, and delegates of the organization/branch within one month of the general assembly meeting may file a case with the allegation that the general assembly or the elections were held contrary to the provisions of the law or the statutes, or in the case of an unlawful act having an effect on the outcome of the elections, for the repeal of the general assembly meeting or the related processes. The court shall apply basic procedures and decide within two months. In the case that the decision of the labor court is appealed, the Court of Cassation shall reach a final decision within fifteen days (Art. 15/2). If the court decides to annul the general assembly or the elections held in the general assembly, it shall appoint one to three trustees and determine their tenure of office pursuant to the provisions of Civil Code No. 4721 in order to convene the general assembly as soon as possible, carry out

the elections, and manage the organization in accordance with the provisions of the law and statutes until a new administrative board has been formed (Art. 15/3).[125]

Accordingly, in a case filed for the annulment of the general assembly or a decision taken in the meeting, the court can decide either to annul the general assembly with all its results, or a part of the decisions and processes of it in a limited manner. It has been argued in the literature that general assembly meetings require considerable expense, time, and effort, and in the case that the decisions in question do not affect the outcome of the general assembly, only the unlawful decisions shall be annulled instead of a total annulment of the meeting as a whole (Tuncay and Kutsal, 2015, p. 68).

Of the functions and powers of the general assembly that are listed in Article 11 of Act No. 6356, election of the organs holds primary importance for union democracy. Elections for the general assembly delegation and for the union organs and the judicial control process over elections will be examined extensively in the next chapter.

4.1.5 Formation of Union Branches by the General Assembly

One of the most important functions of the general assembly that is directly related to democracy is to open, merge, and shut down union branches or to authorize the administrative board in this regard (Act No. 6356 Art. 11/h). Due to the current Turkish system of industry-based unionization and the enforcement of authorization barrages that effectively prevent workplace unionism, the role of union branches is essential for

[125] In the translation of Act No. 6356 that is used in governmental and ILO sources, Article 15/3 starts by stating "where the Court decides to annul the election of the general assembly" instead of "where the Court decides to annul the general assembly", giving a completely different meaning to the actual text. See Footnote 20 for translation mistakes.

union democracy. The union branch is the first stage of organization, where local leaders and other officials organize the rank and file membership, which may potentially serve as autonomous centers of power by giving birth to organized opposition inside the bureaucratic hierarchy. As discussed in section 2.3.1, in the post-1982 context, the union branch is the only platform that can create countervailing powers as conceptualized by Edelstein and Warner (1979), and fails to do so due to the central administrations' formal and informal means that allow strong control over their operations, composition, and representation in the central general assembly meetings. Unless the administrative boards' power over branches is limited, the incumbent leadership may develop ways to abuse the formation of branches in the union and shape the delegates of the general assembly to their personal advantage. Indeed, under the Act No. 274 regime, administrative boards would freely open or shut down branches or alter the size of their field of activity in order to control the delegates. To prevent such abuses of union democracy, the lawmakers gave these powers over union branches exclusively to the union general assembly with Act No. 2821 Art. 11/1. However, Act No. 3449 Art. 4 of 1988, aiming to facilitate union operations, amended the Trade Unions Act by stating that the union general assembly could authorize the administrative board to open branches. This system again brought potential problems, as the administrations could open branches before meetings of the general assembly in order to shift the balance of delegates to their advantage (Merinç, 1991, p. 94). The new Act No. 6356 has also given the leaders power over the branches by making each of these powers (opening, merging, or shutting down) available to the administrative board in the case that the general assembly grants the authorization. However, the new Act's Art. 8/g adds that union

statutes shall include the procedures and principles for the establishment, merger, and closure of branches, their functions and powers, procedures and principles of their general assembly meetings, and the method they are to be represented in the union general assembly. Thus, the new law has given priority to the statutes and the general assembly by providing formal instruments of control over the functions and formation of the branches. It is up to individual unions to organize internally, either in accordance with basic principles of autonomy for branches or keeping the excessively centralized nature of the unionization regime of the previous union laws.

Sample union statutes regulate the issues on opening, merging, and closing of union branches are as follows:

- Banksis, Art. 18/g, 27; Çelik-İş, Art. 15/i; Genel-İş, Art. 14/i; Hizmet-İş, Art. 12/9, 26; Öz Toprak-İş, Art. 17/7; Tes-İş, Art. 18/h; Türk Metal, Art. 28: General assembly opens, merges, or shuts down branches or authorizes the administrative board on each issue.

- Birleşik Metal-İş, Art. 13/f; 25/b; Güvenlik-Sen, Art. 21/j; TGS, Art. 25: General assembly opens, merges, or shuts down branches or authorizes the administrative board to open branches.

There are two groups of unions in the sampling: those that typically grant the right of authorization for all of these issues to the administrative board, and those that grant only the authorization to establish branches to the board and keep the rights of mergers and closures exclusively for the general assembly. The latter group of sample unions safeguards the relative independence of the branches from the arbitrary actions of the incumbent leadership. In the case that a branch produces opposition through the local

leadership or the spontaneous discontent of its members on the basis of policies or other issues like collective agreements or strikes, these branches cannot be eliminated or their powers diminished by a 'clever' merger with other branches in order to control their representative power in the central general assembly.

While the system kept by the former group of sample unions enhances effectiveness through speedy decision-making, it is also widely open to misuse, as experienced in the previous eras. The general assembly, within the same processes of electing the administrative board by a majority decision, would have little concern about also authorizing them with rights based on their own statutory rules under normal circumstances. The lack of autonomous centers of power inside the organization is a direct negative determinant of democratic conduct, as it prevents the rise of organized opposition through alternative communication channels and local leaders that obtain political training and skills based on their local authority and office. Therefore, strong safety measures shall be taken to ensure that political dissent emerging in branches is not silenced by the formal authority of top leadership.

4.2 Administrative Board

The top executive and representative organ of the union/branch/confederation is the administrative board. As the name implies, its members are administrative officials and leaders of the union as defined by the union laws.[126] The election of the administrative board members and their activities are issues vital for the realization of union

[126] Members of the board of auditors were also considered executive officials by the Trade Unions Act No. 2821 Art. 9/7. The new Act No. 6356 Art. 2/i states that the term 'union official' refers to the administrative board members of the organization and its branches only.

democracy. As we have seen in Chapter 1, complaints and criticisms of undemocratic conduct in unions generally focus on the actions and behavior of incumbent members of the administrative board.

4.2.1 Qualification for Administrative Board Membership

Turkish Constitution and union laws alike have provided certain requirements for establishing and maintaining administrative positions in unions. Until 2001, the Constitution explicitly regulated the qualifications of union officials as much as the union laws. Constitution Art. 51/7 required a minimum of ten years of active employment in order to be an administrator of a union or higher organization. Furthermore, the original Act No. 2821 Art. 14 had stated that the requirements for founding union members (explained in section 3.4) were also to be applied for membership in union organs other than the general assembly. For union branch mandatory organs other than the general assembly, the requirements for founding members as stated in Article 5 and one year of active employment in the branch of activity of the union were required.[127]

It has been argued that even though the ten-year active working life requirement aimed to keep people outside of working life away from running unions, it was a breach of union freedom principles (Deren-Yıldırım, 2001 p. 1722). In the ILO court rulings No. 997, 999 and 1029 of CFA, the excessive period of active employment that is required of union officers is asserted to be a breach of organizations' freedom to elect their

[127] In 1988, with the amending Act No. 3449, the prerequisite of one year's activity for branch officials was abolished. With the new provision, a qualification for founding members that required being actively employed within the branch of activity in which the union is constituted was applied.

representatives (Para. 28). The CFA report, ratified by ILO Board of Directors in 1996, states that the ten-year requirement is “immensely harmful” for union interests and is in contradiction of ILO Agreement No. 87/3 (Para. 60 cited in Koç, 1999b, p. 47). Several reports by CFA asserted the problem of this system in detail (Paras. 372, 382, 384 cited in Koç, 1999b, p. 47–48). The regulation of such a rule by the authority of the Constitution was deemed restrictive in terms of union democracy. Such a prerequisite also hindered democracy on the grounds of equal treatment among members. Within such rules, young and ambitious rank and file workers aspiring to be active in the union movement were formally kept at bay from administration. Thus, younger and dynamic members were effectively prevented from acquiring leadership posts (Güzel, 1996, p. 272). Such individuals, being separated from decision-making automatically by constitutional power, possess limited participatory abilities, which in turn will gradually cause apathetic behavioral patterns in the general union life.

The system was amended in 2001 by Act No. 4709 Art. 20, in which the constitutional requirement for a ‘minimum of ten years in active employment’ clause has been repealed, leaving such prerequisites to union law provisions. In 2007, with the amendment of Act No. 2821 Art. 14 by Act No. 5672/1, membership in union/branch/confederation mandatory organs other than the general assembly were made subject to the same requirements as founding members, as stated in Article 5, abolishing any work period requirement of the previous Constitutional and union law provisions.

Under the current Act No. 6356 regime, no special qualifications for being a union official other than those required of founding members exist. As elaborated in section

3.4, founding members are no longer required to be Turkish citizens, be able to read and write Turkish, or be actively employed within the branch of activity in which the union is established. This undoubtedly reinforces both union freedom to organize and the individual freedom to be elected for office. In this regard, the current provisions are more democratic compared to previous constitutional and law provisions. However, the question has been raised in union circles as to how foreigners without knowledge of the Turkish language, or professionals who have not been workers in the branch of activity of the union, can successfully fulfill the tasks demanded by official positions. As indicated in the founding members section (3.4), there has been controversy in the literature about the actual reasons for these changes. Although professionals such as lawyers can now become union officials under the new system—which is seen by union circles as a potential problem, on the basis of efficiency or democratic conduct—these changes have created more space for union freedom in the sense that members are also formally less restricted in becoming union officials. Thus, in the last fifteen years, there has been a constant improvement in terms of union democracy on the issue of becoming officials of unions and their respective organizations. The possibility of professionals becoming officials and its impact on democracy in Turkish unions has not yet been a practical concern, since such incidents have not yet found common ground among the union organizations.

Act No. 6356 Art. 9/3 states that the conditions required in Art. 6, which regulates the requirements for founding members, should be fulfilled in order to be eligible for membership in the organs other than the general assembly. Art. 9/5 states that the functions of the members elected to the organs other than the general assembly shall

automatically terminate if they are sentenced under any of the offences stipulated in Article 6.[128] The offences listed in the related article have been reduced compared to the previous union act, as explained in subsection 3.4.1, which shall also be directly applied for administrative board members. Therefore, the new union act is less restrictive in terms of past criminal convictions.

Before the amendment of Act No. 2821 in 1995, a union member had further limitations on being elected. Originally, Act No. 2821 Art. 9/5 stated that being elected to union organs other than the general assembly in more than four consecutive ordinary general assembly elections was prohibited.[129] One ordinary general assembly period was to pass for re-election of these individuals. The justification for this provision was to provide democratic incentives by closing the gap between leaders and the rank and file members. During the Act No. 274 regime, union leaders in Turkey had commonly established indisputable oligarchies which triggered such propositions to limit their continuous re-election in order to raise a greater number of administrators and assist in the realization of union democracy. The reasoning of related provisions rested on democratic premises to maintain the link between the administration and the rank and file (Çelik, 1994, p. 356). However, such practices also meant the possible frequent elimination of experienced leaders, which may harm the union organization. It has been argued that union democracy can be achieved when members gain consciousness and interest in union activities, not through such legal measures that automatically remove all knowledgeable and experienced officials after a certain period of time (Şahlanan,

[128] Also in the late Trade Unions Act No. 2821 Art. 9/7.
[129] The provisional Article 4/2 of Act No. 3449 in 1988 provided a transitionary period for the incumbent union/branch/confederation officials that had already been elected for four or more consecutive terms (another four terms) and for those that had not (up to eight terms).

1980, p. 173). The related Article 9/5 was abolished with the amending Act No. 4101, and no similar provisions exist in the current Act No. 6356.

The previous Act No. 2821 Art. 7/8 stated that union statutes shall indicate the qualifications required of the officials. Although the new Act No. 6356 does not state such an obligation, union statutes may provide such prerequisites. Another concern for democracy is therefore the way statutory rules limit leadership. Statutes should not give any sort of advantage to certain individuals. In the German system, there is positive discrimination towards people who have less chance of being elected for office but who are thought to be essential for some posts. Women and teenagers are such examples.

Half of the sample union statutes state the restrictions provided by the union law and do not indicate any other further requirements (Banksis, Art. 19/a; Çelik-İş, Art. 16; Genel-İş, Art. 15; Hizmet-İş, Art. 14; Öz Toprak-İş, Art. 18). The rest of the union regulations are of either a restrictive or a promotive nature in their additional prerequisites.

Birleşik Metal-İş and Türk Metal are two unions that bring restrictions which do not discriminate against minorities or groups within the union membership. Birleşik Metal-İş Statutes Art. 15 requires being productive on union aims, an abstract concept that does not pose any concrete limitations. Türk Metal Statutes Art. 19/d requires not being a member of administrative boards or boards of auditors of state agencies and public institutions. This reinforces the autonomy of the board in the sense that the officials may not engage in conflicting public roles, a problem experienced in previous eras of Turkish unionism, as discussed in the second chapter.

TGS Statutes Art. 17/a and 17/d state that Turkish citizenship and literacy are prerequisites. These seem to contradict Act No. 6356, which no longer counts them as qualifications. It is probable that these two prerequisites were overlooked during the amendment of the TGS statutes in 2013, rather than being a deliberate initiative by the union organization.

Tes-İş Statutes requires being a union member (Art. 19/a); not being an employer or having a partnership with an employer in the same branch of activity (Art. 19/c); not being in financial debt to the union (Art. 19/d); being a delegate to the union general assembly (Art. 19/e); and in the case that the person is not a delegate, an absolute majority of the union general assembly delegates shall appeal for candidacy (Art. 19/f).

Of all the sample unions, Güvenlik-Sen is the sole organization that regulates the administrative board in a promotive manner. Güvenlik-Sen Statutes Art. 18/n places a 50 percent quota for women on every union organ, including the administrative board. This serves as an immense boost for union democracy by the formal inclusion of a large minority of members into official positions who are generally disregarded in both Turkish working life and unionism.

4.2.2 Formation and Activities of Administrative Board

Art. 9/1 of the current Act No. 6356 and Art. 15 of the late Act No. 2821 both state that union and union branch administrative boards shall not have fewer than three or more than nine members. This number is between three and five for union branches. An equal number of substitute members shall also be elected to each of the organs. In the case that there is a decrease of members in the administrative board, the substitute members

shall fill the empty positions. If the members of the administrative board fall below half the total number of seats, the incumbent administrative board or board of auditors shall call for an extraordinary general assembly (Tuncay and Kutsal, 2015, p. 69). Sample unions' administrative board membership sizes indicated in their statutes are as follows:

Banksis, Art. 20/a: nine

Birleşik Metal-İş, Art. 16: five

Çelik-İş, Art. 17/a: five

Genel-İş, Art. 16: seven

Güvenlik-Sen, Art. 23: five

Hizmet-İş, Art. 15: five

Öz Toprak-İş, Art. 19: three

Tes-İş, Art. 20: eight

TGS, Art. 18: five

Türk Metal, Art. 20: five

Although a high number of administrative board members (such as in the case of Banksis) would ordinarily hint at a more democratic mechanism compared to a very small number of members, in the sense that in the latter case only a few individuals (e.g., only two in the case of Öz Toprak-İş) can take administrative decisions on behalf of the whole organization, a high number of members in mandatory union organs

creates certain problems for democracy because of the *ex officio* delegation system that is currently in use in Turkish unionism. This problem is discussed in subsection 5.1.4.

Founders and administrators of the organizations and branches shall submit a declaration of personal assets, their spouses, and children under their care in accordance with Act No. 3628 of 1990 on the Declaration of Property, Fight against Bribery and Corruption, and related regulations (Act No. 6356 Art. 29/4). Sanctions against the article are not explicitly stated in the Act. In the previous Unions Act, acting contrary to this provision would result in the termination of administrative office (Act No. 2821 Art. 42/2). Compulsory declaration of family assets reinforces transparency, which is a direct determinant of democratic quality.

Meeting times, procedures, and working principles of the administrative board, as well as quorums for meeting and decision-taking, shall be determined by the statutes of the organization (Act No. 6356 Art. 8/1-f). Unless a higher quorum is specified in the statutes, the quorum for meetings shall be the absolute majority of the board members and the quorum for decision making shall be the absolute majority of the participants (Art. 9/7). In the case that there is a tie in the votes, the decision is taken in favor of the side the president votes with (Tuncay and Kutsal, 2015, p. 71). Except for two unions (Birleşik Metal-İş and Güvenlik-Sen), all of the sample union statutes covered by the study set quorums for union/branch administrative board meetings and decisions identical to the legal requirement (Banksis, Art. 23/b, 36/b; Çelik-İş, Art. 17/f, 34/c; Genel-İş, Art. 17, 34; Hizmet-İş, Art. 15/8, 30; Öz Toprak-İş, Art. 21, excluding the presidential vote; Tes-İş, Art. 22/2, 34; TGS, Art. 20, 32; Türk Metal, Art. 22, 35). The statutes of Birleşik Metal-İş (Art. 17, 34) and Güvenlik-Sen (Art. 18/g) state that the

quorums for both meetings and decision making shall be the absolute majority of the total number of board members. Therefore, the administrative boards of the two unions and their branches always need an absolute majority for any decision, regardless of the number of participants in meetings, seeking a greater consensus among their officials. Decisions taken by a larger consensus are by definition more democratic, but this matters less in the case of Turkish union administrative boards which are generally elected as a single list by the dominant group in the general assembly.

Administrative board members are elected by the general assembly as a basic prerequisite for democracy. Although there is no explicit statement in the laws, the period of office for administrative board members is a maximum of four years provided by the frequency of ordinary general assembly meetings (Art. 12/2). For democratic accountability, elections for leadership office should be carried out as frequently as possible and, as elaborated in the general assembly section (4.1), a period of four years impedes the practice. Elections of the members of the administrative board are of primary importance for union democracy, as will be elaborated extensively in the next chapter.

In practice, officials that resign from their jobs in order to work for the union and receive salaries from the organization are called ‘professional officials’, whereas those who continue to work in their jobs, conducting their administrative duties in the union outside working hours, and who do not receive salaries from the union, are called ‘amateur officials’. Most of the larger unions in Turkey operate through professional officials. This distinction holds importance in relation to several issues, such as the

individual rights and protections of administrative board members, which will be discussed below.

4.2.3 Rights and Protections of Administrators

As the studies of Michels and Lipset et al. clarify in detail, the leaders of large union organizations want to stay in office due to the income and social prestige they obtain through their positions. Unless the incumbent leaders have adequate work and social assurances, they would be motivated to do virtually anything in order not to lose their administrative positions, which may cripple democratic mechanisms in the organization. Furthermore, from a reverse perspective, a potential leader naturally desires work and social protection in the case that he/she decides to challenge the incumbent officials in the union by candidacy for administrative board membership. Unless these rights and protections are assured, the possibility of organized opposition inside unions will be minimal due to personal insecurities. Therefore, protection of administrative board members is indirectly related to union democracy in the sense that any member of the union may become an official without the fear of losing their jobs indefinitely or experiencing other social or economic disadvantages when they resign to conduct their union offices, especially if they are to be professional officials. A recent Turkish study on unionism claims that the reluctance of some workers to undertake administrative posts is due to their perception that they do not have adequate work protection (Demirdizen and Lordoğlu, 2013, p. 233). In other words, formal rights and protections of officials in the event that they lose their seats determine their behavior and motivations in contesting and maintaining union offices, which is related to multiple aspects of democratic conduct.

The previous Trade Unions Act No. 2821 Art. 29 was heavily criticized for its controversial and problematic provisions on the rights and protections of administrative board members, and the current act aimed to eliminate these problems (Tuncay and Kutsal, 2015, p. 71). Under the Act No. 2821 regime, the suspension of professional union officials' employment contracts during their terms of office was arranged through the regulations of individual or collective labor agreements. Within the current system, this practice is now enforced by law.

The new Act No. 6356 Art. 23 provides work protection by stating that the contract of employment of a worker leaving the workplace on account of being a union official in a worker's organization shall remain suspended. The Act also gives another option to the worker: if the official wishes, he/she may terminate the contract of employment on the date he/she leaves work without complying with the notification period or without waiting for the expiry of the contract and shall be entitled to severance pay. If the official terminates the employment contract during his/her term of office, the severance pay shall be calculated according to the equivalent wage or precedent wage at the date of termination. Thus, the official can terminate the employment contract and acquire severance pay at any time while union office continues.

The union official whose contract of employment is suspended may apply to the employer to be reinstated within one month of the termination date of union office due to the termination of the legal personality of the union, voluntary resignation, not being re-elected, or not participating in elections. The employer shall be bound to reinstate him/her within one month from the date on which he/she applies for reinstatement under the existing working conditions, in his/her previous post or in a post equivalent to the

previous one. In the event that the person is not reinstated within the defined period, the contract of employment shall be considered as terminated by the employer (Art. 23/2). In this case, the worker shall be entitled to both severance pay and termination benefits. It has been argued that the absence of vacant positions in the workplace does not constitute justifiable grounds for the rejection of reinstatement (Tuncay and Kutsal, 2015, p. 78).

Officials whose term of office ends for reasons other than those stipulated above shall be paid only severance pay, calculated in accordance with the employment period in the workplace and the precedent wage upon their application (Art. 23/3). Being convicted of crimes listed in Art. 6, lacking the requirements for being a union official as determined by a court verdict, and being elected as a parliamentary member or mayor are among such reasons. Thus, the period of office in the union organization is not included in the calculation for severance pay under such circumstances.

The scope of the term ‘official’ has not been explicitly stated in Art. 23. Since Art. 2/1-i defines union officials as the administrative board members of the organization and its branch, any worker leaving his/her workplace to become an administrative board member in any union/branch/confederation in order to become a professional official shall benefit from these provisions. Amateur officials, on the other hand, benefit from the provisions of Art. 24 that provide the protections of shop stewards, which are detailed in the next chapter (section 5.2).

Another aspect of protection of administrative board members is that of social security. Although Act No. 6356 Art. 23 (and the previous Act No. 2821 Art. 29/3) does not state

that social security of union officials shall continue, Social Insurances and General Health Insurance Act No. 5510 Art. 4 counts workers' unions' and confederations' as well as branches' administrative board members as beneficiaries for all insurances. The insurance premiums of these officials shall be paid by the related union or confederation (Act No. 5510 Art. 12/3). They are also under the scope of general health insurance (Art. 60).

The provisions detailed above indicate an ample quantity of formal protection measures for union administrators, enabling incentives for running for administrative office for all union members, which reinforces union democracy as well as collective union freedom in an indirect manner.

4.3 Board of Auditors and External Auditing

As in the case of the administrative board, the number of members of unions' boards of auditors shall not be fewer than three or more than nine, while members of branch boards of auditors shall not be fewer than three or more than five. An equal number of substitute members shall be elected (Act No. 6356 Art. 9/1). All of the sample unions' boards of auditors are composed of three members except for Genel-İş and Tes-İş boards, which have five members, as indicated in their statutes (Banksis, Art. 25/1; Birleşik Metal-İş, Art. 21/a; Çelik-İş, Art. 24/a; Genel-İş, Art. 21; Güvenlik-Sen, Art. 31; Hizmet-İş, Art. 24/1; Öz Toprak-İş, Art. 23/1; Tes-İş, Art. 24/1; TGS, Art. 22/a; Türk Metal, Art. 24/a). A difference between the previous Act No. 2821 and the current Act No. 6356 is that members of the board of auditors are no longer formally counted as union officials. However, it should be noted that the previous union regime likewise did

not provide the benefits of protection of officials or social assurances elaborated in the administrative board section (4.2) for members of boards of auditors (Esener and Gümrükçüoğlu, 2014, p. 125).

The auditing of organizations shall be carried out by the board of auditors in accordance with the law and provisions of the statutes of the organization. In the auditing process, the compatibility of administration, operations, incomes, expenses, balances, and the relevant procedures with the law, statutes, and the decisions of the general assembly shall be examined (Art. 29/1).

There are no provisions specifying the duties, rights, and responsibilities of the board of auditors in the current Act No. 6356, which are explicitly left to regulations in union statutes (Art. 8/1-f). It is generally accepted in the literature that the duties of the board of auditors as stated in the previous Act No. 2821 Art. 19/2 shall also be valid in the current system, these being to audit the administrative board decisions in accordance with general assembly decisions; to conduct financial and administrative auditing in accordance with the statutes; to request extraordinary general assemblies from the administrative board; to prepare an audit report for the period between two general assemblies and provide it to the administrative board fifteen days prior to the meeting; and to conduct other auditing processes as provided by the organization's statutes (Çelik et al., 2015, p. 637; Tuncay and Kutsal, 2015, p. 80).

A fundamental condition of union democracy is transparency of union accounts (Şahlanan, 1980, p. 210). In this sense, auditing of the union operations is a prerequisite for democracy. Although the formal function of the board of auditors is indispensable in

this regard, its significance diminishes in cases (commonly experienced among Turkish unions) where the administration as a group holds enough power to select the members of other boards by making a single list for elections in the general assembly. Neither the board of auditors nor the disciplinary board is a truly judicial organ that forms under a strict system of separation of powers in the union, because both are elected by the general assembly at the same time the administrative board is elected, resulting in the control of a single group in most circumstances. In parliamentary democracies, there is always the fundamental problem of the government (the executive branch) also controlling the parliament itself (the legislative branch) due to its majority rule. In unions, the judicial branch (board of auditors and disciplinary board) is also formed by the general assembly, and therefore the separation of powers is even more problematic.

An external auditing mechanism that serves to counter this fundamental problem—which had been provided by the previous Act No. 2821 until it was abolished in 1997[130]—is brought back by the current Trade Unions Act. According to Act No. 6356 Art. 29/2, financial auditing of the incomes and expenses of organizations shall be carried out once every two years at least by certified public accountants who have auditing authority in accordance with Act No. 3568 on Independent Accountants, Financial Advisors, and Certified Public Accountants.[131] The completion of this external auditing mechanism does not end the obligations of the board of auditors. In the case that the union administration holds informal control over the board of auditors due to its power in the general assembly, such an external auditing mechanism that is independent

[130] Act No. 4277, 26/6/1997.

[131] In the translation of Act No. 6356 that is used in governmental and ILO sources, the "once in two years at the latest" period is translated as "annual". Moreover, it refers to Act No. 3658 instead of 3568, which does not exist. Both are clear and obvious mistakes. See Footnote 20 for the problems of the translation.

of the union organization serves as a check, providing objective information on the operations of the administrative board for both the members/delegates of the union and state institutions. In this sense, external auditing provided by the law serves union democracy positively.

Several sample union statutes indicate that in the case that the board of auditors detects irregularities or corruption during its auditing, it may request the temporary suspension of the accused's duties from the administrative board (Birleşik Metal-İş, Art. 21; Çelik-İş, Art. 24; Hizmet-İş, Art. 24/10; TGS, Art. 22/c; Türk Metal, Art. 24/c) or from the disciplinary board (Öz Toprak-İş, Art. 23/3). In these cases, the general assembly decides on the expulsion of the accused or their reinstatement.

A regulation of publishing the board of auditors' and certified public accountants' reports via the union's official internet site or other proper facilities is provided in three of the sample union statutes (Genel-İş, Art. 21, 22; Öz Toprak-İş, Art. 23/6; Türk Metal, Art. 24/e). Türk Metal goes further in this respect by adding that the publishing of these reports shall be done immediately. Although the general assembly receives a report from the board of auditors for the latest period before its meetings, publishing the regular reports of both the board of auditors and the certified public accountants who operate independent of the union organization is important for transparency and communication inside the union, which can be hindered by the nature of union organization, as explained by Michels and Lipset et al. in Chapter 1. The fact that general assemblies meet once in four years in almost all Turkish unions further raises the significance of such measures.

As elaborated in section 4.1, the board of auditors has the right to call for an extraordinary general assembly from the administrative board. Only one of the sample union statutes, Hizmet-İş, requires a quorum higher than absolute majority on requests for extraordinary general assemblies, stating that the decision shall be unanimous and together with an explanation of the reason for the call (Art. 24/10). Although this regulation may be in accordance with the text of Act No. 6356 Art. 9/7, which makes a general statement that union statutes may specify a higher quorum than absolute majority for the meetings and decisions of organs other than the general assembly,[132] making a simple majority decision of the auditors insufficient for the call of an extraordinary general assembly that may be justified by an auditing report or observance based on the majority of its members is a hindrance for internal democratic mechanisms. The organization may certainly take measures to reinforce union protection by ensuring that no unnecessary calls are made for an extraordinary general assembly, which requires time, effort, and resources to prepare. In spite of this reasoning, a major dysfunction would arise in the case that the administrative board 'seizes control' of the board of auditors, effectively preventing the board's legal ability to call the general assembly based on corruption or similar misuse of power. In my opinion, the unanimity requirement for such a fundamental aspect of transparency and checks should be regarded as antidemocratic and contrary to the spirit of the union laws and the Constitution asserting democratic principles.

[132] In addition to this general rule, Article 29/5 of Act No. 6356 states that the principles of auditing shall be laid down by regulations to be prepared by the Ministry. However, the referred regulations of 26/11/2013 (Official Gazette No. 28833) make no statement on the issue of the quorum for decision-making for the board of auditors.

4.4 Disciplinary Board

Trade Unions Act No. 274 of 1963 did not count the disciplinary board among the mandatory union organs and its legal position was a matter of debate in that era. It explicitly became a mandatory organ with Act No. 2821 of 1983 and the current Act No. 6356 keeps the same provision intact. As in the case of other mandatory organs, the number of members of a union disciplinary board shall not be fewer than three or more than nine, while members of the branch disciplinary board shall number fewer than three or more than five. An equal number of substitute members shall be elected (Art. 9/1).

Since the primary goal of a union is to defend its members' interests, from it derives the need to take measures against members who violate such goals through the enforcement of authority and discipline. The disciplinary board in this regard serves to protect the union organization's wellbeing and effectiveness. However, as explained with the board of auditors, a true separation of powers in a trade union with independent judicial organs cannot exist because all of the organs are elected by the general assembly at the same time, resulting in the dominance of the administration as a group. Therefore, the disciplinary board may also easily fall under the sway of the incumbent leadership, who may use it as an instrument to punish or eliminate opposing voices or dissident members of the union in an arbitrary manner. In this regard, disciplinary actions may occasionally pose a threat to union democracy (Şahlanan, 1980, p. 197). A balance between discipline and democracy must be found, as one shall not be sacrificed for the other (ibid., p. 194).

As in the case of the board of auditors, the current Act No. 6356 does not provide a list of duties for the disciplinary board and states that its functions, powers, and responsibilities, along with their procedures, shall be included in the organization's statutes (Art. 8/1-f). In the literature, it is agreed that the provisions of the previous Act No. 2821 Art. 18/2 shall also be valid for the current system (Çelik et al., 2015, p. 637; Tuncay and Kutsal, 2015, p. 81). Accordingly, the disciplinary board shall examine charges brought against the members of the organization for violation of the statutes, aims, and principles of the organization. The board shall apply sanctions provided in the statutes other than expulsion from membership (an exclusive right of the union general assembly, as explained in subsection 3.8.3), and shall inform the concerned parties and the general assembly. Various disciplinary sanctions may be taken against members and officials by the union organization, such as condemnation, warning, recommendation, salary cuts (from union officials and attendants), suspension of membership/office, and expulsion.

The above listed powers and responsibilities are basically in line with the ‘particularity principle’, which means that union disciplinary authority can only be used to act in accordance with the aims and principles of the union formalized in its statutes (Şahlanan, 1980, p. 196). This principle ensures the absence of disciplinary action in cases where members are expected to participate in illegal strikes based on political reasons and so forth (ibid.). Furthermore, disciplinary authority cannot be exercised in violation of personal rights. These rights originate from being a union member and an individual alike. No regulations in the statutes or decisions of any union organ can force

members to adopt a political view, and any related disciplinary action is a violation of fundamental rights (ibid.).

The basic rule of law dictates that the accused shall have the right and opportunity to defend himself or herself against any accusations. The right of defense is an indispensable rule for the democratic operation of unions, and unless it is provided and not limited in practice, union democracy suffers at the hands of the disciplinary board (ibid., p. 202). The sample unions regulate the defense procedures in their statutes as follows:

Banksis, Art. 26; Birleşik Metal-İş, Art. 22: written defense and notification of a justified decision.

Öz Toprak-İş, Art. 24; Türk Metal, Art. 25: written defense and notification of a decision to the union presidency.

Çelik-İş, Art. 25: decisions shall be taken after a written or oral defense in seven days. Objections can be made within seven days of the decision being taken.

Genel-İş, Art. 23; TGS, Art. 23, 35: written defense and notification of a decision.

Güvenlik-Sen, Art. 34: no regulations on the form of defense; notification of justified decision to the branches.

Hizmet-İş, Art. 25/b: defense shall be made within seven days; written notification of decision. In the case that an objection to the sanctioned decision is made within seven days, the issue shall be discussed in the union's general assembly. The member

concerned may be granted the right of oral defense in the meeting of the general assembly.

Tes-İş, Art. 25/4: decisions shall not be taken without the defense of the accused.

An exceptional case on the matter of disciplinary regulations among the sample union statutes is Güvenlik-Sen (Art. 34). As with its regulations on other issues such as the formation of union organs, Güvenlik-Sen's disciplinary board regulations provide positive discrimination for women in great detail, an issue totally absent in the other statutes. Accordingly, in the case of an accusation of any kind of violence (including harassment, rape, assault, mobbing, etc.) and discrimination against women, the accused shall be under the burden of proof. Moreover, in such circumstances, the union disciplinary board has the sole authority to take any decision on sanctions against the accused, including expulsion from union membership (Art. 34/2). While the justification for this regulation is commendable, it raises two major concerns. First of all, under basic principles of law, the accused shall be judged fairly, and in the event of accusations based on certain offences under the scope stipulated in the article (such as mobbing), disproving the occurrence of the incident by the accused may be an unfair expectation in some cases. Secondly, Act No. 6356 Article 19/4 explicitly states that the decision of expulsion of any member from a union shall be taken by the general assembly. I argue that empowering the disciplinary board as the sole authority to decide on expulsion on matters related to violence against women is in clear contradiction of the law and therefore shall be null and void. This practice would not just be illegal, but also undemocratic due to the influence of the administration over the disciplinary board, crippling membership rights and protections.

As indicated above, several unions among the samples require written defense from the accused member. Şahlanan argues that instead of regulating whether the defense shall be in written or oral form, it is more adequate to decide on the form of defense case by case in accordance with the peculiarities of each incident (ibid., p. 203). The right of union protection shall be considered along with the right of defense and it shall not be sacrificed for the sake of formalization. If the member concerned fails to respond to the call from the disciplinary board for defense in due time, a decision shall be taken and notified to the member in the absence of a defense (ibid., p. 204).

Union statutes may provide members the right to appeal to other organs of the union in relation to the decisions of the disciplinary board. For example, decisions of branch organs may be brought to the general union organs. Almost all of the sample union statutes state that penalized members may appeal to the central (union) disciplinary board against sanctions taken by the branch disciplinary board. In that case, the union disciplinary board also examines the matter and reaches a final decision (Banksis, Art. 26; Birleşik Metal-İş, Art. 22; Çelik-İş, Art. 25; Genel-İş, Art. 24/c; Hizmet-İş, Art. 25/b-1; Öz Toprak-İş, Art. 24; Tes-İş, Art. 25/6; TGS, Art. 23; Türk Metal, Art. 25). Only the Güvenlik-Sen statutes lack this regulation, on the basis that its branch disciplinary boards are not empowered to take any disciplinary decision and shall prepare reports on the accusations that require sanctions which are to be forwarded to the central (union) disciplinary board for a decision (Güvenlik-Sen, Art. 58).

4.5 Other Organs

Other organs that unions may formally establish in their statutes and their possible effects on union democracy are issues that are generally overlooked in the Turkish union literature. According to Art. 9/2 of Act No. 6356, unions may set up organs other than the mandatory ones stated in the law as required, which is a basic principle of free internal organizing. In order to prevent the reoccurrence of some improper practices of the past, the new law explicitly states that the functions and powers of the mandatory organs cannot be transferred to these organs set up by the statutes. Therefore, at a first glance, power in the union seems to be formally and exclusively distributed among the mandatory organs, leaving any other organ established under the regulations of the union statutes to act only in an advisory capacity (mostly to the union administrative boards). However, organs formed by the statutes may still have positive or even vital functions in terms of the realization of union democracy by other means. A measure of democracy is whether meaningful opposition to the present leadership can be developed relatively easily and whether the risk of reprisal is low (Strauss, 2000, p. 212). In the workplace or union branch, opposition can spontaneously emerge face to face with the workplace union representatives or branch officials. Since this is virtually impossible at the national level, other mechanisms are needed to counteract this problem. In this regard, organs formally established at different levels of union organization may provide alternative channels of communication and to a certain extent serve as countervailing powers, which are institutionalized bases of support for potential leaders as explained by Edelstein and Warner (1979). The keys to effective opposition are the ability to mobilize support and relative independence from the leadership in power (Strauss,

2000, p. 213), which may be achieved within a well-established formal organizational structure. In the case of other organs within the union hierarchy, power may be derived not from the direct support of rank and file members, but from the functions and composition of the organs. Moreover, as discussed in subsection 4.1.4, with other organs formally installed within the union organizational hierarchy, problems caused by a lack of a genuine separation of powers in the union may be countered by enabling them with various functions, such as effectively checking whether or not the decisions taken in the general assembly are enacted.

In order to evaluate the role of other organs in Turkish unionism in relation to the above, I examine each of them as explicitly stated in the sample union statutes in respect of the related articles that list the union organs.

I have categorized the organs set up by the union statutes into three groups.

a) Weak contribution to democracy due to being completely advisory in nature; meets at the behest of the union administrative board only (standard font and not examined further in the study).

b) Advisory in nature but, due to the composition of members and meetings within short intervals as explicitly indicated in their respective statutes, may contribute positively to democracy (*italicized*).

c) Organs that have formal power over the union administration and therefore potential centers of opposition or checks and balances that are alternative to the compulsory organs (**bold**).

Banksis: has no organs other than those mandated by the union laws.

Birleşil Metal-İş: *board of presidents, general board of representatives, branch board of representatives* (Art. 10).

- *Board of presidents* is composed of the union administrative board and the presidents of the union branches. The meetings shall be held within fifteen days following the union general assembly, and once every two months on average following the first meeting. The board may also meet extraordinarily by the call of the administrative board or the absolute majority of its members. Its agenda is set beforehand by the administrative board and communicated to the branch presidents. Serves in an advisory capacity. Also, an extended board of presidents meets at least once a year, functioning identically to the board of presidents (Art. 23).

- *General board of representatives* is composed of the union and union branch members of the mandatory organs, as well as the workplace union representatives (shop stewards). Meets once every year in June upon the call of the union administrative board (Art. 24).

- *Branch board of representatives* is composed of the members of union branch mandatory organs and workplace representatives (shop stewards). Meets at least once a month in an advisory capacity (Art. 36).

Çelik-İş: *board of presidents, council of branch representatives.*[133]

[133] Both organs are absent in Çelik-İş Statutes Article 11's list of union organs, but are regulated by a separate provision (Art. 26).

- *Board of presidents* is composed of union administrative board and the branch presidents. Meets once every four months or extraordinarily by the call of the administrative board in an advisory capacity (Art. 26).

- *Council of branch representatives* is composed of workplace union representatives (shop stewards). Meets once every four months in an advisory capacity.

Genel-İş: *board of presidents*, board of branch representatives, board of workplace representatives (Art. 10).

- *Board of presidents* is composed of the union branch presidents and the union administrative board. Meets once every six months. The agenda of the board is set by the union administrative board (Art. 25). Discusses the problems of the branches, collective agreements and their implementations, presents suggestions, obtains information on the activities of the other organs, gives opinions on general union policies, etc. in an advisory capacity to the union administrative board (Art. 26).

Güvenlik-Sen: **general and regional council of delegates**, *board of branch presidents*, *general or regional extended board of presidents*, *general or regional council of representatives*, council of local representatives, council of sector representatives, **council of branch delegates**, *council of branch representatives*, *council of branch unit committees, council of workplace unit committees* (Art. 13, 15, 17).

- General council of delegates is composed of the union general assembly delegates. Meets annually upon the call of the administrative board. The administrative board presents a report of the previous year's activities of the union, which is sent to the

delegates 15 days prior to the meeting. The contents of the report and the activities of the union, as well as the unimplemented decisions of the general assembly, are discussed. In the case that a union official is neglecting his or her duties, one-fifth of the council may call for a vote on the recall warning of the official. If this call is repeated for the same official in the next council meeting, the official shall resign (Art. 35).

- **Council of branch delegates** is composed of the union branch delegates. It is formed and operates identically to the general council of delegates (Art. 59).

- *Board of branch presidents* is composed of the members of union mandatory organs and the branch presidents, as well as the regional representatives where branches could not be formed. Meets once every six months upon the call of the union administrative board. Administrative, financial, and organizational activities of the past six months are discussed in the meetings, and decisions to be implemented by the union administrative board are taken and communicated in written form to the council of branch delegates and council of branch representatives by the branch presidents (Art. 36).

- *Extended board of presidents* is composed of the members of mandatory union and union branch organs and the regional representatives where branches could not be formed. Meets once a year upon the call of the union administrative board. Functions identically to the board of branch presidents (Art. 37).

- *Council of representatives* is composed of the members of mandatory union and union branch organs and the workplace union representatives (shop stewards). Meets once every two years upon the call of the union administrative board. Debates the council of branch representatives' decisions on the administrative, financial, and organizational

activities of the union. The decisions taken in accordance with Art. 18 of the statutes shall be implemented by the union administrative board (Art. 38).

- *Council of branch representatives* is composed of the members of mandatory union branch organs and the workplace union representatives (shop stewards). It is formed and operates identically to the general council of delegates, except that it meets once every six months (Art. 60).

- *Council of branch unit committees* is composed of the members of mandatory union branch organs, shop stewards, and the unit committees that are formed in workplaces in order to assist the shop stewards. Meets once every two years upon the call of the union branch administrative board. Functions identically to the council of branch representatives (Art. 61).

- *Council of workplace unit committees* meets once every two months upon the call of the board of workplace union representatives. It takes advisory decisions for the consideration of the union branch administrative board (Art. 64).

Hizmet-İş: board of presidents, extended board of presidents, *council of representatives* (Art. 9).

- *Council of representatives* that is composed of the workplace union representatives (shop stewards) shall meet once every month together with the branch, region, city, and district presidents of their area in an advisory capacity by filing a report to the union administrative board (Art. 34).

Öz Toprak-İş: board of presidents (not indicated in the list of union organs in Article 12, but regulated separately in Art. 25).

Tes-İş: **board of presidents**, *board of representatives* (Art. 13).

- **Board of presidents** is composed of the union branch presidents and the union administrative board. Meets once every three months (or extraordinarily) at the call of the administrative board in order to discuss the problems of the branches, collective agreements and their implementations, present suggestions, obtain information on the activities of the other organs, give opinions on general union policies, etc. Moreover, the decisions taken by the majority of the board, unless not against provisions of the law and the regulations of union statutes, shall be executed by the union administrative board. In the case that they are not executed, the reasons, together with justifications, shall be brought to the next meeting (Art. 26). This undoubtedly gives the board formal power over the administration processes.

- *Board of representatives* is composed of the head and other representatives (shop stewards) in workplaces. Meets once every eight months upon the call of the branch administrative board, as well as extraordinarily. The rights and duties of the board are determined by regulations made by the union administrative board and approved by the union general assembly (Art. 38).

TGS: *board of officials* (Art. 10/c).

- *Board of officials* is formed by the members of the mandatory union organs and the administrative board members of the branches. Meets annually or extraordinarily when

necessary in an advisory capacity to the union administrative board in order to discuss the problems of the branches, collective agreements and their implementations, present suggestions, obtain information on the activities of other organs, give opinions on general union policies, etc. (Art. 24).

Türk Metal: *board of presidents*, regional agencies, board of representatives, general secretariat (Art. 13).

- *Board of presidents* is composed of the union branch presidents and the union administrative board; meets once every four months (or extraordinarily) upon the call of the administrative board in order to discuss the problems of the branches, collective agreements and their implementations, present suggestions, obtain information on the activities of other organs, give opinions on general union policies, etc. (Art. 26).

Accordingly, all of the sample unions except for Banksis and Öz Toprak-İş have at least one organ other than those mandated by the union law that meets on a regular basis as indicated in their respective statutes. The frequency of these organs' meetings may also contribute to union democracy. Union organs that meet regularly at monthly intervals (Birleşik Metal-İş' board of presidents and branch board of representatives; Çelik-İş' board of presidents and council of branch representatives; Genel-İş' board of presidents; Güvenlik-Sen's board of branch presidents, council of branch representatives and council of workplace unit committees; Hizmet-İş' council of representatives; Tes-İş' board of presidents and board of representatives; Türk Metal's board of presidents) establish constant communication among union and branch officials and shop stewards. Consequently, the rank and file members of union branches, regions, and workplaces

may benefit from the knowledge of these members on union policies and activities. They may also serve as a space for the emergence of organized opposition in the case that branch presidents, officials, and other regional/workplace representatives form common opinions of dissent against the incumbent central administration.

Güvenlik-Sen and Tes-İş are two unions that have established organs which possess formal power over the union administration, as stated in their statutes (Güvenlik-Sen's general and regional council of delegates and council of branch delegates; Tes-İş' board of presidents). These organs contribute to union democracy by various means. They have the capacity to break the linear relationship in the organizational hierarchy, and may sustain communication among different levels of union office as well as with the rank and file members. Most importantly, they may serve as bases of power that operate on various levels in the organizational hierarchy and separate from the administrative board, which can produce opposition due to their composition and functions.

Güvenlik-Sen is again an exception to the rest of the sample unions, as it has almost a dozen organs set up by its statutes which have regular meetings, some of which have actual formal power over the administration. While it has been hypothesized that smaller unions are in general more democratic, a union with a few thousand members organized into dozens of organs of various sizes, rights, and responsibilities is a truly exceptional case among Turkish unions.

In this chapter, I have asserted that the formation, frequency, and procedures for agenda-setting, calls, and meetings of the union central and branch general assemblies are of utmost importance for union democracy due to their supreme decision-making

functions. Act No. 6356, along with the previous Act No. 2821, regulated each of these aspects of general assemblies in great detail. This has served union democracy positively in the sense that minority rights are preserved against majority rule. However, the structural formation of organs legally demanded of each union organization fails to produce an actual separation of powers, due to their formation through general assembly elections in which a dominant group typically imposes the election of candidates not only for the administrative board, but also for the other mandatory boards. There are few measures taken to ensure that the board of auditors or the disciplinary board serve their intended functions. Combined with the dependence of union branches on the powers of the central organization, the formal structure of unions provides few opportunities to produce organized opposition. The role of organs other than those mandated by the union law may counter this problem in the case that union statutes establish organs that may serve as centers of countervailing power that are relatively independent of the central union organization, such as in the case of Güvenlik-Sen among our sample unions. The systems of delegation that are directly related to the formation of the general assembly and union workplace representatives (shop stewards) will be examined in the next chapter in order to complete the framework of the organizational structure of unionism in Turkey and provide a comprehensive understanding of the internal decision-making processes and interaction of all actors inside the union organization.

CHAPTER V

THE DILEMMAS OF DELEGATION AND REPRESENTATION IN UNION ADMINISTRATION

5.1 Delegation in Turkish Unionism

As discussed in section 4.1, in respect to their vital functions of decision-making, union/branch general assemblies hold primary importance for the practical implementation of union democracy. Due to the unionization system in Turkey, the delegation method for union general assembly meetings is indispensable for the effective functioning of virtually every major union in the country. However, delegation may severely hinder democratic conduct unless its application is formally arranged to effectively establish a constant link between ordinary members and decision-making mechanisms. In the pre-1982 Turkish literature, it has been asserted that deviations from democratic conduct are most commonly experienced in the procedures of delegation (Şahlanan, 1980, p. 247). Therefore, the current context will be elaborated by taking into account the problems of the previous eras of unionism.

As explained in Chapter 2, under the Act No. 2821 regime that lasted for three decades until late 2012, the authorization for conducting collective labor agreements was only available to unions possessing ten percent of the work force of their branch of activity as its members, and the prohibition of workplace unionism practices of the previous era obliged unions to operate nationwide. The industry-based unionization system, together with this first stage authorization barrage, while limiting the number of unions in

operation, assisted in gathering high membership numbers for a small number of existing unions, which resulted in general assemblies finding it more and more difficult to cope in terms of appropriate physical space and logistics. There is a general consensus in the contemporary literature that because of the high number of members in unions, it is virtually impossible to handle such meetings: therefore local union branch members shall elect delegates to participate in the national general assemblies on their behalf.

The delegation system without doubt facilitates the organization of the general assembly when a union has tens or even hundreds of thousands of members. Although it has been claimed that delegation undermines the principle of individuality of the right to vote (Merinç, 1991, p. 32), such systems that have representative democracy characteristics are common among western countries such as Britain and Sweden (Tuncay and Kutsal, 2015, p. 58). Thus, within the organizational system of unionism in Turkey, where union membership numbers have reached hundreds of thousands, the practical problems of such assemblies have paved the way for a system of delegation. It is generally acknowledged that although representation through delegation cannot be as democratic as direct popular rule, the delegation of such rights will not hinder democracy if the delegates are elected fairly, operate independent of the administrative board and other sources of leadership, and represent the expectations of the rank and file members. However, it has been asserted that local [branch] union delegates that attend the national union general assemblies can easily fall under the sway of the incumbent leadership or other power groups, and cannot truly represent the rank and file members because they

lose their ability to criticize and politically maneuver to the advantage of the central administration (Dereli, 1977, p. 43).

5.1.1 Past Provisions and Jurisprudence on Delegation

Within the original Trade Unions Act No. 274, no explicit provisions about delegation existed. The delegation system was explicitly adopted for the first time with the amendment of Act No. 1317 in 1970. Before this change, such regulations could also be provided in the union statutes (Deren-Yıldırım, 2001, p. 1717). In this period of unionism, there was complete union freedom over the internal regulations of delegation. In practice, Turkish union administrations took advantage of the nature of the delegation system by making several undemocratic rules in union statutes in order to control the decision-making mechanisms. These included various kinds of 'natural delegation' (elaborated in subsection 5.1.4), such as the administrative power to appoint delegates and the enforcement of qualification requirements for being elected as a delegate. Some union statutes gave even more power to their administrations by giving them the right of veto over delegate candidacy or of annulment of the delegate status of those already in office (Şahlanan, 1980, p. 130). These were direct formal violations of union democracy, and were in clear contradiction of the democratic principles as stipulated by the 1961 Constitutional provisions (Art. 46/2). As a reaction to such abuses, delegation began to be regulated by means of several precise and strict rules in Trade Unions Act No. 2821 of 1983.

According to Article 10 of the late Act No. 2821, the general assembly of a workers' trade union was composed of its members. The formation of the general assembly by

the totality of the union members is a basic aspect of direct democracy. The Court of Cassation, in a ruling, explicitly stated that this is both "essential and natural".[134] Basically, members *are* the general assembly; there is no need to state the formation of the assembly itself, just the necessity to call its meeting (Şahlanan, 1980, p. 120). The Constitutional Court, in a ruling, stated that democratic conduct in an occupational institution can be secured in proportion to the amount of participation of the members in the organization's general assembly.[135] In the case that the general assembly is composed of the union members, it is also educative and informative for all the members who may benefit from the reports and deliberations in the meeting. Also, the administrators may communicate with the rank and file about their desires and needs, which serves the unity and cooperation inside the union (Dereli, 1977, p. 127). In the case of a delegation, however, ordinary members have less information and very limited chance of contact with the leaders of the central administration, which is detrimental to union democracy.

The second part of the late Act No. 2821 Article 10/3 stated that if the total number of union members exceeds one thousand, the general assembly shall be composed of delegates. The delegates shall be elected by the general assembly of the branches. The statues of the trade union shall fix the number of delegates to the general assembly at not less than 200 and not more than 500. Article 10/2 stated similar principles for union branches: if the total number of union members within the jurisdiction of the branch exceeds 500, the general assembly of the branch of a union shall be composed of delegates. The statutes shall fix the number of delegates to the branch general assembly

[134] Court of Cassation 10. HD., 18/11/1976, 3094/7813, YKD 1977/3, p. 371.
[135] AYMK, 21/1/1971, 1969/37 - 1971/18, RG.. 18/4/1971 - 13813.

at not less than 100 and not more than 250. It was also stated that the members of the administrative board, the board of auditors, and the disciplinary board of the organizations and branches shall be *ex officio* delegates to the general assembly of their respective organizations (10/6). Lastly, it was stated that the statutes of trade unions shall not have any restrictive provisions concerning the election of delegates (10/8), a measure taken to prevent common antidemocratic practices of the previous era by ensuring that all union members have the right to delegate candidacy (Çelik et al., 2015, p. 627; Tuncay and Kutsal, 2015, p. 59). The Article also implicitly states that delegation shall only be through elections. This prevented the appointment of delegates by union administrations as in the previous era, another measure taken to ensure democratic conduct.

By implementing such precise rules of general assembly formation in the provisions of Act No. 2821, the lawmakers aimed to provide the means for the establishment of union democracy in practice, a feat that had not been achieved before (Çelik et al., 2015, p. 627). With such a purpose, the functions of the general assembly, the lower and upper limits of delegates, and the basic rules on how delegates were to be elected at both union and branch levels were strictly regulated by law and not left to unions' internal regulations.

5.1.2 Current Provisions and Statutes on Delegation

The procedures on delegation that were heavily regulated by Act No. 2821 are left mostly to union statutes within the new regime. Act No. 6356 Art. 10/1 states that the general assembly of the organizations shall be composed of its members or delegates in

accordance with their statutes. The new legislation made a massive change by abolishing any quantitative requirements on the delegation system. Thus all trade unions, regardless of membership size, can now opt for the delegation system. The lack of any quantitative regulations on delegation is already a matter of controversy in the literature (Şahlanan, 2013, p. 115; Çelik et al., 2015, p. 627). In contrast with Act No. 2821 that regulated delegate numbers with a minimum of 100 for branch general assemblies and 200 for union general assemblies, the new Act has provided the possibility for lower numbers of delegates, which can directly hinder union democracy. Within the de-regulated new system, excessive delegation may be made in which the member/delegate proportion can be so huge that delegation itself becomes unrepresentative in nature. Secondly, a newly founded, small union that opts to use delegation from its very beginning may be democratically hindered by this system. Finally, an even bigger and direct threat to union democracy arises in the case that natural delegation is abused and matches, or even surpasses, the elected delegate numbers due to a disparity of member/delegate proportion, which will be discussed in the next section.

All of the sample unions use the delegation system, including the smallest unions in the sampling such as TGS (1,016 members), Öz Toprak-İş (1,631 members) and Güvenlik-Sen (2,873 members), as indicated in their statutes. In theory, some of these unions could opt out of the delegation system by organizing general assemblies in large convention halls. However, it should be noted that although these unions are comparatively much smaller than the other samples (e.g., Türk Metal with 166,250 members), it is no more feasible for them to organize general assembly meetings by the

direct participation of union members due to practical and financial difficulties that are commonly experienced by smaller unions. A more realistic approach would be to ensure fair external and internal systems of delegation in terms of democratic representation. Within the current structure of Turkish unionization, delegation is a necessary tool for union operations' effectiveness. Therefore, unless a radical change in the Turkish system of unionism takes place, the focus should be on how the legal provisions ensure a democratic system of delegation and how internal delegation rules are implemented in union statutes rather than on the existence of delegation as a method of decision-making.

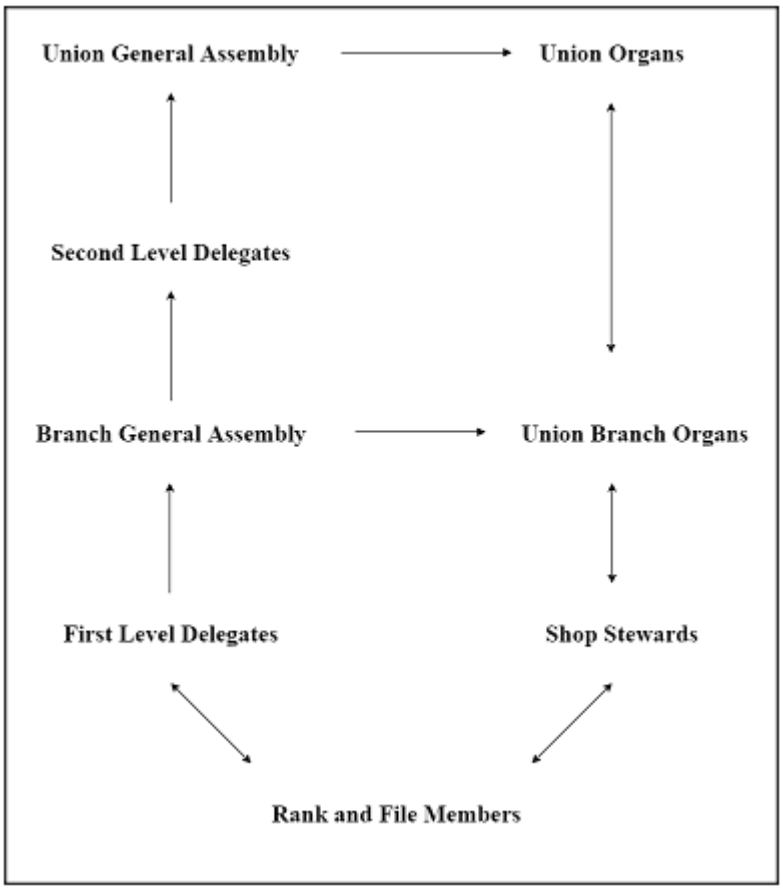
5.1.3 The Double Delegation System

Most of the Turkish unions that legally possess the authorization for making collective labor agreements and therefore the right to strikes use the double delegation system in their organization. The first level delegation appears between workplaces and the union branch general assembly: in general, each union member of a workplace affiliated with the union branch participates in the election of delegates that shall attend the union branch general assemblies. Thus, a limited number of union rank and file members may participate in the lower decision-making mechanism of the union. This hinders union democracy, as most union members in the workplace are formally separated from general assembly meetings. Considering that apathy is the normal state of affairs among the ordinary union members, the first level delegation further contributes to the loss of identification with the union and the willingness to participate in democratic mechanisms. Another issue is that of the adequate representation of workplaces affiliated with the branch. Unless regulated by the union, larger workplaces or those

with a higher number of union members may dominate the branch delegate elections, causing an unfair representation scheme that disregards smaller or less unionized workplaces.

The second level delegation is between the union branch and union (central) general assemblies. Again, a limited number of union branch members is elected to participate in the union general assembly, the highest decision-making organ of the union. Unless a fair number of delegates from each union branch is represented, the rank and file members may be completely disconnected from the central organization. Furthermore, branches should have a balanced representation provided in the union statutes in a similar way to the relationship between workplaces and union branches in the first level delegation. The following table sums up the common interaction pattern in the Turkish union administration system.

Table 1: Common Internal Structure of Turkish Union Organization



Arrows indicate the basic interaction pattern that is common in Turkish union organizations. There is a typical linear relationship between the rank and file members and union organs. While rank and file members have direct communication opportunities with the shop stewards and may interact with the union branch organs and central union organs to a dwindling degree, their contribution to and participation in the branch general assembly and union (central) general assembly is—in the case of most branches—limited to electing a delegation to participate in the meetings.

If confederations are also added to this table of unionization, a triple delegation of democratic rights is formed, in which ordinary union members and their relationship with the confederations of which their union is a member is somewhat ambiguous. The main concern of union democracy studies rests with the central and local union organization itself, which will be the scope of the following evaluations.

5.1.3.1 First Level Delegation

I will examine the first level of delegation in relation to the sample unions. The formation of union branch delegations is a vital issue for union democracy, since a large gap in the member/delegate proportion and an imbalance between organized workplaces may easily produce an unrepresentative system. These delegates are elected by the union members in the workplaces affiliated with each branch. Sample union branch delegates are indicated in their respective statutes as follows.

- Banksis, Art. 28: Sixty delegates + *ex officio* for all branches.

- Birleşik Metal-İş, Art. 26: a) Branch members + *ex officio* for branches with up to 500 members; b) 150 *ex officio* for 501–1500 members, 200 *ex officio* for 1,501+ members.

- Çelik-İş, Art. 28: a) Branch members + *ex officio* for branches with up to 500 members; b–f) a cumulative number of delegates from 100 to 200 + *ex officio* in a 501 to 10,001+ membership range.

- Genel-İş, Art. 29: a) Branch members + *ex officio* for branches with up to 500 members; b–f) a cumulative number of delegates from 100 to 250 + *ex officio* in a 501 to 5,001+ membership range.

- Güvenlik-Sen, Art. 19: d) Branch members + *ex officio* for branches with up to 500 members; e) 150 + *ex officio* for 501–1500 members, 200 + *ex officio* for 1,501+ members.

- Hizmet-İş, Art. 27: a) Branch members + *ex officio* for branches with up to 200 members; b–g) a cumulative number of delegates from 50 to 120 + *ex officio* for a 201 to 5,001+ membership range.[136]

- Öz Toprak-İş, Art. 27: Branch members + *ex officio* for branches with up to 500 members; 120 delegates + *ex officio*[137] for branches with 500+ members.

- Tes-İş, Art. 28: 1) Branch members + *ex officio* for branches with up to 500 members; 2a–d) a cumulative number of delegates from 100 to 175 + *ex officio* for a 501 to 4,001+ membership range.

- TGS, Art. 26: Branch members + *ex officio* for all branches.

- Türk Metal, Art. 29: Branch members + *ex officio* for branches with up to 500 members; a–g) A cumulative number of delegates from 100 to 250 - *ex officio* for a 501 to 6,001+ membership range.

Accordingly, TGS is an exception with a single delegation system in which all union branch general assemblies are formed directly by the union members of workplaces affiliated with the branch. This is undoubtedly more democratic, as every union member

[136] The current Hizmet-İş Statutes and Hizmet-İş Branch General Assemblies Delegate Election Regulations (Appendix A) that predates the Statutes by a year (2014) provide different numbers and ratios on the issue. Therefore, the related data is in accordance with the statutes, which shall be enforced in the case of conflict with lesser regulations.

[137] The related article counts only the branch administrative board and disciplinary board as natural delegates, leaving out the board of auditors, which conflicts with Act No. 6356.

may participate in their branch general assemblies and therefore in the decision-making on issues such as branch organs' elections. Most of the other unions (Birleşik Metal-İş, Çelik-İş, Genel-İş, Güvenlik-Sen, Öz Toprak-İş, Tes-İş and Türk Metal up to 500 members and Hizmet-İş up to 200 members) do not use the first level delegation system in their smaller branches. The only union that uses first stage delegation regardless of branch size is Banksis, with a fixed number of 60 elected delegates for each branch.

The second issue with the first level delegation is based on the representation balance of workplaces. Unless union internal regulations provide the means of representation based on the equality of union members, an unrestricted election scheme for branch delegates based on a simple majority of votes may automatically cause the candidates from workplaces that possess more union members to win all delegate seats. Consequently, a) smaller workplaces or workplaces in which the related union has fewer members would have little chance of representation in the branch general assembly; and b) rank and file union members who would like to participate in union matters but are employed in such workplaces have little chance of being elected, and therefore are indirectly treated unequally on the basis of electoral rights. Such issues of representation in branches cannot be left to informal mechanisms or lesser regulations made by administrative boards, and should be resolved by union statutes themselves in order to ensure democratic conduct.

The sample unions have adopted various measures on the issue.

- Banksis, Çelik-İş, Güvenlik-Sen, Öz Toprak-İş: No explicit regulations.

- Birleşik Metal-İş, Art. 26: B/b) Firstly, each workplace affiliated with the branch is given one delegate; B/c) next, each workplace is given a number of delegates in proportion with their union membership size, calculated in accordance with the total number of branch delegates.

Birleşik Metal-İş Branch General Assembly Delegate Election Regulations (Appendix B) Art. 9: In the case that the proportion of male or female union members exceeds ten percent in a workplace where elections will be held and there are candidates of that gender in the elections, a minimum of ten percent of delegate representation shall be fulfilled by that gender.

- Genel-İş, Art. 29: A lower regulation (*yönetmelik*) shall be made in order to ensure the fair representation of members in each workplace.

Genel-İş Branch General Assemblies and Delegate Election Regulations (Appendix C) Art. 3/c: Firstly, each workplace affiliated with the branch is given one delegate. Next, each workplace is given a number of delegates in proportion with its union membership size, calculated in accordance with the total number of branch delegates.

- Hizmet-İş, Art. 27/g: The workplaces affiliated with the branch elect their delegates separately. The branch administrative board determines the number of delegates to be elected by workplaces in accordance with membership size.

- Tes-İş, Art. 28/3–4: An inner regulation shall determine the electoral procedures.[138]

[138] Although Tes-İş Statutes Art. 28/4 explicitly states that a Regulation of Delegate Elections to be ratified by the general assembly shall determine the electoral procedures, Tes-İş officials have stated in our private e-mail correspondence of 26/4/2016 that there are no other internal regulations on the issue.

- TGS, Art. 26: No delegation system for branch general assemblies.

- Türk Metal, Art. 29/g; General Assembly and Election Regulations (Appendix D) Art. 17: Each workplace is given a number of delegates in proportion to its union membership size, calculated in accordance with the total number of branch delegates.

Accordingly, half of the sample unions (Birleşik Metal-İş, Genel-İş, Hizmet-İş, Türk Metal, and TGS which does not use first level delegation) have taken formal measures to counteract the representation problem arising from elections of delegates by all members of the workplaces under the scope of the union branch. The other half of the sample unions (Banksis, Çelik-İş, Güvenlik-Sen, Öz Toprak-İş, and Tes-İş) does not have an explicit or clear regulation on the issue, and are therefore open to the practice of undemocratic representation, especially if their administrative boards intervene in branch organizing in order to secure personal support. It should be noted that although formal means of protecting the right to fair representation is vital in the case of larger and more developed unions, smaller unions—or unions organized in a way that sets union branches specifically for a balanced delegation—may not experience unrepresentative outcomes. In the event that branches are formed by covering single workplaces or workplaces that match in membership size, representation may be democratic. Each of these cases should be examined thoroughly in order to evaluate their degree of actual representativeness.

5.1.3.2 Second Level Delegation

The second level delegation among the sample unions indicates the relationship between the top central organization and branches, and is the next focus of the study.

Sample union (central) organization total quantities of delegates that are to be fulfilled by the union branches are indicated in their respective statutes as follows.

- Banksis, Art. 14: 80 delegates

- Birleşik Metal-İş, Art. 11: 250 delegates

- Çelik-İş, Art. 12/b: 250 delegates

- Genel-İş, Art. 11: 250 delegates[139]

- Güvenlik-Sen: One delegate per ten members[140]

- Hizmet-İş, Art. 10: A relative number of delegates from each union branch and other lower organizations based on their membership size[141]

- Öz Toprak-İş, Art. 13: 100 delegates

- Tes-İş, Art. 14/1-2: 250 delegates; one delegate per 210 members (current membership size: 58,706)

[139] Genel-İş, Güvenlik-Sen, and Öz Toprak-İş Statutes state that in the case that union membership is below 1,001, the general assembly is composed of union members. All three unions pass this margin, as indicated in the Ministry statistics of July 2015.

[140] In the statutes currently published on the Ministry of Labor and Social Security official site, the related article of Güvenlik-Sen Statutes that regulate general assemblies (Art. 19) is unclear on the issue of union general assembly delegation size, and on the issues of natural delegation (in which the disciplinary board members are not counted as *ex officio* delegates, in line with the older Trade Unions Act No. 2821) and having confusing regulations on branch formations. The statutes on the Güvenlik-Sen official site as of 13/10/2016 clarify the issue by stating that the delegate/member proportion shall be one in ten when membership passes the one thousand margin, which is the case as indicated in the statistics.

[141] As of 15/9/2016, Hizmet-İş has 47 branches, as indicated on their website, which is the basis for delegate calculations:
http://www.hizmet-is.org.tr/v2/teskilat.asp?durum=2&bl=5&_tr
Hizmet İş Statutes Art. 10 has an unclear explanation of the delegate distrubution in the sense that larger branches/lower organizations may produce a lower number of delegates compared to smaller branches/lower organizations.

- TGS, Art. 11: 100 delegates

- Türk Metal, Art. 14: 250 delegates

All of the larger sample unions (Birleşik Metal-İş, Çelik-İş, Genel-İş, Hizmet-İş, Tes-İş, Türk Metal) have opted for a high number of delegates and have stayed within the limits of the older delegation system imposed by Act No. 2821 Art. 10/3 (between 200 and 500 delegates). Smaller unions, on the other hand, have gone lower in numbers. Although the related articles of its statutes are confusing with their vague language, the Güvenlik-Sen regulations guarantee the closest membership/delegate proportion (one in ten) among the sample unions, utilizing delegation to a lesser extent.

Compared to the role of rank and file union members in workplaces, which is to elect delegates to the branch general assemblies, the representation problem arising from elections in workplaces is in general absent in second level delegation, since the union branches themselves choose their delegation for the union (central) general assembly. Union statutes provide the structure for delegate distribution among the branches, which is commonly done in accordance with their union membership size. There are a few exceptions to this in the sampling: The Öz Toprak-İş statutes state that the general assembly delegates are to be elected in accordance with the lesser regulations (*yönetmelik*) to be made by the administrative board (Art. 13). As the union did not provide us with these regulations, the delegate distribution properties cannot be evaluated comprehensively. However, to leave this issue in the hands of the administrative board, which can change these regulations with little difficulty, poses serious concerns for the fair representation of branches in the general assembly

decision-making processes, especially in cases where the officials of a specific branch present potential opposition to the central leadership. Another union which did not respond to any of the correspondence attempts, Çelik-İş, states no explicit method for the distribution of the union general assembly delegates between union branches, making an ambiguous and equally problematic case.

As explained in the literature review, the member/delegate proportion is related to democratic conduct (Dereli, 1977, p. 190). When the ratio is closer, members have more possibility of establishing face to face communication with the delegates that represent them in the general assembly, which is a practical necessity for the delegates to form an opinion based on the ideas of the rank and file members. In the case that a few delegates represent hundreds or more workers, such communication opportunities cannot spontaneously form, creating a gap between the ordinary members and their representatives, which may cause uninformed or even irresponsible behavior by the delegates during decision-making processes in the general assembly.

In accordance with the union membership size and general assembly delegation size of sample unions, member/delegate proportion is as follows:

- Banksis: 8,816/80

- Birleşik Metal-İş: 31,066/250

- Çelik-İş: 32,192/250

- Genel-İş: 63,154/250

- Güvenlik-Sen: 10/1

- Hizmet-İş: 300–800/1 (relative to branch sizes)

- Öz Toprak-İş: 1,631/100

- Tes-İş: 210/1

- TGS: 1,016/100

- Türk Metal: 166,250/250

As indicated in the ratios above, the larger a union grows, the higher the member/delegate proportion becomes, meaning that each delegate represents a higher number of workers through his attendance at the general assembly. There is no exception to this pattern among the sample unions. While the smaller samples have lower proportions, such as one delegate for each ten members, and therefore a probable means of constant immediate communication between delegates and ordinary members, larger sample unions have drifted from this aspect of democratic conduct in direct correlation with their size. The larger unions should therefore either increase the number of delegates in order to lower the democratic gap created by these ratios, or come up with other mechanisms to reinforce other ways of participation, which I will discuss further in the elections section (5.3).

5.1.4 Natural Delegation

As stated in Chapter 1, delegation that is acquired through means other than election is called ‘natural delegation’ in the union literature. A common practice in unionism based

on delegation is to make members of the main union organs natural delegates during their tenure of office (*ex officio*), by means of either union laws or union statutes.

During the Act No. 274 regime, various anti-democratic misuses of natural delegation—such as the appointment of former union officials or the determination of certain individuals as natural delegates by the central administration—became frequent among Turkish unions. In addition, because of the abundance of union organs whose members were *ex officio* delegates, the number of 'natural' delegates in several unions occasionally surpassed the number of elected delegates (Şahlanan, 1980, p. 126). Moreover, requirements to qualify for delegate candidacy (e.g., formerly holding an office in a union organ; being a union member for a certain period; possession of certain educational qualities) were often enforced by union administrations in order to control the delegation processes (ibid., p. 129).

Combined with other misuses of delegation—such as administrative boards' authorization to veto candidates or to annul the status of delegates already elected, as explained in subsection 5.1.1—the use of such measures proved that union democracy could not be maintained in the pre-1982 Turkish context due to the dominance of the incumbent administration over the elected delegates and therefore over the whole organization. Consequently, both delegation by appointment and *ex officio* delegation were strongly criticized as antidemocratic on the basis that the practice gave union organs the power to control the general assembly (ibid., p. 126). In broad terms, the free will of the members may be distorted by *ex officio* delegates (Deren-Yıldırım, 2001, p. 1718). Şahlanan argued that it would be more democratic for union officials who could not be elected as delegates to participate in the general assembly meetings not as

members of the general assembly, but as officials devoid of the right to vote (Şahlanan, 1980, p. 127). He also asserted that basic rules on the electoral processes of delegation should be regulated by the force of law instead of union statutes (ibid., p. 125). In the literature, scholars objecting to *ex officio* delegation of the incumbent leaders have also claimed that the notion of natural delegation shall only be utilized for minorities, such as women and teenagers (Deren-Yıldırım, 2001, p. 1719).

Act No. 2821 of 1983 prohibited the appointment of delegates by statutory provisions and administrative board members alike, but enforced the *ex officio* system for the members of two union organs—the administrative board and the board of auditors (Art. 10). The new Act No. 6356 also retained the *ex officio* delegation system of the previous Act, as well as the procedures for the election of delegates and their tenure. Art. 10/1 states that the members of the administrative board, the board of auditors, and the disciplinary board of the organizations and branches shall be *ex officio* delegates to the general assembly of their respective organizations. Thus, the new Act has added members of the disciplinary board to the natural delegation system.

The addition of disciplinary board members has been criticized by Şahlanan (2013, p. 115) as a threat to union democracy on the basis of the combined effect of two other aspects of the new union Act. As explained in Chapter 4, Act No. 6356 Art. 9/1 states that the number of union organ members other than the general assembly shall not be fewer than three or more than nine; the number of members of administrative boards of confederations shall not be fewer than five or more than twenty-two; and the members of branch organs other than the general assembly shall not be fewer than three or more than five. Thus, in the case of the central trade union organization, the statutes may

determine the mandatory union organs (other than the general assembly) with a maximum of nine members. With the addition of the disciplinary board in the natural delegation system in the new Act, a maximum of 27 *ex officio* delegates may be provided within the union's internal rules. As the new Act also gives complete freedom to unions in determining the total number of delegates in the organization through their statutes (Art. 10/1), the system paves the way for the possibility of more *ex officio* delegates than elected delegates in the general assembly, a problem encountered in the pre-1982 era of Turkish unionism due to a lack of related provisions. In such an event, a permanent oligarchy in the union organization can be established by the administration. Even if the number of *ex officio* delegates does not surpass the number elected, I argue as a basic hypothesis that democratic conduct suffers directly in proportion to the closeness of the number of *ex officio* delegates and elected delegates. In this sense, the size of the member/delegate ratio in the organization determines the effect of natural delegation in the decision-making mechanisms.

The sample unions indicate the number of members of the union administrative board, the board of auditors, and the disciplinary board (in that order) in their statutes as follows.

Banksis, Art. 20/a, 25/1, 26/1: 9 + 3 + 3

Birleşik Metal-İş, Art. 16, 21/a, 22: 5 + 3 + 5

Çelik-İş, Art. 17/a, 24/a, 25: 5 + 3 + 3

Genel-İş, Art. 16, 21, 23: 7 + 5 + 5

Güvenlik-Sen, Art. 23, 31, 33: 5 + 3 + 3

Hizmet-İş, Art. 15, 24, 25: 5 + 3 + 3

Öz Toprak-İş, Art. 19, 23, 24: 3 + 3 + 3

Tes-İş, Art. 20, 24/1, 25/1: 8 + 5 + 5

TGS, Art. 18, 22/a, 23: 5 + 3 + 3

Türk Metal, Art. 20, 24, 25: 5 + 3 + 5

Although none of the sample unions has opted for the highest number of mandatory union organ memberships and only a few have a membership total of more than half of what has been made possible by the current law (Banksis: 15; Genel-İş: 17; Tes-İş: 18), these numbers have limited meaning for democratic conduct unless compared with the number of union general assembly delegates, as hypothesized above.

In comparison with the union (central) delegate numbers indicated in the previous subsection (5.1.3.2), the number of union general assembly delegates elected by the union branches surpasses the *ex officio* delegates significantly in all of the sample unions. The closest proportion between *ex officio* and elected delegates is in the case of Banksis, with a 15/80 ratio. Therefore, it shall be concluded that the impact of natural delegation on union democracy among the sample union central organizations is formally marginal.

As the first stage of union administration, and therefore of the practice of democracy, union branch general assemblies deserve equal attention in the case of natural

delegation. The sample unions indicate the number of members of the union branch administrative board, the board of auditors, and the disciplinary board in their statutes as follows:

Banksis, Art. 34, 38, 39: 5 + 3 + 3

Birleşik Metal-İş, Art. 30, 34/a, 35: 5 + 3 + 3

Çelik-İş, Art. 32, 40, 41: 5 + 3 + 3

Genel-İş, Art. 33, 39, 41: 7 + 5 + 5

Güvenlik-Sen, Art. 45, 55, 57: 7 + 3 + 3

Hizmet-İş, Art. 29, 32/1, 33: 3/5 + 3 + 3

Öz Toprak-İş, Art. 31, 35/1, 36: 5 + 3 + 3

Tes-İş, Art. 32, 36, 37: 5 + 3 + 3

TGS, Art. 30, 34, 35: 4/5 + 3 + 3

Türk Metal, Art. 33, 37/a, 38: 5 + 3 + 3

Accordingly, most of the sample union branches have fewer union organ members than the central organizations' mandatory organs (Banksis, Birleşik Metal-İş, Hizmet-İş, Tes-İş, TGS, Türk-Metal) or keep the same numbers (Çelik-İş, Genel-İş), except for Güvenlik-Sen and Öz Toprak-İş, whose branch organ members number more than those of the higher organization (13 and 11 respectively). Even so, these two exceptions do not produce an excessive natural delegation, as their numbers remain within reasonable

limits compared to the number of members/elected branch delegates indicated in subsection 5.1.3.1.

Combining the data and elaborations of *ex officio* delegation size and the number of elected delegates/branch members of both central and branch general assemblies, it shall be concluded that although the de-regulation of most issues pertaining to union/branch delegation has provided Turkish unions the ability to organize their internal regulations in a manner that hinders or even cripples democratic conduct, none of the sample unions has opted for measures that misuse the natural delegation system as an instrument to formally control the primary decision-making mechanisms. While the concerns of Şahlanan (2013) about the freedom of delegation in the new union law are clearly warranted based on valid theory, sampling of the study indicates that larger unions have in fact stayed within the regulated limits of the older Act No. 2821. Most importantly, the natural delegation instrument has not been abused by any of the sample unions by setting the mandatory union organs to the maximum permissible by law and thereby decreasing the quantity of elected delegates.

5.2 Workplace Union Representatives

Since the enactment of the Trade Unions Act No. 274 in 1963, workplace union representatives (shop stewards) have been the sole representatives of workers in workplaces. Before that, in accordance with Art. 78 of the Labor Act No. 3008, all workers in the workplace qualified to be elected as workers' representatives. With Act No. 2821 of 1983, it became mandatory for shop stewards to be appointed from among members of the union with authorization for collective labor agreements in the

workplace. The new Act No. 6356 retained this method with an addition: in accordance with Art. 27/2, union statutes may now provide regulations for the election of shop stewards, instead of appointment by the union. By definition, election is a fundamental instrument of representative democracy and therefore the new law has provided a means of democratizing the workplace union representation mechanism in the event that unions adopt this procedure. In the absence of such internal regulations, direct appointment by the union administration takes place.

Depending on the number of workers in a workplace, as provided in detail by the law, between one and eight union representatives can be appointed by the authorized union (Art. 27/1). One may be designated as chief representative. The duties of the shop stewards and chief representative (limited to the related workplace) are to hear workers' requests and handle their grievances; to safeguard cooperation, harmony at work, and peaceful relations between workers and employers; to protect the rights and interests of the workers; and to help implement working conditions as provided by legislation and collective labor agreements (Art. 27/3). Shop stewards shall carry out these duties on the condition that their job and work discipline in the workplace are not hindered. They shall be provided with the means to carry out their duties quickly and efficiently in the workplace (Art. 27/4).

Although their position in the union organizational hierarchy is defined within the above provisions of the union law, the role of the shop steward is more complex and significant due to the multiple duties in relation to the union, employers, and administration in the workplace. First of all, collective agreements commonly provide shop stewards with duties on boards such as disciplinary boards (Çelik et al., 2015, p.

586). Moreover, several regulations in accordance with the labor law and other laws give shop stewards power to become or appoint members of certain offices related to the workplace administration, such as the leave board,[142] work health and safety board,[143] and laboring representative.[144] As the local representative of the union who comes into contact with the ordinary members, union branch officials, and employers (or their representatives) face to face on a regular and frequent basis, the office of shop steward holds primary importance for the local operation of the union and for the participatory abilities of the rank and file members who are potentially left out of higher decision-making mechanisms in the case of delegation used for union branch general assemblies, as discussed in the above subsections. Under such circumstances, unless the higher union organization establishes other methods of communication and participation, shop stewards are left as the sole link between rank and file members and union organs (See Table 1 in subsection 5.1.3). In this respect, shop stewards play vital roles and they need to have adequate time and knowledge of union affairs, as well as other personal traits that facilitate influence and communication skills, in order to fulfill any democratic gaps.

Similar to the system provided by the new law, during the Act No. 274 regime, unions would in general produce fewer regulations in accordance with their statutes on the issue of workplace representation. Common to these regulations, union members in the workplace would elect their representatives, who would then be appointed by the union administration. This practice was consistent with union democracy, but it has been

[142] Regulations on Paid Annual Leave, Art. 15 (in accordance with Labor Act No. 4857).
[143] Regulations on Work Health and Safety, Art. 4 (in accordance with Work and Health Safety Act No. 6331).
[144] Act No. 6331 Art. 20/5.

asserted in the literature that it also gave shop stewards practical power to imbalance relations between unions and employers (ibid., p. 583). In some cases, unions categorically adhered to the electoral results and appointed the elected shop stewards who lacked the temperance demanded by the task and had low education, experience, and knowledge. These individuals commonly placed the union in difficult situations, lowered work efficiency, and pushed members for actions that disrupted the peace in the workplace. Although unions possessed the formal means to revoke the office of these elected shop stewards, they rarely utilized it in order not to risk the loss of union strength in the workplace, unless they convinced the members first. It has been argued that because of such experiences, most unions today opt for the appointment system instead of elections (ibid.). Once more, a balance between union democracy and union protection needs to be struck, but direct appointment basically means that union representation in the workplace may serve neither as an adequate gap filler between ordinary members and union administration nor as a basis for the establishment of countervailing powers within the union hierarchy which arise from day to day activities in which all union members (and even non-members) participate. In branches where the first stage delegation discussed above is adopted, the rank and file union members' connection and communication with the union organization is based solely upon and is dependent upon their interaction with the shop stewards.

A final issue to be addressed in relation to workplace representation, which is indirectly related to union democracy, is the formal protection of shop stewards from arbitrary dismissal by employers or other similar mechanisms of punishment. As in the case of union organization officials, shop stewards need basic incentives and protections to take

on representative duties, and unless these are ensured, the democratic potential of candidates for representation will be hindered. Some Turkish rank and file union members refrain from taking shop steward posts, stating that shop stewards may be fired if their relationship with the workplace managers deteriorates (Demirdizen and Lordoğlu, 2013, p. 233). Either the legal assurances stated below are unknown to these workers, or their content or actual practice is not properly enforced, resulting in such behavioral patterns.

Article 24 of Act No. 6356 specifically regulates the protection of shop stewards in detail. An employer shall not terminate the employment contract of a shop steward unless there is a just cause that is stated clearly and precisely in written form. In such a case, the shop steward or the union has the right to file a lawsuit within one month of the notice of termination. In the event of an appeal to the decision given by the court, the decision of the Court of Cassation shall be final. Provisions of reinstatement and other protections that prevent the alteration of jobs/workplaces of shop stewards are provided further in the Article, which are also valid for amateur union officials who continue working in the workplace. The enforcement of these protections through the force of law undoubtedly secures democratic conduct in the case of elections for shop steward positions, by giving them formal assurances of work security. It has been asserted that since the Trade Unions Act No. 274 of 1963, union workplace representatives have been strongly protected, and they form the most effectively protected category across the three laws on unions (Dereli, 2013, pp. 49–50).

5.2.1 Internal Regulations on Workplace Representation

Sample unions have regulated the procedures of workplace union representation by either general provisions in their statutes or specific regulations. Birleşik Metal-İş, Genel-İş, and Türk Metal have made lesser regulations (*yönetmelik*) on workplace union representatives, while the rest of the sample unions operate on general statutory provisions.[145]

a) In regard to the election or direct appointment of shop stewards, the sample unions state the following:

- Banksis, Art. 22/16; Hizmet-İş, Art. 37/1–2; Öz Toprak-İş, Art. 20/31; Tes-İş, Art. 21/31; TGS, Art. 19/31:[146] The union administrative board directly appoints and removes shop stewards by taking the opinion/suggestion of branch administrative boards.

- Birleşik Metal-İş, *Art. 5* (Appendix E): As a general rule, the representatives are to be elected rather than directly appointed. The exception to this rule is that the representatives in the newly organized workplaces are appointed by the central administration until six months after the second period of collective labor agreement in the related workplace. In the case that the male/female ratio in the related workplace passes exceeds percent, at least one person of the minority gender shall become a shop

[145] Article numbers of regulations (*yönetmelik*) are *italicized*, whereas statutory provisions are written in standard font.
[146] TGS Statutes of 2013 Art. 19/31 state that an inner regulation on workplace union representatives shall be made. However, TGS officials stated in our private correspondence on 27/9/2016 that the regulation has not been enacted.

steward provided that there is a candidate of that gender and there are multiple positions for representatives.

- Çelik-İş, Art. 18/39: The union administrative board appoints and removes the representatives. Art. 43: Branch administrative boards give their opinion on the appointment, and shall act in accordance with the Regulations on Branch Board of Representatives[147] enacted by the union general assembly.

- Genel-İş, *Art. 4* (Appendix F): As a general rule, representatives are to be elected in their related workplaces and appointed by the union administrative board accordingly. Due to organizational necessities or union interests, direct appointment may also be adopted. In that case, the opinion of the related branch shall be sought.

- Güvenlik-Sen, Art. 24/ş: Representatives are appointed in accordance with elections held in workplaces by the union general assembly.

- Türk Metal, *Art. 3* (Appendix G): The union administrative board (or branch administrative board, in the case of their authorization) shall determine whether the representatives are to be elected or appointed.

Accordingly, the majority of the sample unions (Banksis, Çelik-İş, Hizmet-İş, Öz Toprak-İş, Tes-İş, TGS), which vary in size, have opted for the direct appointment of shop stewards, allowing the central union organization complete control over them. In contrast, two of the unions (Birleşik Metal-İş and Genel-İş) have adopted an electoral system for shop stewards in the related workplaces under normal circumstances.

[147] Çelik-İş did not provide the referred regulations nor any replies to our multiple correspondence attempts, as explained in the introduction.

Birleşik Metal-İş furthermore provides positive discrimination for women (and for men, if they stand as minority, a rare case due to the nature of the metal industry) to be representatives in the workplace, which may serve positively for both democracy and other aspects of work life, as women workers may be more comfortable in dealing with their own gender regarding problematic issues arising on the job.

Formally, the higher administrators of Türk Metal have the ability to control the appointment process in a direct manner due to their authorization to choose between election and appointment mechanisms. However, their regulations should be evaluated in accordance with the data on the actual practice of their administrative board, which may prove both election and appointment as the common state of affairs on the issue of workplace representation. Türk Metal has stated that since the update of the organization's statutes on 2 August, 2015 and the renewal of the related regulations, almost all of their shop stewards have been elected and then appointed by the central administration in accordance with these elections instead of directly appointed.[148] In the current context of unionism, the adoption of elections for the lowest level of union representation in such a large organization (with 166,250 members, 33 branches and 14 regional agencies) should be regarded as a prerequisite for union democracy, which is fulfilled in the recent practice.

The exceptional case among the sample unions is Güvenlik-Sen, which does not rule out the election of shop stewards under any circumstances, reinforcing democratic mechanisms for the office of workplace union representation. It also stands out as the sole small-scale union in the sampling that does not opt for direct appointment.

[148] Private correspondence with Secretary General of Türk Metal, 13/10/2016.

b) Three unions explicitly state the qualifications for becoming a shop steward. The related requirements that concern democratic conduct are as follows.

- Birleşik Metal-İş, *Art. 4*: Conditions for founding members as stipulated in Art. 5 of Act No. 2821;[149] not being discharged from a previous representative post during the last two collective labor agreement periods; *attending certain educational trainings or having duties in union organs, boards, commissions, or bureaus; being a union member for one year*; in case of a previous resignation from union representative duty, one period of representative elections passing since resignation.[150]

- Genel-İş, *Art. 3*: Working in the related workplace for at least six months; not receiving punishments other than warnings from the union disciplinary boards; conditions for founding members as stipulated in Art. 5 of Act No. 2821.[151]

- Türk Metal, *Art. 2*: Three years of seniority in the workplace (two years in the case of workplaces wherein the union has been organized for less than five years); attending compulsory educational trainings unless with just cause; not receiving any punishments from the union disciplinary board; not being discharged from a previous representative post; being a union member for at least one year in the case of workplaces wherein the

[149] Birleşik Metal-İş Regulations on Representatives was enacted on 18 September, 2012, being exactly one month before the enactment of the new Act No. 6356. Although multiple articles in the Regulation refer to provisions of the older Trade Unions Act, the union administration has provided these regulations as up-to-date. Act No. 6356 Art. 81/2 states that references to the older Acts No. 2821 and 2822 in other legislation shall be regarded as references to the new law. In that respect, it should be accepted that these regulations refer to the conditions of founding members that are listed differently in the related articles of the new law.

[150] *Italicized* conditions are not applicable for workplaces where the union is newly organized.

[151] Genel-İş Regulations on Union Workplace Representatives, Board of Workplace Representatives and Branch Board of Representatives were enacted on 13 August, 2008. These regulations predate the new union Act by four years and refer to the older Act, but were provided as up-to-date by the union administration. As in the case of Birleşik Metal-İş (Fn. 147), the new Act No. 6356 should be the reference for these conditions.

union has been organized for more than one year; in the case of union resignation, one collective agreement period passing since resignation.

Accordingly, Birleşik Metal-İş and Genel-İş both require the conditions of founding members listed in the older Trade Unions Act No. 2821. This poses two problems. First of all, since Act No. 2821 has been repealed by the enactment of the new union law, both organizations should bring these inner regulations up-to-date, either by referring to the new Act No. 6356 or by stating each of the conditions of founding members as explicitly provided by the older union law in order to make the procedures clear. Secondly, as explained in the sections on founding members and the administrative board, Act No. 2821 made excessive limitations through these requirements, which also raises questions regarding their enforcement for the lowest (workplace) level of representation. It would undoubtedly be inappropriate to require from local representatives more qualifications than are required from upper union officials (fewer of which are now required by Act No. 6356) if the older union act is strictly enforced in accordance with these workplace representation regulations.

The rest of the qualifications required by the sample union regulations can generally be categorized as seniority and activity requirements, which are generally justifiable on the grounds that shop stewards need to possess certain qualities stemming from experience and knowledge of both workplace issues and unionism.

c) Procedures on the dismissal of shop stewards are explicitly stated in the related regulations as follows.[152]

[152] Except for reasons of dismissal based on losing the legal/statutory qualifications for the post.

- Banksis, Art. 22/16; Çelik-İş, Art. 18/39; Öz Toprak-İş, Art. 20/31; Tes-İş, Art. 21/31; TGS, Art. 19/31: The union administrative board is directly authorized to dismiss shop stewards. No other procedures for dismissal are stated in the statutes.

- Birleşik Metal-İş, *Art. 6*: The union administrative board is authorized to dismiss representatives who neglect/misuse their duties, or who act contrary to or inconvenience union aims. The absolute majority of union members in a workplace may also apply in written form to the union or branch for the dismissal of representatives, with an explanation.

- Hizmet-İş, Art. 37/2: The union administrative board is authorized to directly dismiss representatives. The branch administrative board or two-thirds of the union members in the workplace may also suggest a dismissal.

- Genel-İş, *Art. 7*: Causes of dismissal are: not succeeding in duties; in the case of an explained and written application by the absolute majority of union members in the workplace; deemed necessary by union branches. In such cases, the union administrative board will remove the shop steward upon the request of the branch administrative board. Consequently, new workplace representatives are appointed within two months.

- Türk Metal, *Art. 5/c*: In the case that the absolute majority of union members in a workplace applies in written form to the union or branch, a representative may be dismissed. Consequently, workplace representatives are renewed through elections or appointment within 15 days.

Art. 34/g: The union branch administrative board may elect/change/appoint representatives in the case that the central administrative board grants authorization.

Accordingly, half of unions (Banksis, Çelik-İş, Öz Toprak-İş, Tes-İş, TGS) directly authorize the union administrative board to dismiss shop stewards and give no other procedures for dismissals. The Birleşik Metal-İş, Hizmet-İş, Genel-İş, and Türk Metal Statutes give a majority (absolute or qualified) of union members in the workplace the ability to suggest a dismissal. Güvenlik-Sen is again an exception among the sample unions, as it does not explicitly provide the authorization to dismiss workplace representatives to any union organ or individual.

5.3 Elections in Turkish Unions

Democracy is essentially a regime that is realized either through direct decisions of its members or through the election of individuals as their delegates and/or representatives. Elections are a prerequisite of representative democracy, and the form in which elections take place directly determines democratic quality. As elaborated in Chapter 1, since the earliest days of the labor movement, unions have been governed by representative models based on the election of officials instead of by means of direct democracy in order to function efficiently and decisively, and Turkish unions are no exception to this.

However, representation as a concept also has its problems in terms of democratic conduct. Rousseau, and later Michels, criticized this aspect of modern democracies. Although they admit that political parties and parliaments, along with other organizations, adopt strong leadership through representation and delegation due to

technical and administrative necessities, the emergence of professional leaders, which is a by-product of these systems, in the theory of the iron law of oligarchy, marks the beginning of the end of democracy (Michels, 1915, p. 86). Representation and delegation systems were strongly criticized by Rousseau:

> "Sovereignty cannot be represented, for the same reason it cannot be alienated; its essence is the general will, and will cannot be represented—either it is the general will or it is something else; there is no intermediate possibility. Thus the people's deputies are not, and could not be, its representatives; they are merely its agents, and they cannot decide anything finally. Any law which the people has not ratified in person is void; it is not law at all" (Rousseau, 1968, p. 141).

Accordingly, adopting representation means the end to the exercise of basic rights by each individual, and therefore the organization has to be very small in order to function by true democratic means. In addition to the fundamental problems caused by representation on the basis that ordinary members are excluded from most decision-making mechanisms, the possibility of excessive delegation at the union branch and at the central organization in the Turkish context is an issue for serious concern that may prevent the representation of opinions of large minority groups in the general assembly altogether. Moreover, the elected officials may also become unresponsive to the interests of rank and file members unless certain democratic processes take place in the organization. Although it is inconceivable to abandon the representation system in unions due to organizational necessities, the problems posed by its necessary adoption demand mechanisms that favor democratic conduct, such as frequent elections and other certain qualities of each electoral process, and these will be discussed below.

Due to the double delegation system and organizational structure, there are several electoral positions based on delegation, representation, and posts in organs in Turkish unions. As elaborated in the previous subsections and illustrated in Table 1, union organizations first of all commonly opt for the election of delegates in the workplaces for union branch general assemblies in the case of large union branches (first level delegation). They also may adopt the election of shop stewards as their representatives in workplaces. The branch general assembly elects the branch administrators and officials of other branch organs, as well as delegates to attend the central union general assembly (second level delegation). Finally, the union general assembly elects the central administration and other compulsory organs of the organization. In the case of confederations, each member union supplies a number of delegates to the general assembly in accordance with the statutes of the confederation in order to elect the higher officials. It is essential for Turkish unions to run each of these elections according to certain rules to ensure union democracy.

In order to achieve the basic purpose of democratic choice through fairness, all of the above-mentioned electoral processes have to be free and universal, based on equality, and conducted through secret ballot and open counting. Free elections are essential for democracy: therefore the union law dictates that voters cannot be persuaded or coerced politically or economically in elections, and members or delegates cannot be prevented from joining general assemblies or casting votes. ‘Universal’ means that each member who fulfills the general prerequisites for elections may cast a vote, a basic right that was won in the later stages of modern democracy. The prerequisites have to be based on the constitution, laws, and statutes, without an intention to limit basic voting rights.

‘Equality’ means the rule of one person, one vote. With a secret ballot, pressure on members from leaders or groups can be formally controlled by anonymity. Open counting is a means to prevent cheating and fraud, and therefore a prerequisite for legitimate elections. Each of these elements is enforced through the current constitution and laws.[153]

5.3.1 Procedures on the Election of Delegates

As with the previous Act No. 2821, the current Act No. 6356 states that the statutes shall not have any restrictive provisions concerning the election of delegates (Art. 10/3). Article 10/2 explicitly states that the credentials of the delegates shall be valid until the date of election for the delegates to the next ordinary general assembly. As explained in the Statement of Reasoning of the Act, this provision was made in order to prevent an ongoing confusion as to whether or not the delegates elected in the branch ordinary general assembly attend the union extraordinary general assembly that meets between the two ordinary general assemblies, making it clear that they will do so.

5.3.1.1 Branch General Assembly Delegate Elections

The original version of Act No. 2821 Articles 10 and 14 had strict regulations on the issue of union branch general assemblies and on the election of delegates who would attend them. The delegates to attend the union branch general assembly would be elected under the rules of Art. 14 that provides judicial supervision over elections. Unions objected to this provision, claiming that it would cause practical difficulties,

[153] Article 67 of the Constitution refers to universal elections; Act No. 6356 Art. 14/1 refers to the principles of free and equal elections, secret ballot, and open counting of votes.

delays, and heavy burdens for the organization. Therefore, the article was amended, and the new provision (10/2) stated that these elections would be done in accordance with the principles of free and equal voting, secret ballot, and open counting, and within the regulations of the union statutes, removing the reference to Art. 14 (Act No. 2882). Consequently, the basis of judicial supervision on union branch delegate elections in accordance with Art. 14 was replaced with a lesser judicial review mechanism on the basis of general electoral principles. Although a ruling of the Court of Cassation states that this change aimed to prevent practical difficulties in the implementation of the law and not to remove judicial control,[154] the fate of elections for delegation of the union branch general assembly—the primary stage for the establishment of union democracy—was left to the union organizations themselves as in the previous era of unionism (Act No. 274). Çelik et al. (2015, p. 628) claim that instead of changing the principles stated in Articles 10 and 14, Art. 14 could have been amended by shortening it and making its application simpler and easier. Accordingly, because of this amendment, the goal of securing union democracy through the above-mentioned provisions did not hold much merit.

As in the case of most related provisions, Act No. 6356 has not brought any important changes to the first level (branch) delegate election system. Apart from basic democratic principles, it simply states that the procedures of these elections shall be regulated by the union statutes (Art. 16/1), meaning that delegate elections conducted in workplaces shall not be under the supervision of the judiciary. The ongoing dominant concern is that the absence of electoral supervision will cast a shadow over the union democracy

[154] Court of Cassation 9.HD., E. 1983/8689., K. 1983/10151., T.1.12.1983, YKD, p. 1984.

process (Tuncay and Kutsal, 2015, p. 58). As the statutes may freely regulate these elections, a judicial supervision may be enforced by the unions themselves. However, none of the sample unions of this study has provided any such regulations.

The lack of supervision over the electoral process is still a concern for union democracy. Democratic processes in a union begin at the very bottom: in Turkish unions, this means the elections for who will represent the whole of the members of a workplace. A very large number of union members in Turkey do not directly participate in any other elections after this level. Moreover, objections to results of elections are not possible, which causes important problems. In actual practice, we observe that large union branches generally operate through delegation, as elected by members in the workplace. If union branches are not formed through the free will of the members, it is doubtful that the delegates who are elected within them to participate in the union general assembly and afterwards in their respective confederation assemblies will represent the will of the rank and file. Therefore, I stress that judiciary supervision is an important safety measure in this first step of democratic conduct.

In spite of these problems, the new Act states that objections to the results of delegation elections made within two days of the announcement shall be finally decided by the court of labor. In the case that the election is annulled by the court, the elections shall be repeated in fifteen days (Art. 16/2). Thus, the drawbacks caused by the absence of a direct judicial supervision of the branch delegate elections made in workplaces was eased to some degree by this provision.

5.3.1.2 Union (Central) General Assembly Delegate Elections

Act No. 6356 Art. 14/1 states that in the general assembly, delegates (along with the members of the other mandatory union organs) shall be elected under the supervision of the judiciary in accordance with the principles of a free, equal, and secret vote, public counting and open return of the votes, and within the provisions of the statutes. Thus, the election of the second level delegation to attend the central union general assembly is done under judicial supervision, in contrast to the election of branch delegates, as explained in the previous subsection. Moreover, the rest of the Article 14 provisions make explicit rules on: a) the preparation process of the elections, including the dates/hour, location, and candidate lists (14/2); b) judicial approval of the member/delegate list to vote in the elections to be published by the organization (14/3); c) procedures for objecting to the results (14/4); d) the formation of a voting ballot board and its functions (14/5); e) detailed procedures on the method of casting votes (14/6–7); f) publication and transmission of the results (17/8–9); and g) protections and rights of the electoral board and voting ballot board (14/10–11). Art. 15 provisions formulate the judicial review mechanism by stating the method of objection to electoral results and the procedures for judges' decision-making. Accordingly, within thirty days of the general assembly meeting, the Ministry or the members/delegates of the organization or its branch may bring a case to the court with the allegation that the meeting or the elections were held contrary to the provisions of the law or the statutes; or that there was an infraction of rules or unlawful practice, having an effect on the result of the elections. The court shall decide within two months. In the case where the

decision is appealed, the Court of Cassation shall give a final decision within fifteen days.

A final concern over the electoral processes of delegates arises in the case that the central general assembly delegates are not split between the branches in proportion with each branch's size based on membership numbers. In the case that each branch produces the same (or similar) delegate numbers to attend the union general assembly, the votes of union members/delegates of the smaller branches have more weight in terms of representation in the ballot box. Therefore, the equality principle in elections is hampered in such circumstances. Equality of member votes is disrupted directly in proportion with the disparity between the size and voting power of the branches.

5.3.2 Union Organ Elections

The election of union/branch organs serves two main purposes: to choose leaders and to keep them accountable for their actions through voting, which are indispensable features of representative democracy models. Elections of the administrative board, board of auditors, and disciplinary board are bound by the same rules as delegate elections for the union (central) general assembly (Articles 14–15), as discussed in the previous section.

Since the elections for posts in the mandatory union organs are carried out strictly during the general assembly meetings in the Turkish context of unionism, two electoral aspects are bound by general assembly processes. First of all, only those who participate in general assembly meetings may cast votes. If unions have adopted the delegation system (which is the case for all the sample unions in the study), rank and file members

do not participate in these elections. Moreover, even the delegates directly elected by the rank and file members for union branch general assemblies do not participate in the union (central) general assembly meetings in the case of double delegation. Thus, a clear democratic deficit occurs in the election of union leaders, as well as for other posts important to democratic conduct, such as the auditors.

Secondly, the frequency of ordinary general assembly meetings automatically determines the periodic frequency of administrative elections. I have established in the previous chapter that a large majority of Turkish unions has adopted the maximum interval period for general assembly meetings, which is once every four years (TGS being the only exception in the sampling at once every three years). The generally inadequate nature of such long intervals has been explained in section 4.1.4. In the case of union organ elections, a long interval between general assembly meetings directly translates into a long term of tenure in administrative office. In the words of Michels (1915, p. 98), "the longer the tenure of office, the greater becomes the influence of the leader over the masses and the greater therefore his independence. Consequently a frequent repetition of election is an elementary precaution on the part of democracy against the virus of oligarchy."

Since the days of Trade Unions Act No. 274 of 1963 that had originally enforced a two-year general assembly interval, the common justification adopted in defense of longer intervals was that general assembly meetings are most cumbersome and frequent intervals burden the organization regardless of its size. However, the two fundamental problems discussed above may be resolved without making radical changes to the Turkish system of unionism, in accordance with practices and experiences addressed in

the history of trade unions. For instance, a favored remedy to democratize the internal organizational structure introduced in some western trade unions before World War I was to replace assembly elections of officers by a direct vote by the membership (Lipset et al., 1977, p. 7). If some or all officials in central union organs are elected in a separate process and directly by union members instead of by delegates, the practical burdens of conducting general assembly meetings will be eased and the democratic gap between top union officials and rank and file members will be significantly reduced. This way, minorities that are unrepresented in the general assembly due to delegation processes may influence the electoral outcomes through direct participation. An electoral process separate from the general assembly may also be arranged on a more frequent basis, such as once every two years (matching common collective agreement periods) or every three years. These elections can be arranged without further burdening the organization and in a similar process to second level delegate elections or shop steward elections to be held in the workplace, or in union branch meetings separate from the branch general assembly. From a cost-benefit perspective, direct elections would reinforce democracy in the current context of the Turkish unionism structure that is heavily defined by double delegation, long general assembly intervals, and large unions due to authorization rules.

Table 2. Presidential Election Results

Union /Confed.	1st (Latest) Period				2nd Period				3rd Period			
	Year/Cand.	Delegates	Votes	Ratio	Year/Cand.	Delegates	Votes	Ratio	Year/Cand.	Delegates	Votes	Ratio
Birleşik Metal-İş	2015/1	263	235	89.4%	2011/1	257	217	84.4%	2007/1	N/A[155]	229	N/A
Genel-İş	2015/1	265	228	86%	2014/1	233	157	67.4%	2013/2	238	123vs 100	51.7%
Hak-İş	2015/1	493	402	81.5%	2011/1	358	318	88.8%	2007/1	418	381	91.1%
Hizmet-İş	2015/1	288	220	76.4%	2011/1	315	245	77.8%	2007/1	324	256	79%
Tes-İş	2014/1	265	246	92.9%	2010/1	298	245	82.2%	N/A[156]	N/A	N/A	N/A
TGS	2013/1	114	49	43%	2012/2	211	58vs51	27.5%	2010/1	211	122	57.8%
Türk-İş	2015/1	275	230	83.6%	2011/2	362	223vs 127	61.6%	2007/2	372	214vs 147	57.5%
Türk Metal	2015/1	264	261	98.9%	2012/1	258	255	98.8%	2009/1	260	256	98.5%

[155] The official minutes of Birleşik Metal-İş elections in 2007 do not indicate the total number of delegates or those who attended the election.
[156] Tes-İş provided the latest two electoral results only.

Table 2 shows the latest three presidential electoral results for the eight unions and confederations that are among the thirteen sample unions/confederations in the study. The rest of the four unions (Banksis, Çelik-İş, Güvenlik-Sen, and Öz Toprak-İş) and one confederation (Disk) in the sampling have not responded to our multiple communication attempts, as explained in the introduction. This includes three of the four smaller unions (excluding TGS) and the smallest union confederation. It also includes one of the three unions in the metal industry, Çelik-İş, preventing a comparative electoral analysis of the three large unions in the second biggest branch of activity in Turkey. In terms of higher organizational category, only one confederation among the samples (Türk-İş Confederation), together with all its members (Tes-İş, TGS, and Türk Metal), has fully supplied the necessary information and documents in respect of past elections and the related lesser regulations. Transparency and accountability are basic elements of democracy, and all electoral results should be available not just to standing union members but also to the public, where past results are easily accessible by union officials. Similar difficulties have been faced in previous Turkish academic studies due to union officials' reluctance to give interviews, which was to be solved through private connections established later (Demirdizen and Lordoğlu, 2013, p. 230). Results of top office elections for the last decade, and inner regulations on delegation and union workplace representation, are undoubtedly data that it is fairly easy for union administrations to provide, regardless of their size and operational abilities. Withholding such information indicates ambiguous behavior in terms of democratic conduct and poses an immediate concern as to its practice.

The low number of candidates (mostly a single one) observed in the electoral results indicates an overall very low level of contention among the sample unions. Union democracy suffers when leadership is not contested. In such cases, a single list composed of the candidates for each of the mandatory union organs automatically wins by placing the names on the ballot lists. Out of 23 elections, there are only four contested elections (each with two candidates), of which two are Türk-İş Confederation top elections. The lack of contest in the elections also reflects the level of contest for other offices on the administrative board, as well as the board of auditors and disciplinary board, due to the candidacy for all posts appearing on one single list produced by the dominant group in the general assembly.

As adopted in the studies of Edelstein and Warner (1979) and Stepan-Norris (1997), one measure of election closeness is the percentage of the vote going to the winner. When a successful candidate receives a large proportion of the total vote, the contest is, by definition, not close. Table 2 indicates the percentage of votes the candidate received from all the delegates permitted to cast a vote. In some of the sample unions' electoral records, the number of participant delegates that cast votes is not indicated (especially if there was a single candidate). Accordingly, a varying proportion of delegates does not attend the general assembly meetings, and therefore the elections. The highest participation rate is consistently in the largest union in Turkey, Türk Metal, whereas the lowest participation rate is consistently in the smallest union among the samples, TGS. A comparatively high level of participation does not signify electoral contest, as indicated in Türk Metal elections with a single candidate, and a low level of participation does not indicate the absence of contest, as indicated in the 2012 TGS

elections, in which there was close competition between two candidates and the winner received only 27.5 percent of the total number of delegate votes, as approximately half of the delegates attended the elections. Participation is a broad concept that also includes processes such as decision-making in other aspects of union operation and attending local union meetings, as described in the introduction and first chapter. Here, I refer only to the participation process by second level delegates to central general assemblies. Thus, the data partially confirm the hypothesis examined in Chapter 1, that the relationship between participation and democratic conduct is not directly correlative.

A close election is also one in which the loser wins nearly as many votes as the winner. An alternative measure is therefore the number of votes in comparison to the winner. Of the four contested elections, the competing candidates have received a close proportion of votes by varying degrees (Genel-İş, 2013: 123 vs. 100; TGS, 2012: 58 vs. 51; Türk-İş, 2011: 223 vs. 127, 2007: 214 vs. 147). TGS and Genel-İş had a close contest in a single election, whereas the contention in the Türk-İş Confederation in both elections was less in respect of the candidates' proportion of the vote. It can be argued that since the organizational structure of confederations is formed by autonomous unions, opposition in confederations may emerge more easily compared to unions because large member unions of the confederation each serve as a center of countervailing power. Moreover, leaders of confederational opposition have less concern over losing an election because their official position in the union hierarchy is not dependent solely on their status within the confederation itself.

It has been asserted that a lack of contest may mean merely that differences are settled informally without election shootouts (Strauss, 2000, p. 213). Table 2 cannot reflect the

informal power struggles inside the union organization that might have been concluded by reaching a consensus, or because potential contenders chose not to run for the elections for a combination of reasons, such as the perception that they may not win, or other motives arising from Turkish cultural qualities that serve to prevent open clashes of conflict, as argued by the Derelis in the literature review. This may also be another factor to explain why unions, in comparison with confederations, have fewer electoral contests but, when they do, the proportion of the votes for each candidate is closer.

The electoral results shown in Table 2 do not provide any data on the electoral contention in union branches, which may be stronger compared to the central union contention of leadership. For instance, Birleşik Metal-İş officials stated that although they had a single list of candidates for electoral positions in the central organization for the last three periods, there was a significant amount of competition in union branches. Therefore, a case study is needed to evaluate all electoral processes in a union comprehensively, which is beyond the scope of my current analysis. In the event that there is a strong degree of electoral contention for union branch offices but a lack of any meaningful opposition in the central administrative elections, it may be concluded that the lack of autonomy of union branches hinders their contribution to democracy, since they cannot function as relatively independent bases of power in the organizational structure that can produce an alternative to the incumbent leadership and sustain an opposition.

This chapter has established the final components of formal union organization in the Turkish context. Even though the provisions of the new union law make union democracy vulnerable through natural delegation, all of the sample union statutes have

regulated the issue within democratic limits that were imposed more strictly within the older union law regime. However, the double delegation system poses serious issues of concern for union democracy, as the rank and file members drift further away from participation in decision-making processes as the size of the organization grows. This detrimental effect should be countered by mechanisms that favor less delegation (in the form of adopting only second level delegation, leaving union branches to be formed directly by the members; or keeping the member/delegate proportion to a minimum), the direct election of central union leadership through referenda outside general assembly meetings, or the establishment of other union organs that ordinary members may attend. The role of shop stewards is vital when first level delegation exists, and their fair election by the members in workplaces ensures that the rank and file maintains communication within the union hierarchy. Turkish unions are divided on the issue of elections or appointment of shop stewards, reflecting problematic practice in respect of democratic conduct.

The electoral results among the union samples indicate that there is little tangible opposition in the current Turkish context of unionism, and that close competition exists in either smaller unions with skilled workers or in nationwide confederations, but not inside large trade union organizations between these two groups. The large unions, on the other hand, have experienced almost no electoral contention in their last three periodical elections. Membership rights and freedoms, the formal organizational structure of unionism, and the double delegation system examined in this chapter are undoubtedly direct determinants of the absence of organized opposition and therefore the single electoral list of candidates in these unions.

CONCLUSION

Until the 1961 Constitution era, unionism in Turkey was directly controlled by the state and political parties through both legal and informal mechanisms, and the collective functions of unions were drastically limited. Even though the rapid unionization in the period between 1963 and 1980 was matched by hard won gains of the labor movement at large and of the organizational freedom that was exercised through collective agreements and strikes, union leaders of this period established indisputable oligarchies and left little room for union democracy by developing various internal mechanisms to eliminate dissent and potential opposition, as detailed in the study. State control in the early stages of unionism were replaced by oligarchic control and permanency of the leaders. The 1982 Constitution and the union laws of 1983 would aim to resolve this democratic deficit in a very limited and problematic manner while simultaneously restricting several freedoms.

Most of the major western union democracy studies focus on the internal dynamics of specific union organizations as the primary determinants of democratic conduct, instead of the external rules (laws) which in general regulate the structure of unionism less compared to the Turkish case. Since the ratification of the Constitution and Act Nos. 2821 and 2822, Turkish laws have strictly defined the boundaries of the unionism terrain on which democratic struggles are fought. These laws, compared to the older Trade Unions Act No. 274, limited collective union freedom by making it harder to establish unions that possessed the right to make collective agreements; prohibiting occupational and workplace unionism; making locals (branches) completely dependent

on the central administration; enforcing an ineffective mandatory arbitration system; and limiting types and procedures of strikes. The burdensome notary act procedures required to join or leave a union, as well as the limits on union founding and becoming officials, were serious issues that inhibited unionization. These two issues are related to both individual and collective union freedoms, thereby having a detrimental impact on both unionization and internal union democracy. The new Act No. 6356 of 2012 gave priority to organizational autonomy by leaving several membership issues to regulations in union statutes. Most prohibitions and limitations on union membership, union founding, and becoming officials were lifted. In general, the new law has created a more favorable climate for union democracy by eliminating several restrictions and burdensome procedures on membership acquisition and resignation, as well as being more inclusive on the issues of leadership qualifications, while providing more individual protections against arbitrary actions from the top compared to both systems imposed by Act No. 274 of 1963 and Act Nos. 2821 and 2822 of 1983. The decrease of the authorization barrage based on industries from ten percent to one percent is also an important change for unionism, and has an indirect positive effect on democracy by reinforcing pluralism. However, new problematic areas such as the e-State system and the entrustment of several issues to lesser regulations (*yönetmelik*) issued by the Ministry instead of statutes have emerged within the new union law regime.

It is observed in the study that positive and negative (individual) union freedoms are direct determinants of union democracy. It is beyond doubt that by ensuring these freedoms are put into practice, laws can contribute to democratic conduct. However, formal measures that excessively or improperly promote certain aspects of democracy

may conflict with the principles of freedom to organize, union protection, and discipline, which are essential for the effective operation and wellbeing of the organization. In that sense, trying to increase participation in decision-making or impose intrusive schemes to break the bureaucratic hierarchy of the organization through the force of law is a futile attempt to enforce union democracy. The original version of the late Trade Unions Act No. 2821's provision that prohibited the re-election of mandatory union organ members for more than four consecutive terms is a perfect example of imposing leadership change through the force of law and not through internal decision-making mechanisms. Change of leadership is an indicator of democracy only when the members themselves produce opposition inside the organization, not when an automated law enforcement mechanism provides it. In this sense, such an artificial intervention cures the symptom instead of the disease itself. This kind of cure may also hurt the organization more than help its democratic administration. As elaborated in the literature review, oligarchs come up with various formal and informal methods of dealing with potential opposition and securing their permanent tenure. In the example above, union leaders, by designing the organizational structure for their own advantage through decades of control, were able to informally empower their successors to govern the union on their behalf in order to return to formal leadership positions in the next elections. In other cases, union leaders who had high skills and knowledge of the union affairs would be eliminated, weakening the organization. In sum, intervention from above through the force of law would in certain cases do the organization more harm than good. Union laws must secure the practical use of individual rights and freedoms, and not interfere excessively with internal organizational processes to the point that

unions cannot function effectively, which would also hinder their operation in the wider society, while representing their members or the working class at large. An optimal balance between individual freedoms and union protection shall be provided by the law, as well as the promotion of collective union freedom.

The formal, centralized nature of the Turkish unionization structure has direct repercussions for union democracy. The utilization of the double delegation system and the lack of union branch autonomy, combined with authorization barrages on the basis of industry, give absolute control of the organization to the central union administration, which is commonly elected according to a single list together with the other compulsory organs that are formally meant to produce a separation of powers in the organizational hierarchy, but fail to do so precisely because of the nature of general assembly procedures. The electoral results analyzed in the study indicate that there is a lack of institutionalized opposition in almost all of the sample unions. This is a reflection of the organizational structure of unionism in which the branches are largely controlled by the central administration, and the participation and communication channels between branches and ordinary members are non-existent unless the organization is small and/or there are other processes to counteract the problems of delegation and separation of powers. For the emergence of organized opposition, the union has to accommodate an internal mechanism that loosens the grip of bureaucratic hierarchy and serves as a basis to produce autonomous centers of power that may create contention for leadership offices. Turkish union laws do not and cannot impose this feat directly unless there is a radical change in the unionization structure (e.g., by bringing back local unions and federations of the pre-1982 era, which provided a more decentralized model of

organization). Empowering branches with rights to prevent the administration's arbitrary termination or mergers of branches, and/or with functions such as collective bargaining and the adoption of master agreement procedures as proposed by Dereli in the pre-1980 context, can be indirect remedies to support democratic conduct without interfering with the freedom to organize. As the study indicates, a few of the sample unions have adopted such mechanisms in their inner regulations, further reinforcing other democratic rules that commonly exist in these unions.

In addition to such changes, either through the more adequate method of self-regulation in statutes or through the force of law, organs other than the three mandatory boards that can be established by the union statutes may have a major role in creating a sustainable democratic climate if they are empowered with the means of checking and balancing the top leadership. The study has revealed that in a couple of the sample union organizations, these organs have formal power to control the operations of the administrative board, to check and push for the implementation of the decisions taken by the general assembly, and even to punish the leaders on the basis of misconduct. The potential democratic contribution of such organs cannot be overstated. Since the branches cannot function as centers of organized opposition, these organs—when they are composed of key officers that include local leaders and shop stewards—may break up the linear relationship between members and administration and serve as a constant communication channel inside the organization that is separate from the bureaucratic hierarchy. I also emphasize that the adoption of other formal measures to increase participation and representativeness should be considered by both lawmakers and unions themselves, such as the election of the central administration by the members

instead of delegates in a process separate from union general assembly meetings, which ordinarily meets at long intervals and produces organs under the domination of a single group.

Although union statutes are reviewed by the Ministry, which may demand the organization to amend them in accordance with the related legal provisions, there are several regulations in the sampling that conflict with either Act No. 6356 or democratic principles as stipulated by the Constitution. Furthermore, some of the sample union statutes are unclear on the distribution of delegates to attend the union (central) general assemblies, as indicated in the study. In the case that the administrative board can directly decide on the quantity of delegation for specific branches, they can alter the decision-making processes to their own unfair advantage.

Throughout the study, two of the four smaller sample unions (TGS and Güvenlik-Sen) proved to be more democratic in terms of formal internal rules compared to the group of larger unions in the sampling. These two unions' inner regulations confirm the hypothesis that smaller union organizations formed by a skilled workforce tend to be more democratic. However, this confirmation shall be considered as partially valid, since the electoral data at hand fail to provide the necessary variables for a comparative analysis of contention (and therefore of institutionalized opposition) among the smaller unions, as only one of the four samples, TGS, supplied the related documentation (which also indicates electoral contention that is non-existent for most of the samples). Consequently, the study concludes with concerns over the actual practice of democracy in these unions (and in one confederation and one medium-sized union that did not respond to any correspondence) on the basis of a lack of transparency.

The comparison of the three sample unions in the metal industry (Birleşik Metal-İş, Çelik-İş, and Türk Metal) suggests that union size and organizational strength are not the sole determinants of democracy. Although Birleşik Metal-İş and Çelik-İş are medium-sized unions with approximately the same number of members (31,066 and 32,192 respectively) which possess members with the same qualities and work conditions, Birleşik Metal-İş stands out as one of the most democratic unions in the sample in terms of formal rules, as indicated throughout the study, whereas Çelik-İş has more ambiguous rules in its statutes compared to both Birleşik Metal-İş and the largest union in the country, Türk Metal (166,250 members). Moreover, Çelik-İş is the only organization among the three that has not responded to any correspondence attempts, preventing a comparative analysis of electoral contention in the industry.

However, with its democratic rules, Birleşik Metal-İş still fails to produce contention in central elections for top posts, in parallel with Türk Metal, which also has no prominent formal rules or related practices that are to be considered antidemocratic. I assert that organized opposition can be realized only when autonomous centers of power outside the direct control of the central administration exist within the organization, and due to the excessive centralized character of Turkish unionism in the post-1982 era, neither union branches nor the mandatory organs provided by the law in the current context can fulfill this role, or function as a true separation of powers, or function as a mechanism of checks and balances without the assistance of other factors as discussed above. The lack of communication channels separate from the central administration or leadership training opportunities normally provided by relatively independently functioning locals/branches, combined with limited member participation stemming from multiple

levels of delegation and representation, ensures that there is little room for the emergence of any sustainable opposition.

In the case that future organizational studies focus on specific unions instead of a general elaboration of several samples, the stages of participation in which democratic conduct starts to fail in producing representative results, and when potential opposition is swayed away from becoming organized against the incumbent leaders, may be identified and elaborated more accurately. The close examination of all decision-making processes, starting from the workplace (election or direct appointment of shop stewards, the formation of the union branch by the delegates or members, elections of branch organs and branch/central general assembly meetings) and ending with the election of central administration, is crucial for the identification of problems that create an unfavorable climate for democracy. Union-specific organs and their functions in supporting (or hindering) democratic conduct may also be evaluated in a more precise manner in such case studies. The perceptions and motivations of rank and file workers in matters of participation and opposition on the basis of legitimacy or tolerance are undoubtedly another aspect heavily influencing the internal political climate of unions, and deserves closer attention to facilitate a comprehensive theory on democracy, both inside unions and in terms of what the workers expect from their organizations in respect of their role in the wider society. Legal rules and internal regulations both reflect and determine the outcomes of such behavioral patterns, and shall not be neglected in these theories.

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APPENDICES

Appendix A:

Hizmet-İş Branch General Assemblies Delegate Election Regulations

HİZMET-İŞ ŞUBE GENEL KURULLARI DELEGE SEÇİM YÖNETMELİĞİ

MADDE 1. İLAN, BAŞVURU ve DELEGE ADAYLARININ TESPİTİ:

Delege seçimleri; Şubeye bağlı işyerleri ve çalışan üye işçi sayıları esas alınmak suretiyle, Şube Genel Kurulu tarihinden en erken 3 ay ve en geç 1 ay önce tamamlanacak şekilde, Genel Yönetim Kurulunun belirlediği tarihlerde yapılır.

Üye işçiler, kadrolarının bulunduğu işyerinde oy kullanabilir ve delege adayı olabilirler.

Üye işçilerin, kadrolarının bulunduğu işyerleriyle fiilen görev yaptıkları işyerlerinin farklı olması halinde, üye işçiler fiilen görev yaptıkları işyerlerinde oy kullanabilir ve delege adayı olabilirler.

Delege seçimlerinden önceki altı aylık dönem içerisinde üye işçilerin görev yerlerinin değişmiş olması halinde, üye işçiler, tercihlerine göre yeni görev yerlerinde veya değişiklik öncesi görev yerlerinden birinde oy kullanabilirler ve aday olabilirler.

Delege adayları, ilan tarihinden itibaren üç işgünü içerisinde, başvuru dilekçesini (EK-4 dilekçe örneği) doldurmak suretiyle bizzat şube başkanlığına başvuru yaparlar. Şube başkanlığı tarafından, süresi içerisinde yapılmayan delege adaylığı başvuruları kabul

edilmez. İlan süresi içerisinde, başvuru dilekçesini doldurarak şube başkanlığına başvuran delege adayına, alındı belgesi (EK-5 alındı belgesi örneği) verilir. Şube Başkanlığınca süresi içerisinde yapılan delege adaylık başvurusu dilekçesinin alınmaması veya alındı belgesi verilmemesi halinde, delege adayları başvurularını, bizzat veya faks yoluyla Hizmet-İş Sendikası Genel merkezine, aynı süre içerisinde yapabilirler.

Genel yönetim kurulunca görevlendirilen kişi tarafından, şube yönetim kuruluna veya sendika genel merkezine yapılan başvurular esas alınmak suretiyle, delege seçimi yapılacak işyeri veya işyerlerindeki delege adayları, alfabetik isim sırasına ve çarşaf liste usulüne göre birleştirilmek suretiyle, delege seçiminin yapılacağı tarihten önce, delege aday listesi (EK-6 işyeri delege aday listesi örneği) hazırlanır. Hazırlanan delege aday listesi, sendika şubesi ile delege seçiminin yapılacağı işyeri veya işyerlerinde bir çalışma günü süresince ilan (EK-7 delege adaylığı ilan tutanağı örneği) edilir.

İlan asma (EK-2 ilan asma tutanağı örneği) ve ilan indirme tutanakları (EK-3 ilan indirme tutanağı örneği), genel yönetim kurulunca görevlendirilen kişi ile şube yönetim kurulunun kendi arasından görevlendireceği bir üye birlikte, işyeri veya işyerlerinde çalışan bir üye tarafından imzalanır. İlan indirme tutanağı imzalayacak üyenin delege adayı olmaması esastır. İşyeri veya işyerlerinde delege adayı olmayan üyenin bulunmaması halinde (üye sayısının yetersiz olması halinde) ilan asma ve ilan indirme tutanakları, genel yönetim kurulunca görevlendirilen kişi ile şube yönetim kurulunun kendi arasından görevlendireceği üye tarafından imzalanır.

Genel yönetim kurulunca delege seçimini sevk ve idare etmek üzere görevlendirilen kişi veya şube yönetim kurulu tarafından, delege seçiminden önce ilgili işveren ile mülki amirliğe yazılı şekilde bilgi verilir.

MADDE 2. SANDIK KURULU:

Sandık kurulu; delege seçimlerini yapmak üzere görevlidir. Sandık kurulu, Genel Yönetim Kurulunca görevlendirilen kişinin başkanlığında, Şube yönetim kurulunun kendi aralarından seçeceği bir kişi ve delege seçiminin yapılacağı işyeri veya işyerlerinde çalışan ve delege adayı olmayan üyelerden bir kişi olmak üzere, toplam üç kişiden oluşur. Sandık kuruluna, genel yönetim kurulunca görevlendirilen kişi başkanlık yapar.

Sandık Kurulu Başkanı, seçimler sırasında Şube Genel Kurulları Delege Seçim Yönetmeliğine uygun hareket edilmediğine kanaat getirdiği takdirde, seçimleri tatil eder ve durumu bir rapor ile Genel Yönetim Kuruluna bildirir. Seçimlerin tatil edildiği, işyeri veya işyerlerinde ilan edilir. Bu durumda, işyerinde veya işyerlerinde seçimlerin yapılacağı tarih, Genel Yönetim Kurulunca yeniden tespit edilir. İşyerinde veya işyerlerinde ilan edilir.

Sandık Kurulu; işyeri veya işyerlerindeki işçi sayısını, çalışma sürelerini ve ilanda belirtilen süreleri göz önünde bulundurarak, üye işçilerin oy kullanma süresini tespit eder.

MADDE 3. DELEGE TESPİTİ:

Şube genel kurulu, üye sayısının 200'den az olması halinde üyelerle, 200'den fazla olması halinde delegelerle toplanır.

Şube yönetim kurulu, şube denetleme kurulu ve şube disiplin kurulu asil üyeleri, şube genel kuruluna delege olarak katılırlar.

Şube genel kurulunu oluşturacak delegeler, şube genel kurul tarihinden en az 1 ay önce, genel yönetim kurulunca belirlenen tarihlerde, şubeye bağlı işyeri veya işyerlerinde çalışan üyeler arasından serbest, eşit, gizli oy, açık sayım ve döküm esasına göre, 6356 Sayılı Sendikalar ve Toplu İş Sözleşmesi Kanunu, Türk Medeni Kanunu, Dernekler Kanunu, Ana Tüzük, genel kurul kararları, ilgili yönetmelik ve genel yönetim kurulu kararları esas alınmak suretiyle seçilirler.

Şubeye bağlı işyerlerinde çalışan toplam üye sayısı, şube genel kurulunu oluşturacak delege sayısına bölünmek suretiyle, delege tespitine esas üye sayısı belirlenir. Şubenin faaliyet alanı içinde bulunan her bir işyerinde çalışan üye sayısı, delege tespitine esas sayıya bölünerek, her bir işyerinin çıkaracağı delege sayısı tespit edilir.

Delege seçimi yapılacak tüzel kişiliğin birden fazla işyerinden oluşan işletme olması halinde, genel yönetim kurulunun kararına göre işletmeye bağlı işyerlerinde ayrı ayrı delege seçimi yapılabileceği gibi, işletmeye bağlı işyerlerinin tamamı birleştirilmek suretiyle delege seçimi yapılabilir.

Genel yönetim kurulu, üye sayılarına göre, şubeye bağlı işyeri veya işyerlerinden, işletmeye bağlı işyerlerinin her birinden veya işletmenin bütününden seçilecek delege

sayısını, şubeye, yazılı olarak bildirir. Delege sayısının tespitinde, yarıdan fazla sayılar tam kabul edilir.

Şubeye bağlı ve tüzel kişiliğe sahip işyerlerinin delegeleri ayrı ayrı seçilir. İşyerinde çalışan üye sayısı delege seçmeye yetmiyor ise, işyeri en yakın işyeri veya işyerleriyle birleştirilmek suretiyle delege seçimi yapılır. Birleştirme işleminin yapılmasında, işçi sayısının delege seçimine esas en yakın sayıya ulaşması göz önünde tutulur. Birleştirilen işyerlerinde yapılması gereken delege seçimleri, birleştirilen işyerleri bakımından en uygun yer seçilerek yapılır. İlan, birleştirilen her işyerinde ayrı ayrı yapılır. Tüzel kişiliği bulunan işyerlerinde çalışan üye sayısının, bir delege tespiti için gereken sayının yarısına ulaşması veya yarısını geçmesi halinde, tüzel kişiliğe sahip işyerine bir delege verilir.

Şube yönetim kurulu, şube genel kurul tarihinden önce, şubeye bağlı işyeri ve işyerlerinde çalışan işçilerin ilgili işverenlerinden, T.C. kimlik numaralarını kapsayacak şekilde alacakları onaylı listeleri ile SGK'ya verilmiş en son aya ait aylık prim bildirge listelerini genel yönetim kuruluna gönderir. Buna göre;

a) Şube genel kurulu, şubeye bağlı işyeri veya işyerlerinde çalışan üye sayısı 200'ün altında ise üyeler ile yönetim kurulu, denetleme kurulu ve disiplin kurulu asil üyelerinden oluşur.

b) Şube genel kurulu, şubeye bağlı işyeri veya işyerlerinde çalışan üye sayısı, 201 ile 300 arasında ise üyeler arasından seçilecek 50 delege ile yönetim kurulu, denetleme kurulu ve disiplin kurulu asil üyelerinden oluşur.

c) Şube genel kurulu, şubeye bağlı işyeri veya işyerlerinde çalışan üye sayısı, 301 ile 400 arasında ise üyeler arasından seçilecek 60 delege ile yönetim kurulu, denetleme kurulu ve disiplin kurulu asil üyelerinden oluşur.

d) Şube genel kurulu, şubeye bağlı işyeri veya işyerlerinde çalışan üye sayısı, 401 ile 500 arasında ise üyeler arasından seçilecek 70 delege ile yönetim kurulu, denetleme kurulu ve disiplin kurulu asil üyelerinden oluşur.

e) Şube genel kurulu, şubeye bağlı işyeri veya işyerlerinde çalışan üye sayısı, 501 ile 1000 arasında ise üyeler arasından seçilecek 100 delege ile yönetim kurulu, denetleme kurulu ve disiplin kurulu asil üyelerinden oluşur.

f) Şube genel kurulu, şubeye bağlı işyeri veya işyerlerinde çalışan üye sayısı, 1001-2000 arasında ise üyeler arasından seçilecek 125 delege ile yönetim kurulu, denetleme kurulu ve disiplin kurulu asil üyelerinden oluşur.

g) Şube genel kurulu, şubeye bağlı işyeri veya işyerlerinde çalışan üye sayısı, 2001-3000 arasında ise üyeler arasından seçilecek 150 delege ile yönetim kurulu, denetleme kurulu ve disiplin kurulu asil üyelerinden oluşur.

h) Şube genel kurulu, şubeye bağlı işyeri veya işyerlerinde çalışan üye sayısı, 3001’den fazla ise üyeler arasından seçilecek 175 delege ile yönetim kurulu, denetleme kurulu ve disiplin kurulu asil üyelerinden oluşur.

MADDE 4. DELEGE SEÇİMİ:

Delege seçimi, tespit edilen yer, gün ve saatte, genel yönetim kurulunca delege seçimini sevk ve idare etmek üzere görevlendirilen yetkilinin huzurunda yapılır.

Delege seçimi yapılacağına dair ilan asma ve ilan indirme tutanaklarında, delege aday listelerinin düzenlemesinde ve delege seçimlerinin yapılması sırasında, Genel Yönetim Kurulunca görevlendirilecek yetkilinin bulunmaması halinde yapılan işlemler, mutlak şekilde geçersiz sayılır.

Delege aday listesi (EK-6 işyeri delege aday listesi örneği) ile delege seçiminde kullanılacak oy pusulaları (EK-8 işyeri delege seçimi oy pusulası örneği), Sandık Kurulu Başkanınca imzalanıp mühürlenmeyen, seçilecek delege sayısından fazla işaretlenen veya özel işaret konulan oy pusulaları geçersiz sayılır. Geçersiz sayılan oyların sayısı ve nedenleri tutanakla tespit edilir. Delege seçimi sonucunda eşit oy alan delege adayları arasında kura çekilir.

MADDE 5. OY KULLANMA ŞEKLİ:

Oy verme işlemi, serbest, eşit, gizli oy, açık sayım ve döküm esasına göre yapılır.

Sandık Kurulu, işyeri veya işyerlerinden seçilecek delege sayısından fazla müracaat olmadığı takdirde, oylamaya gerek olmaksızın müracaat edenlerin delegeliğini tespit eder. Bu durum, tutanak altına (EK-9 tutanak örneği) alınır, işyeri veya işyerlerine ilan edilir.

Üyeler, kimlik belgelerini göstermek suretiyle oylarını kullanırlar. Üye olmayanlar, delege seçiminde aday olamazlar ve oy kullanamazlar.

Üyeler, oy kullanmadan önce, listed isimlerinin karşısını imzalar, üyeler sandık kurulu başkanınca imzalanıp mühürlenen oy pusulalarını, tahsis edilen yerde kullanırlar. Üyeler, delege adaylarının isimlerinin baş tarafında bulunan kutucuklara işaret koymak suretiyle, oy pusulalarını, sandık kurulunca belirlenen oy sandığına atarlar.

MADDE 6. OYLARIN SAYIMI ve SONUCUN İLANI:

Sandık Kurulunca, delege seçiminde kullanılan oylar, tasnif edilerek sayımı ve dökümü yapılır. Seçim sonuçları, üç nüsha halinde hazırlanacak tutanakla (EK-10 delege seçimi sonuç tasnif tutanağı örneği) tespit edilir. Seçim sonuç tutanakları, sandık kurulu başkanı ve sandık kurulu üyelerince imzalanır. Sandık kurulu üyelerinden herhangi birinin bulunmaması veya seçim sonuç tutanağını imzalamaması halinde, bu durum sandık kurulu başkanı tarafından bir tutanakla tespit edilir.

Seçim sonuçları, seçimi takip eden üç gün süresince, sendika şubesinde ve delege seçimi yapılan işyeri veya işyerlerinde ilan (EK-11 tasnif tutanağı ilanı örneği) edilir. Sandık Kurulu Başkanı, oy pusulalarını ve tutanakların bir nüshasını Genel Merkeze gönderir. Şubede ilan edilen sonuçlar Şube Başkanlığınca saklanır.

MADDE 7. İTİRAZ SÜRESİ ve İTİRAZIN KARARA BAĞLANMASI:

Genel yönetim kurulu, 6356 Sayılı Sendikalar ve Toplu İş Sözleşmesi Kanunu, Dernekler Kanunu, Ana Tüzük, genel kurul kararları ve bu yönetmelik hükümlerine

uygun şekilde yapılmayan delege seçimlerini, re'sen veya itiraz üzerine kısmen veya tamamen iptal edebilir.

Delege seçimlerine yapılacak itirazlar, seçim sonuçlarının ilan edilmesinden itibaren üç gün içinde, Genel Yönetim Kuruluna yapılır. İtiraz süresinin son gününün, tatil gününe rastlaması halinde, itiraz süresi takip eden ilk mesai günü, mesai bitiminde sona erer. İtiraz dilekçesinin, bizzat verilmesi, iadeli taahhütlü mektupla veya faks yoluyla gönderilmesi zorunludur. İtiraz dilekçesinin faks yoluyla gönderilmesi halinde, dilekçe aslının itiraz süresi içerisinde iadeli taahhütlü şekilde PTT'ye verilmesi zorunludur. Genel merkeze bizzat yapılan itirazlarda, itiraz edene, itiraz dilekçesinin alındığına dair, alındı belgesi verilir.

İtiraz halinde, genel yönetim kurulu, itiraz dilekçesinin aslının alındığı veya genel merkeze ulaştığı tarihten itibaren 5 gün içerisinde gerekli incelemeyi yaparak, delege seçimlerinin onanmasına, kısmen veya tamamen iptaline karar verebilir. Genel Yönetim Kurulunun kararı kesindir.

Genel yönetim kurulunca, re'sen veya itiraz üzerine, delege seçimlerinin kısmen veya tamamen iptaline karar verilmesi halinde, delege seçimleri, karar tarihinden itibaren on beş gün içinde yenilenir.

MADDE 8. YÜRÜRLÜLÜK SÜRESİ:

İşbu yönetmelik ve EK'leri Ana Tüzük hükümleri gereğince, Genel Yönetim Kurulunun 03.09.2014 tarih ve 11/302 sayılı kararı ile kabul edilmiş ve 03.09.2014 tarihinde

yürürlüğe konulmuştur. İşbu yönetmelik EK'leri (EK-3, EK-4, EK-7) Genel Yönetim Kurulumuzun 01.10.2014 tarih ve 11/322 sayılı kararı ile yeniden düzenlenmiştir.

Bu yönetmeliğin uygulanmasına, gerekli görüldüğü hallerde kısmen veya tamamen değiştirilmesine veya iptaline, Genel Yönetim Kurulu yetkilidir.

MADDE 9. GEÇİCİ MADDE:

Şube Genel Kurulları Delege Seçim Yönetmeliğinin yürürlüğe girdiği tarihten önce, uygulanan Şube Genel Kurulları Delege Seçim Yönetmeliği hükümleri yürürlükten kaldırılmıştır.

Hizmet-İş Sendikası Genel Yönetim Kurulunca, bu Yönetmeliğin yürürlüğe girdiği tarihten önce, yürürlükten kaldırılan Şube Genel Kurulları Delege Seçim Yönetmeliği hükümlerine göre yapılan işlemler geçerlidir.

EKLER: Belge Örnekleri

Appendix B:

Birleşik Metal-İş Branch General Assembly Delegate Election Regulations

BİRLEŞİK METAL İŞÇİLERİ SENDİKASI

ŞUBE GENEL KURULU DELEGE SEÇİM YÖNETMELİĞİ

MADDE 1- YÖNETMELİĞİN AMACI:

İşbu yönetmeliğin amacı; Anatüzüğümüzün 26 ıncı maddesi uyarınca, üye sayısı 500'ü aşan şubelerde, Şube Genel Kurulunu oluşturacak delegelerin seçiminde uygulanacak esas ve usullerin belirlenerek, tüm şubelerde uygulama birliğinin sağlanmasıdır.

MADDE 2- DELEGELERİN NİTELİĞİ:

Tüm sendika üyeleri, delege seçimine katılma, seçme ve seçilme haklarına sahiptirler.

Seçilen delegeler, delegelik sıfatlarını yitirmedikleri sürece, seçimi izleyen ilk olağan genel kurul ile bir sonraki olağan genel kurul öncesinde yapılacak yeni delege seçimlerine kadar geçen süre içinde toplanacak olağanüstü genel kurullara katılma hakkına sahiptir.

MADDE 3- DELEGE SEÇİMİ HAZIRLIKLARI:

Şube yönetim kurulu, genel yönetim kurulunun yazılı olurunu almak koşuluyla belirlediği olağan şube genel kurul tarihinden yirmi gün önce sonuçlanacak biçimde, şube delege seçim takvimini hazırlar.

Bu takvimde:

a) Delege seçimlerinin başlangıç ve bitiş tarihleri,

b) Şubeye bağlı işyerleri için delege seçiminin yapılacağı yer, gün ve saatler saptanır.

Delege seçim takviminin bir nüshası genel merkeze gönderilir. Genel merkez, üç işgünü içinde şubeye bağlı işyerlerindeki üyeleri gösteren üye listelerini ve her işyerinden seçilecek delege sayısını şube yönetim kuruluna bildirir.

MADDE 4- SEÇİMLERİN DUYURULMASI:

a) Şube yönetim kurulu, delege seçimi yapılacak işyerlerinde çalışan üyelerin sayılarıyla, her işyerinden seçilecek delege sayılarını şube ilan tahtasında üç gün süreyle ilan eder.

Askı süresi içinde işyerlerinin üye ve delege sayılarına karşı genel yönetim kurulu nezdinde itiraz edilebilir. Genel yönetim kurulu bu itirazları askı süresinin bitmesini takip eden iki iş günü içinde kesin olarak karara bağlar. İtirazlar sonucunda daha önceki tespitlerde bir farklılık olmuşsa, son durumu gösterir listeler ile delege sayılarını şubeye gönderir.

b) Şube yönetim kurulu, işyerleri delege sayılarının kesinleşmesini takiben, delege seçimi yapılacak işyerinde çalışan üyelerin isim listesini (Ek-1 işyeri delege seçimi duyurusu) örnek duyuru ile birlikte seçim gününden 7 gün önce işyeri ilan tahtasına, bu mümkün değil ise, şube ilan tahtasına, bu da mümkün değilse, şube yönetim kurulu tarafından belirlenecek yere, üyelere duyurulmak kaydıyla asar.

İşyerinde çalışan üyelerin isim listelerine ilişkin ilan, üç gün süreyle askıda kalır. İşyeri delege seçim duyurusu ise delege seçimi tamamlanıncaya kadar askıda kalır

İlan süresi içinde üyeler, şube veya genel merkeze başvurarak listeye itiraz edebilir.

İtirazlar askı süresini takip eden iki işgünü içinde başvurulan kurul tarafından incelenerek kesin olarak karara bağlanır ve sonuç ilgili üyeye; karar genel yönetim kurulu tarafından verilmiş ise, şube yönetim kuruluna bildirilir.

MADDE 5- DELEGE ADAYLIĞI BAŞVURUSU:

Delege adaylığı başvuruları, seçim gününden önceki ikinci günün çalışma saatleri sonuna kadar şube yönetim kurulu üyelerine veya genel yönetim kuruluna yapılır. Genel yönetim kuruluna yapılan başvurular ilgili şubeye bildirilir.

Sendika şubesinin bulunduğu il sınırları dışında bulunan işyerlerinde yapılacak seçimler için adaylık başvuruları baştemsilci veya onun yokluğunda yerine bakan temsilci veya temsilci ataması yapılmamış işyerlerinde, şube yönetim kurulunca belirlenerek ilanda duyurulmuş bulunan üyeye de yapılabilir.

İşyerinde yapılacak delege seçiminde, seçilecek delege sayısı 10'un altında ise bu sayıdan en az bir fazla delege adayının, seçilecek delege sayısı 10 ve 10'un üzerinde ise bu sayıdan en az %10 fazla sayıda delege adayının başvuru yapmaması halinde, delege seçim duyurusunda ilan edilen başvuru süresi ve delege seçim tarihi yedi gün uzatılır. Bu süreler sonunda müracaat eden delege adayları ile delege seçimi yapılır.

Adaylık başvuruları (Ek-2A) örnek form ile yapılır. Delege adaylığı için başvuran üyeye, başvuruyu alan yetkili tarafından görevi ve adı soyadı yazılmak suretiyle imzalandıktan sonra (Ek 2B) örnek formu verilir.

MADDE 6- OY PUSULALARI:

Delege adaylığı başvuru süresinin bitiminden sonra kesinleşen delege aday listesi, şube yönetim kurulunca, işyerleri de belirtilerek birleşik oy pusulası haline getirilir.

Oy pusulasında adayların sıralaması, adları dikkate alınarak, alfabetik esasa göre yapılır.

Oy pusulaları oy kullanacak üye sayısı kadar çoğaltılarak şube mührü ile mühürlenir.

Oy pusulaları (Ek-2C) formunda gösterildiği şekilde hazırlanır.

MADDE 7- SEÇİM YERİ, SAATİ, VE SANDIK KURULU:

Delege seçimleri işyerinde, bu mümkün değilse şube binasında, bu da mümkün değilse şube tarafından belirlenerek üyelere duyurulan yerde ve saatler arasında yapılır.

İşyerinde çalışan üye sayısı ikiyüzün altında ise bir, üzerinde ise her ikiyüz üye için bir olmak üzere seçim sandığı konulur.

Her sandık için, o sandıkta oy kullanacak ve aday olmayan üyeler içinden sandık kurulunda görev almak isteyenler arasından kura ile belirlenen iki üye ve bir şube yönetim kurulu üyesi veya şube yönetim kurulu tarafından görevlendirilen bir başkan olmak üzere üç kişilik Sandık Kurulu oluşturulur. Sandık kurulu üyelerinin okur-yazar olmaları zorunludur.

MADDE 8- SEÇİMLER:

Seçimler, serbest, eşit, gizli oy, açık sayım ve döküm esasına göre yapılır.

Oy verme işlemine, sandık kurulu ve genel yönetim kurulunun görevlendireceği gözlemci nezaretinde başlanılır. Üyeler oylarını gizli olarak kullandıktan sonra üye listesindeki isminin karşısındaki yeri imzalar.

Oylar, oy verme sırasında sandık kurulu tarafından verilen mühürlü oy pusulalarında tercih edilen adayın isminin işaretlenmesi ile kullanılır. Mühürsüz veya seçilecek delege sayısından fazla adayın isminin işaretlendiği oy pusulaları ile başka şekillerde kullanılmış oylar geçersizdir.

Oy verme işlemi sonunda tasnif, sandık kurulu tarafından ve açık biçimde yapılır.

Tasnif sonuçları (Ek-3) örnekteki tutanağa geçilerek imzalanır. Adayların aldığı oy sayıları boş bir oy pusulasında adayların isimlerinin yanına aldıkları oy sayısı yazılmak ve pusulanın altı, sandık kurulunca imzalanmak suretiyle de tutanağa alınır. Üç nüsha düzenlenen tutanağın bir nüshası temsilcilik odasında veya şubede üç gün süre ile askıya çıkarılır. Birer nüshası, genel merkez ve şubeye verilir.

Seçimlerde birden fazla adayın eşit oy alması durumunda yapılacak sıralamada, öncelikle sendika tüzüğünde belirlenmiş organlarda görev alınması veya eğitimlere katılması hali öncelik sağlar. Burada da farklılık yoksa, öğrenim durumuna bakılır. Öğrenim durumlarının aynı olması halinde kura yoluna başvurulur.

Birden fazla sandığın kullanıldığı seçimlerde seçim sonuç tutanakları, şube yönetim kurulunca birleştirilir.

Askı süresi içinde yapılacak itirazları inceleme yetkisi, genel yönetim kuruluna aittir.

Yapılacak itirazlar, askı süresini takip eden iki işgünü içinde karara bağlanır.

Oy pusulaları ve diğer belgeler iki ay süre ile şubede saklanır.

MADDE 9- KADIN VE ERKEK ÜYELERİN TEMSİLİ:

Seçim yapılacak işyerinde çalışan kadın veya erkek üyelerin oranı, çalışan toplam üyelerin % 10'unu geçiyorsa, işyerinden şube genel kurulu için yapılan delege seçimlerinde bu cinsiyetten aday bulunması kaydıyla seçilen delegeler arasında bu cinsiyete delege sayısının en az % 10'u oranında temsil olanağı sağlanması zorunludur.

Bu maddede düzenlenen ve kota uygulanması gereken durumlarda, belirtilen kota tamamlanıncaya kadar, kadın veya erkek üyelerden en yüksek oyu almış bulunanlar delege olmaya hak kazanır. Kalan eksik delegelikler için cinsiyetlerine bakılmaksızın, en çok oy alanlara göre sıralama yapılır.

MADDE 10- YÜRÜRLÜK

İşbu yönetmelik Genel Yönetim Kurulunun 03.08.2007 tarih ve 375 sayılı kararıyla kabul edilerek yürürlüğe girmiştir.

Appendix C:

Genel-İş Branch General Assemblies and Delegate Election Regulations

GENEL-İŞ SENDİKASI ŞUBE GENEL KURULLARI

VE DELEGE SEÇİMİ YÖNETMELİĞİ

MADDE 1: KAPSAM VE AMAÇ

Bu yönetmelik, Sendika Anatüzüğünün 29. maddesinin (b), (c), (d), (e), (f) fıkraları kapsamına giren şubelerin genel kuruluna katılacak delegelerin seçimi ile Şubelerin genel kurullarının yapılmasına ilişkin hususları düzenler.

MADDE 2: ŞUBE GENEL KURULU

Şube Genel Kurulu, Şube Yönetim Kurulu, Denetim Kurulu ve Disiplin Kurulu Üyeleri ile

a) Üye sayısı 500'e kadar olan Şubelerde, tüm üyelerin katılımıyla,

b) Üye sayısı 501'den 1000'e kadar olan Şubelerde, üyeler arasından seçilen 100 delegeden,

c) Üye sayısı 1001'den 2000'e kadar olan Şubelerde, üyeler arasından seçilen 150 delegeden,

d) Üye sayısı 2001 'den 3000'e kadar olan Şubelerde, üyeler arasından seçilen 175 delegeden,

e) Üye sayısı 3001 'den 5000'e kadar olan şubelerde, üyeler arasından seçilen 200 delegeden,

f) 5001'den çok olan Şubelerde ise üyeler arasından seçilen 250 delegeden oluşur.

Delegelerin toplamı 250'den çok olamaz. Delegelerin işyeri bölümlerindeki üyelerin tümünü temsil edecek biçimde seçilmelerine özen gösterilir.

MADDE 3: DELEGE SAPTANMASINDA KURAL

Anatüzüğün 6. maddesindeki koşulları taşıyan sendika üyeleri delege seçilebilirler.

a) Şubenin çalışma alanında bulunan bütün işyerleri ayrı ayrı dikkate alınarak işyeri ayrımı yapılır. Genel Merkezce gerekli görüldüğünde 50'den az üyesi olan işyerleri birbirlerine yakınlığı da gözetilerek tek bir işyeri gibi değerlendirilir ve delege seçimi buna göre yapılır.

b) Delege saptanmasında kapı-kalorifer işçisi üyelerin çalıştıkları bir mahalle bir işyeri olarak dikkate alınır, gerekli görülürse bu mahalleler de birleştirilerek bir seçim bölgesi oluşturulabilir.

c) (a) bendine göre yapılan birleştirmeler hariç olmak üzere, Sendika şubesine bağlı her tüzel kişiliğe sahip işyeri bir delege ile temsil edilir. Sendika Şubesi Genel Kurulu için seçilecek toplam delege sayısından her işyeri için ayrılan delege sayısı indirilir.

Şubenin toplam üye sayısı kalan delege sayısına bölünerek bir delege seçmek için anahtar üye sayısı bulunur.

İşyerlerinde toplam üye sayısı anahtar üye sayısına bölünerek bulunacak sayı kadar delegeler ilgili işyerleri için tahsis edilir.

d) Yukarıdaki (c) fıkrasına göre belirlenen delege sayılarının toplamı, Şube için Anatüzükte öngörülen delege tam sayısından azsa, eksik delegeler (c) fıkrası uyarınca yapılan bölme işlemleri sonucu en fazla küsuratı bulunanlardan başlamak üzere işyerlerine birer delegelik verilerek bölüştürülür. Bu işlemden sonra da eksik delegelik kalırsa, eksik delege sayısı, en çok üyeli işyerlerinden başlanarak her işyerine bir delegelik vermek suretiyle delege tam sayısına tamamlanır.

e) Yukarıdaki (c) fıkrasına göre hesaplanacak delegeler toplamı, delege tam sayısından çok olursa, artan delege sayıları en az üyeli işyerlerinden başlanarak birer delege sayısı indirilerek delege tam sayısı bulunur.

f) Anatüzüğün 29. maddesinde belirtilen delege sayıları aşılamaz. Ancak bu sayıya Şube Yönetim Kurulu, Denetim Kurulu ve Disiplin Üyeleri dâhil değildir. Bu organ üyeleri doğal delege sayılırlar.

MADDE 4: ŞUBE GENEL KURULU ÜYELİK LİSTELERİ VE LİSTELERE İTİRAZ

Şube yönetimi her işyeri için sendika üyelerinin ayrı ayrı ad ve soyadlarını gösteren üye listelerini delege seçiminden en az 7 gün önce işyerlerinde ilan eder. Üyeler işyerlerinde ilan olunan Sendika üyeleri listesine, ilan günü dâhil 3 gün içerisinde; listeye yazılması gerektiği halde adının bulunmadığı ya da yanlış yazıldığı veya listeye yazılmaması gereken başka üyelerin veya Sendika üyesi olmayan kişilerin listeye yazıldığı veya başka üyelerin ad ve soyadlarının yanlış yazıldığı gerekçesiyle şube

yönetimine itiraz edebilirler, itiraz yazı ile yapılır. Şube Yönetim Kurulu bu başvuruya 2 gün içerisinde kesin yanıt vermek zorundadır.

Kesinleşen üye listelerinin, seçimler sonrasında seçim sonuçları ile birlikte Genel Merkeze gönderilmesi zorunludur.

Üyelerin yasa gereği İş Mahkemelerine itiraz etme hakları saklıdır.

MADDE 5: DELEGE SEÇİMLERİNİN YAPILMA TARİHİ VE YÖNTEMİ

Delege seçimlerinin yapılma tarihleri, şube genel kurul tarihi Genel Merkez tarafından belirlendikten sonra, üyelerinin çoğunluğunun katılabileceği gün dikkate alınarak Şube Yönetim Kurulu tarafından saptanır. Delege seçimlerinin yer, gün ve saati işyeri ilan tahtalarına en az 7 gün önce üyelik listeleriyle birlikte asılarak duyurulur. Delege seçimleri şube genel kurulundan en geç bir ay öncesine kadar sonuçlandırılır.

Delege seçimleri serbest, eşit, gizli oy, açık - sayım ve döküm esaslarına göre görevli kurullar gözetiminde yapılır. Şubenin Olağanüstü Genel Kurulu en son Genel Kurula katılan delegelerle yapılır.

MADDE 6: SEÇİM KOMİSYONUNUN OLUŞUMU

Her işyerinde bir Seçim Komisyonu kurulur. Seçim Komisyonu bir başkan ve iki üyeden oluşur. Seçim Komisyonu, Şube Yönetim Kurulu tarafından saptanır. Bu Komisyona -Genel Merkez gerekli gördüğü hallerde- Genel Merkez'in belirlediği en fazla üç kişi daha katılabilir. Bu komisyonun görevi seçimlerin işbu yönetmelikte

öngörülen yöntem ve esaslara göre yapılmasını sağlamak ve kullanılan oyların ayrımı ve sonuçlarını tespit etmektir.

MADDE 7: DELEGE SEÇİMİNİN YAPILMASINA İLİŞKİN ESASLAR

a) Oy Zarfları:

Oy pusulalarının içerisine konulup kapatılacağı zarflar, Şube yönetimince hazırlanır ve üzeri mühürlenir.

b) Oy Sandığı:

Oy sandıklarının boş oldukları Seçim Komisyonunca üyelerin gözleri önünde saptanır; bu husus Komisyonca tutanağa bağlanır ve sandık kilitlenir. Oy sandıkları her işyeri için ayrı ayrı uygun bir yere konur.

c) Oyların Kullanılması Yöntemi:

Delege seçimine katılacak Sendika üyeleri, Seçim Komisyonunun gözetiminde ad ve soyadlarının yazılı bulunduğu listeye (kimlik tespiti yapılarak) imzalarını attıktan sonra oy kullanabilirler.

Üyeler Seçim Komisyonu tarafından hazırlatılan kapalı yerlerde Seçim Komisyonundan alacakları zarfa, oy pusulalarını koyup kapatarak oy sandığına atmak suretiyle oylarını kulladırlar.

d) Delegeliğe Aday Olmaya Gerek Bulunmadığı:

İşyerinden delege seçilebilmek için önceden aday olunduğuna dair başvuruda bulunmaya gerek yoktur. Üyeler, üyelik listesinde adı bulunan üyelerden dilediklerine oy verebilirler.

e) Oy Verilecek Delege Sayısı ve Oy Pusulaları:

İşyerinde seçilmesi karara bağlanan ve ilan edilen delege sayısı kadar delege adaylarının ve yedeklerinin belirlendiği oy pusulaları, önceden hazırlanabileceği gibi, bu pusulalara önceden yazılı olan isimler, üye tarafından çizilip ilave ya da çıkarma da yapılabilir. Bu pusulalar el yazısı veya daktilo ile düzenlenmiş veya matbu olarak basılmış ve herhangi cins, renk ve boyutta kâğıttan yapılmış olabilir.

f) Oyların Geçersiz Sayılacağı Haller:

Tek tip ve mühürlü zarflar içerisine konulmayan oy pusulaları tümden geçersiz sayılır. Oy pusulasında o işyerinde seçilecek delege sayısından fazla üyenin adı yazılmış ise fazla yazılan isimler sondan başlayarak düşülür.

Oy pusulasına imza atılamaz, oy kullananın adı soyadı yazılamaz veya hüviyetini belirtecek veya başkaca işaretler konulamaz, seçilmesi isteneni belirleyici (sendika üye listesinde yazılı olanlar dışında) bilgi eklenemez. Bu kurallara aykırı olarak düzenlenmiş oy pusulaları tümden geçersiz sayılır.

g) Oyların Geçerli Sayılacağı Haller:

Oy pusulasında o işyerinden seçilecek delege sayısından az üyenin adı yazılmış ise oy pusulası yazılan üyeler yönünden geçerli sayılır.

h) Oylama Süresi:

Oylar 08.00 ile 17.00 saatleri arasında kullanılır. İlgili işyeri delege seçim listesinde adları yazılı üyelerin tamamının oylarını kullandığının tespiti halinde seçim süresinin bitmesi beklenmeden; ilgili işyeri delege seçim listesinde adları yazılı üyelerin tamamı oylarını kullanmamış olsa dahi seçim süresi sona erdiğinde, oylama işlemine son verilir. Seçim Komisyonu durumu bir tutanakla tespit ederek oyların sayımına geçer. Ancak seçim süresi sona erdiği saatte, sandık başında oy kullanmak için sıra bekleyenler varsa, onların da oylarını kullanmaları beklenir.

MADDE 8: OY AYRIMI

Oyların ayrımı açık olarak yapılır. Seçim sonuçlarını bildiren, biri Genel Merkez'e, biri şubede kalmak, biri de işyerinde ilan edilmek üzere, üç kopya tutanak düzenlenir ve Seçim Komisyonu tarafından imzalanarak oy pusulaları ile birlikte Şube Yönetim Kuruluna teslim edilir. Seçim Komisyonu üyeleri arasında sonuçlara ilişkin mutabakat sağlanamazsa tekrar sayım yapılır.

İşyerinde seçilen delegeler en yüksek oy alandan başlanarak belirlenir. Seçilen son delegeye eşit oy verilmesi halinde tekrar sayım yapıldıktan sonra eşitlik bozulmazsa üyelerin gözleri önünde Seçim Komisyonu tarafından bir üyeye kura çektirilerek kazanan belirlenir. Asil delege sayısı kadar da yedek delege oylama sonucuna göre saptanır. Seçim sonuçlarını bildiren tutanaklar, oy pusulaları ile oy zarflan, Seçim Komisyonunca Sendika Şube Yönetim Kuruluna ağzı kapalı ve ağzı Komisyon üyelerince imzalanan zarflar içinde, belgelerin sayısını belirtir bir tutanakla birlikte teslim edilir. Bu belgeler Şube Olağan Genel Kurulu kesin sonuçlarına kadar saklanır.

MADDE 9: SONUÇLARIN İLANI VE İTİRAZ

Sonuçların bildirildiği tutanaklardan biri seçimin yapıldığı işyerinde hemen ilan edilir.

Bu seçim sonuçlarına 2 gün içinde itiraz edilebilir. İtirazlar Şube Yönetim Kuruluna yapılır. Şube Yönetim Kurulunun vaki itiraz üzerine en geç 2 gün içinde vereceği karara karşı Genel Merkeze itiraz edilebilir. Genel Yönetim Kurulu itirazın kendisine ulaşması üzerine en geç 2 gün içinde itirazı inceleyerek kesin kararı verir ve durumu itiraz edene ve şubeye yazı ile bildirir.

Ancak üyelerin İş Mahkemelerine başvurma hakları saklıdır.

MADDE 10: GENEL KURUL ÖN HAZIRLIKLARI

Şube Genel Kurullarında, Şube delege saptamalarının -varsa- itiraz aşamasından sonra, Şube Yönetim Kurulu tarafından, Genel Kurulun yapılması önerilen tarih için Genel Yönetim Kuruluna başvurularak izin istenilir. Şube Genel Kuruluna katılacak delegelerin kesinleşmesinden sonra kongrenin en geç 3 ay içinde yapılmış olması gereklidir.

Şube Genel Kurulu, Sendika Genel Kurulundan en az 2 ay önce Genel Yönetim Kurulunun belirlediği tarihte Şubenin kurulu bulunduğu yerde olağan olarak toplanır.

MADDE 11: ŞUBE BAŞKANI VE YÖNETİM KURULU ADAYLARI

Yönetim Kurulu adaylarının 6356 Sayılı Yasanın 6. maddesinde yer alan koşulları taşımaları ve Genel Kurul kararları ile üst örgüt ve organ kararlarına sendika üyeliği süresince aykırı davranışlarda bulunmamaları ve sendikal eylem ve işlemlerinden dolayı Disiplin Kurullarınca süresiz görevden alma cezası almamış olmaları zorunludur.

MADDE 12: GENEL KURULUN DUYURUSU

Sendika Genel Yönetim Kurulu tarafından Şube Genel Kurulunun tarihi belirlendikten sonra Şube Yönetim Kurulunca, Genel Kurul toplantısının gündemi ile yer, gün ve saati en az 15 gün önce şube binasında ilan edilir. Bu ilanda, çoğunluk sağlanamaması nedeniyle toplantı yapılamazsa ikinci toplantının hangi gün, saat ve yerde yapılacağı da belirtilir, ilk toplantı günü ile ikinci toplantı günü arasında bırakılacak zaman bir haftadan az, 15 günden çok olamaz.

MADDE 13: GENEL KURUL ÖNCESİNDEKİ İŞLEMLER

a) Seçimli genel kurullarda, toplantı tarihinden en az 15 gün önce, Genel Kurula katılacak üye veya delegeleri gösteren listeler, toplantının gündemi, yeri, günü, saati ve çoğunluk olmadığı takdirde yapılacak ikinci toplantıya ilişkin hususları belirten bir yazı ile birlikte, 2 nüsha olarak o yerin Seçim Kurulu Başkanlığına verilir.

b) Seçim Kurulu Başkanı olan Yargıç tarafından incelenerek onaylanan delege veya üye listeleri ile toplantıya ilişkin diğer hususlar Genel Kurulun toplantı tarihinden 7 gün önce Şube binasında asılmak suretiyle ilan edilir. İlan süresi 3 gündür.

c) İlan süresi içinde listeye yapılacak itirazlar var ise bu itirazlar konusunda Yargıç tarafından verilen kesin kararlara göre işlem yapılır. Yargıç kararıyla kesin olarak onaylanan listeler, "Genel Kurul Hazır Bulunanlar Listesi" olarak kullanılır ve toplantı ve karar yeter sayısının saptanmasında esas alınır.

d) Delegelerle toplanan genel kurullarda, delege olmayanlar; üyelerle toplanan genel kurullarda ise üye olmayanlar toplantı yeter sayısının belirlenmesinde gözetilmezler ve

hiçbir şekilde oy kullanamazlar. Toplantı yeter sayısı delege veya üye tamsayısının salt çoğunluğudur. İlk toplantıda salt çoğunluk sağlanamazsa, ikinci toplantı en çok 15 gün sonraya bırakılır. Bu ikinci toplantıya katılanların sayısı, Şube üye veya delege tam sayısının üçte birinden (1/3) az olamaz.

e) İki genel kurul toplantısı arasındaki çalışma dönemine ait şube yönetim kurulunun faaliyet ve hesap raporu ile şube denetim kurulu raporu, Genel Kurula katılacaklara toplantı tarihinden 15 gün önce gönderilir.

f) Şube genel kurul toplantıları, 6356 sayılı Yasanın 14. maddesinin getirdiği hükümler çerçevesinde, haftanın Cumartesi veya Pazar günlerinden herhangi birisi içinde yapılabilir. Görüşmeler ve seçimler aynı gün içinde tamamlanabilir.

Ancak gerektiğinde, şube genel kurul toplantıları yasal koşullar yerine getirilmek kaydıyla birden fazla güne de uzayabilir,

g) 6356 Sayılı Yasa'nın 14. maddesi uyarınca Yargıç tarafından kurulan ve 1 başkan ile 2 üyeden oluşan Seçim Sandık Kurulunun 2 üyesi, Genel Kurula katılan ama Şube organlarına ve Sendika Genel Kurul delegeliklerine aday olmayan delege veya üyeler arasından seçildiğinden, Yasanın bu konudaki hükmüne aykırı bir işlem yapılmaması için, üyelere önceden bilgi verilir.

MADDE 14: GENEL KURULUN AÇILIŞI

Genel Kurula katılacak üye veya delegeler kimlikleri saptanarak ve onaylı üye ya de delege listesindeki adlarının karşısına imzaları alınarak toplantı salonuna kabul edilirler.

Delegeler nüfus cüzdanlarını yanlarında bulundurmalıdırlar. Yeteri çoğunluğun varlığının saptanmasından sonra, Genel Kurul, Şube Başkanı, onun yokluğunda Şube Sekreteri, onun da yokluğunda yönetim kurulu üyelerinden biri tarafından açılır.

Genel Kurulu açan, Genel Kurul Başkanlık Kurulu'nun seçimini de yönetir.

MADDE 15: GENEL KURUL BAŞKANLIK KURULU

Başkanlık Kurulu, 1 Başkan ile yeter sayıda Başkan Yardımcısı ve Yazmandan oluşur ve Genel Kurula katılanların önerisi ve açık oylarıyla seçilir.

Bu Kurula seçileceklerin, Sendika üyesi veya DİSK ya da bağlı Sendikaların temsilcilerinden olması gerekir.

MADDE 16: GENEL KURUL ÇALIŞMALARI

a) Genel Kurul, çalışmalarını Başkanlık Kurulunun yönetiminde, 6356 sayılı Yasa'nın öngördüğü düzen ve genel kabul görmüş usuller içinde gündem uyarınca yürütür

b) Başkanlık Kurulu, gündemi Genel Kurulun bilgisine sunar; değişiklik önerisi olup olmadığını sorar ve gündemi oya koyarak kesinleştirir. Ancak gündemin maddelerine geçilmeden önce, Genel Kurula katılanların en az onda birinin (1/10) yazılı istemi ve Genel Kurulun kararı ile gündemde değişiklik yapılabilir.

c) Listede adı yazılı delegelerin veya üyelerin Genel Kurula katılmaları ve oy kullanmaları engellenemez.

d) Genel Kurul çalışmalarını iki şekilde yürütür:

- Genel Kurul halinde çalışmalar,

- Komisyonlar halinde çalışmalar. Genel Kurul, gündemindeki konulan ve toplantıya katılanların öneri ve dileklerini inceleyip bir rapor halinde sunmak üzere komisyonlar oluşturabilir. Komisyonlar hazırladıkları raporları Genel Kurul'a sunulmak üzere Başkanlık Kuruluna verirler. Komisyon raporları Genel Kurulca görüşülüp karara bağlandıktan sonra geçerli olur.

e) Genel Kurul kararları için yeter sayı, toplantıya katılanların salt çoğunludur. Ancak bu sayı, delege ya da üyelerin tamsayısının dörtte birinden (1/4) az olamaz.

f) Genel Kurulca yapılan görüşmeler, alınan kararlar ve oylama sonuçları Başkanlık Kurulunca tutanağa geçirilir, imzalanır ve işbu Yönetmeliğin 21. maddesine göre işleme tabi tutulur.

MADDE 17: GENEL KURULDA SEÇİMLER

a) Seçim Sandık Kurulu

Şube organları ve Genel Merkez Genel Kurulu delegelikleri için yapılacak seçimler, 6356 sayılı Yasa'nın 14. maddesinde ve Sendika Anatüzüğünde belirlenen esaslar uyarınca ve Yargıç tarafından oluşturulan Seçim Sandık Kurulunun gözetim, denetim ve yönetiminde yapılır.

Genel Kurul Başkanlık Kurulu, seçimlere ilişkin olarak Seçim Sandık Kurulu ile eşgüdüm içinde çalışır.

b) Seçim Yapılacak Görevler ve Sayıları

* Şube Genel Kurulları, Şube Başkanlığı, Yönetim, Denetim ve Disiplin Kurulu Üyelikleri ve Sendika Genel Kurulu delegelikleri için seçim yapar.

* Şube Başkanı, tek dereceli olarak doğrudan Genel Kurul'ca seçilir.

* Şube Yönetim Kurulu için (Şube Başkanı hariç) ayrıca dört üye seçilir.

* Şube Denetim ve Disiplin Kurullarına beşer üye seçilir.

* Şube Yönetim Denetim ve Disiplin Kurulu üyeleri için yukarıdaki esaslara göre belirlenen asıl üye sayısı kadar ayrıca yedek üye seçilir.

* Şube Genel Kurulu'nca Genel Merkez Genel Kurulu için seçilecek delegelerin sayısı Genel Merkezce Anatüzük hükümlerine göre belirlenir.

c) Adaylık ve Aday Listeleri:

Yukarıda sayılan görevler için yasal ve Tüzüksel engeli bulunmayan tüm Şube üyeleri serbestçe aday olabilirler.

Adaylar, aday oldukları görevi ve asıl ya da yedek üyelik istemlerini belirtmek suretiyle ve belirlenen süre içinde, başvurularını Genel Kurul Başkanlık Kuruluna yaparlar.

Başkanlık Kurulu, kendisine yapılan adaylık başvurularını, aday olunan görev ve asıl - yedek ayırımı belirtilecek şekilde, ya tek bir Aday Listesi halinde veya her organ için ayrı ayrı olmak üzere birden çok Aday Listeleri halinde düzenlemekle görevli ve yetkilidir.

Bu şekilde düzenlenen Aday Listeleri, Başkanlık Kurulu tarafından yeteri sayıda çoğaltılır ve Seçim Kurulu Başkanına mühürlenmek üzere verilir. Seçim için kullanılacak oy zarfları da yeter sayıda Seçim Kurulu Başkanına iletilir.

d) Seçim İlkeleri:

Şube Genel Kurulunda yapılacak seçimlerde, serbestlik, eşitlik, 'gizli oy, açık sayım ve döküm ilkeleri esastır. Bunu sağlamak üzere Seçim Sandık Kurulu gerekli önlemleri alır. Seçimlerin yapılış biçimine ve sonuçlarına itiraz 6356 sayılı Yasa'da öngörülen usul ve yöntemlere göre yapılır.

e) Oy Kullanma Biçimi:

Yargıç tarafından onaylanarak kesinleşmiş olan Genel Kurul delege veya üye listesinde adı yazılı bulunmayanlar oy kullanamazlar. Oylar, oy verenin nüfus cüzdanı ile kanıtlanmasından ve Listedeki isminin karşısında ayrılmış yerin imzalanmasından sonra kullanılır.

Oylar, oy verme sırasında Sandık Kurulu Başkanı tarafından verilen adayları gösterir Seçim Kurulu Başkanınca mühürlenmiş Aday Listelerindeki isimlerin işaretlenmesi suretiyle kullanılır ve mühürlü zarflar içine konularak ilgili sandığa atılır. Aday Listelerinde, seçilmesi öngörülen sayıda aday bulunması halinde, Aday Listelerindeki bu isimlerin ayrıca işaretlenmesi zorunlu olmayıp, işaretsiz Listelerde ismi bulunanlara oy verilmiş sayılır. Bu şekildeki Listelerde üzeri çizilen adaylara ise oy verilmemiş sayılır.

Seçilecek organı oluşturan üye sayısından fazla adayın işaretlendiği oy pusulaları ile mühürsüz diğer kâğıtlara yazılan oylar geçersizdir.

Oy kullanmaya, açık sayım ve döküm işlemlerine ve oyların geçerliliğine ait diğer hususlar hakkında Seçim Sandık Kurulunun belirleyeceği kural ve yöntemlere göre işlem yapılır.

MADDE 18: SEÇİM SONUÇLARINA İLİŞKİN TUTANAK

Seçim süresinin sonunda Seçim Sandık Kurulunca, seçim sonuçlarını gösterir 2 nüsha Tutanak düzenlenir ve imzalanır.

Bu tutanağın bir örneği seçim yerinde asılarak ilan edilir.

MADDE 19: SEÇİM İŞLEMLERİNE VE SONUÇLARINA İTİRAZ, KESİN SONUÇLAR VE İLAN

Seçimin devamı sırasında yapılan işlemler ile tutanakların düzenlenmesinden itibaren 2 gün içinde seçim sonuçlarına yapılacak itirazlar Yargıç tarafından aynı gün incelenir ve kesin olarak karara bağlanır. İtiraz süresinin dolması veya yapılan itirazların Yargıç tarafından kesin karara bağlanmasından sonra Yargıç, kesin seçim sonuçlarını ilan eder ve Şubeye bildirir.

MADDE 20: ŞUBE GENEL KURUL TUTANAĞI

a) Şube Genel Kurul tutanağı Başkanlık Kurulunca hazırlanır. Bu tutanakta;

1) Genel Kurul toplantı yeri, günü, saati ve gündemi, kesinleşmiş delege veya üye listesi,

2) Yapılan yoklamada gerekli çoğunluğun sağlanıp sağlanamadığı ve katılan delege veya üye sayısı, buna ait liste örneği,

3) Başkanlık Kurulu üyelerinin adları ve buna ilişkin oylama sonuçlan,

4) Kurulan Komisyonlar ve üyeleri,

5) Genel Kurula katılan konuklar ve varsa konuşma özetleri; kutlama mesajları,

6) Yönetim, Denetim ve Disiplin Kurulu raporları, komisyon raporları, bunlara ilişkin konuşmaların özetleri,

7) Genel Kurulca alman tüm kararlar,

8) Yönetim ve Denetim Kurullarının aklanması,

9) Şube Genel Kurulu kararını gerektiren diğer işlemler yer alır.

Başkanlık Kurulu, tutanağı beş nüsha olarak imzalar ve sayılan ekleriyle ve varsa ses kayıt bantlarıyla birlikte Şube Başkanına teslim eder.

b) Şube Yönetim Kurulu, Genel Kurul tutanağını, Yargıç tarafından bildirilen kesin seçim sonuçlarını gösterir tutanağı, kendi görev bölüşüm çizelgesini, Şubenin diğer organlarına seçilen asil üyelerin ad ve soyadlarını, Valiliğe ve Sendika Genel Merkezine en geç 15 gün içinde gönderir. Geriye kalan nüshalar ise Şubede muhafaza edilir. Şube Yönetim Kurulu, seçim sonuçlarını Şubenin bulunduğu mahalde ilan eder.

MADDE 21: OLAĞANÜSTÜ ŞUBE GENEL KURULU

Olağanüstü Şube Genel Kurulu, Şube yönetim veya denetim kurullarının gerekli gördüğü hallerde yahut Genel Kurul delege veya üyelerinin beşte birinin (1/5) yazılı isteğinin Genel Yönetim Kuruluna iletilmesi ve kararı sonucunda toplanır.

MADDE 22: GENEL KURUL TOPLANTI SALONUNUN DÜZENLENMESİ VE GÜVENLİĞİ

Şube Genel Kurullarının yapılacağı salonların belirlenen esaslara göre önceden tanzim edilmesi/ iç ve dış güvenliğinin sağlanması, konukların ve basın mensuplarının karşılanması konusunda Şube Yönetim Kurulu görevli olup. Başkanlık Kurulu'nun oluşumundan sonra da onunla işbirliği içinde bu görevini yerine getirir.

MADDE 23: YÜRÜRLÜK

Genel Yönetim Kurulu'nun 09 Aralık 1992 tarih ve 105 sayılı kararı ile düzenlenen ve Genel Yönetim Kurulunun 14.11.2014 tarih ve 1071 sayılı kararıyla Yasa ve Anatüzük değişikliklerinin işlendiği işbu Yönetmelik 23 asıl maddeden ibaret olup, 14.11.2014 tarihinde yürürlüğe girer.

Appendix D:

Türk Metal General Assembly and Election Regulations

TÜRK METAL SENDİKASI GENEL KURUL VE SEÇİM YÖNETMELİĞİ

BİRİNCİ KlSIM: Sendika Genel Kurulu

BİRİNCİ BÖLÜM: Genel Kurulun Teşekkülü

Madde 1- Genel Kurul ve Yetki:

Genel Kurul Sendikanın en yetkili organıdır.

Madde 2 - Genel Kurulun toplanma şekli:

Genel Kurul Olağan ve Olağanüstü olmak üzere iki şekilde toplanır.

Madde 3 - Olağan Genel Kurul toplantısı ve çağrı:

Olağan Genel Kurul dört senede bir Sendika Merkezinin bulunduğu yerde Yönetim Kurulu tarafından belirtilen yer, gün ve saatte hazırlanan gündeme göre toplanır. Genel Kurula çağrı Yönetim Kurulu tarafından toplantı tarihinden en az 15 gün önce ülke çapında yayınlanan ve dağıtılan iki gazetede ilan edilerek yapılır. İlk toplantıda nisabın sağlanamaması halinde yapılacak ikinci toplantının yer, gün ve saati de bu ilanda belirtilir. Yönetim Kurulu Genel Kurula katılacak delegelere faaliyet ve hesap raporu ile denetleme kurulu veya denetçi raporunu ve gelecek döneme ait bütçe teklifi ile gündemdeki konularla ilgili belgeleri toplantı tarihinden en az 15 gün önce gönderir.

Madde 4 - Genel Kurulun teşekkülü:

Genel Kurul seçim yönetmeliğinin 6. maddesine göre Şube Genel Kurullarınca seçilen 250 delege ile sendika yönetim, denetim ve disiplin kurulu üyelerinden teşekkül eder.

a) Sendika Yönetim Kurulu, Sendika Denetleme Kurulu ve Sendika Disiplin Kurulu asıl üyeleri, bu sıfatları devam ettiği sürece kendi genel kurullarına delege olarak katılırlar.

b) Öncelikle her şubeye birer delegelik verilir.

c) Yukarıdaki (a) ve (b) fıkralarda belirlenen delegeler toplamı, delege tam sayısından çıkarılır. Böylece kalan delegeliklerin dağıtımında; sendika genel kurulunun yapılacağı tarihten önceki aybaşında sendikanın toplam üye sayısının, geri kalan delege sayısına bölünmesi ile bulunacak anahtar üye sayısına; şubenin aynı tarihteki üye sayısının bölünmesi ile tespit edilen delege sayısı esas alınır.

d) Yukarıdaki (a), (b), (c) fıkralarında belirlenen delegeler toplamı ile delege tam sayısı arasındaki fark kadar delege (c) fıkrası uyarınca yapılan bölme işlemi sonucu en çok artık üyesi bulunanlardan başlamak üzere, şubelere birer delege daha olmak üzere bölüştürülür. Bu bölüşümden sonra da eksik delege kalırsa, işbu eksik delege sayısı en çok üyeli şubelerden başlayarak her şubeye birer delegelik daha verilmek suretiyle delege tam sayısı tamamlanır. Ancak, şubeye bağlı üye sayısı, anahtar sayısının altında ise bu şubeler eksik delegeliğin tamamlanma işlemi dışında bırakılır.

e) Her şube genel kurulunda (genel kurul kararı alındığı tarihte aidat ödeyen şube üye sayısının, anahtar üye sayısına bölünerek bulunacak sayının %50 fazlası kadar) sendika genel kurul (üst kurul) delegesi seçilir. İşbu delegeler, her şube genel kurulunda

yenilenir ve seçilen delegeler (bir sonraki şube genel kuruluna kadar geçen süre içerisinde) toplanan bütün sendika genel kurullarına katılırlar. Şube genel kurullarındaki delege seçiminde oy alanlar, aldıkları oy sayısına göre sıralanırlar ve asıl ve yedek olarak ayrı gruplar halinde gösterilmezler.

f) Seçilen delege (işyeri değişikliği veya işyerinin başka bir şubeye bağlanması gibi sebeplerle) başka bir şube kapsamına girerse yeni şube genel kurulunda delege seçimi yapılıncaya kadar eski şube delegeliğini korur.

Madde 5 – Genel Kurul toplantı nisabı:

Genel Kurul delege tam sayısının salt çoğunluğu ile toplanır, ancak birinci toplantıda bu nisap sağlanamazsa en çok 15 gün sonra yapılacak ikinci toplantıda bu nisab aranmaz. Bu toplantıya katılanların sayısı delege sayısının üçte birinden az olamaz.

Hastalık, ölüm, istifa, işten veya şubenin faaliyet sahası içindeki işyerlerinden ayrılma nedeniyle Genel Kurula katılamayacakları gerekli belgeleri ile şube yönetim kurulunca bildirilen delegelerin yerine 32. maddede belirtilen seçim tutanağında en çok oy almış delege Genel Kurula katılır.

Madde 6 - Şubelerin temsili:

Genel Kurulda şubeler 4. Maddenin (c) bendinde de ifade edildiği üzere; sendika genel kurulunun yapılacağı tarihten önceki aybaşında sendikanın toplam üye sayısının, geri kalan delege sayısına bölünmesi ile bulunacak anahtar üye sayısına; şubenin aynı tarihteki üye sayısının bölünmesi ile tespit edilen delege sayısı ile temsil edilir.

Delege sıfatı müteakip olağan genel kurul için yapılacak delege seçimi tarihine kadar devam eder.

Madde 7 - Olağanüstü Genel Kurul:

Olağanüstü Genel Kurul Olağan Genel Kurul için tesbit edilmiş esaslar dairesinde; Yönetim Kurulu veya Denetleme Kurulunun gerekli gördüğü hallerde veya Genel Kurul delegelerinin 1/5'inin toplantı istemlerinin gerekçelerini belirtir yazılı isteği ile toplanır. Genel Kurula çağrı genel yönetim kurulu tarafından yapılır.

Olağanüstü Genel Kurullarda gündem dışı konular görüşülemez ve teklifte bulunulamaz.

İKİNCİ BÖLÜM: Toplantı Usulü

Madde 8 - Yoklama ve Açılış;

a) Genel Başkanca görevlendirilecek Genel Yönetim Kurulu üyelerinden biri tarafından yapılan yoklamada yeterli çoğunluğun bulunduğun tesbiti ile Genel Kurul çalışmalarına başlanır.

Genel Kurulda hazır bulunan her delegenin hazırun cetvelini imzalaması şarttır.

b) Açış konuşmasını Başkan veya görevlendireceği Yönetim Kurulu üyesi yapar.

c) Delegeler teklif ve oyları ile bir başkan, iki başkan vekili ve yeteri kadar katipten oluşan Genel Kurul Başkanlık divanını oluşturur. Başkanlık divanı, delegeler arasında veya Türk-İş yada Türk İş’e üye teşkilat üyeleri arasından seçilir.

Madde 9 - Başkanlık Divanının görev ve yetkileri:

a) Divan yerini aldıktan sonra toplantıda bulunanları divan başkanı saygı duruşuna davet eder.

b) Gündemi okur, 1/10 imzalı gündemde sıra değişikliği ile ilave teklif varsa oylar.

c) Görevliler tarafından isimleri ve konuşma istekleri tesbit edilmiş misafirleri tanıtır. Gündem sırasında olduğu gibi gerekli görürse gündem sırası haricinde misafirlere söz verir. Telgraf ve mesajları okutur.

d) Toplantının nizam ve düzenini bozanları ikaz eder. lsrar edenleri Genel Kurulun onayına sunar. Genel Kurulun kararına göre hareket eder.

e) Kanunlara, tüzük ve tüzüğe bağlı yönetmeliklere aykırı olan ve mani olunamayan olaylar karşısında çalışmalara bir müddet ara verebileceği gibi gerekirse hükümet komiserine bildirerek genel kurulun çalışmalarına son verebilir. Divan genel kurulun yeniden yapılabilmesini ve en kısa zamanda usulüne uygun çağrılmasını sağlar.

f) Normal ara dinlenmelerini, çalışma saatlerini re’sen tesbit eder.

g) Delegeleri söz alma kağıdındaki sıraya göre konuşturur.

h) Delegeler tarafından itimatsızlık isteği zuhur ettiği takdirde bir kereye mahsus itimat oyuna başvurur. Güvensizlik oyu alırsa divan yeniden kurulur.

ı) Genel Kurul görevlileri Başkanlık Divanının emrindedir.

i) Sendika organlarına aday olanların listelerini yönetmeliğin 14. maddesindeki esaslara göre düzenleyerek ilgili seçim kurulu başkanına mühürlenmek üzere teslim eder.

Divan Katipleri:

Genel Kurul tutanaklarını tutmakla görevli Divan Katipleri tutanakta aşağıdaki hususların yer almasına dikkat ederler;

a) Genel Kurul toplantı yeri, tarihi gün ve saati,

b) Yapılan yoklamada gerekli çoğunluğun temin edilip edilmediği ile katılan delege adedini,

c) Divan Başkanlığının adları ve soyadları ile seçim oylamasındaki oranı,

d) Misafirlerin ve üyelerin konuşmalarının özeti,

e) Komisyonlara seçilenlerin ad ve soyadlarını,

f) Faaliyet, denetleme ve disiplin kurulları ile komisyon raporlarında söz alanların ve konuşmalarının özetlerini,

g) Alınan kararları ve oy durumlarını,

h) İbra oylamasının durumunu,

ı) Genel Kurul karar defterine geçmesi icap eden notları ve video kasetleri yeni seçilen Genel Sekretere teslim ederler.

Görevliler:

a) Salonda görevlendirilmiş üye, delege ve personel kollarında veya yakalarında görevli tanıtma kartı veya bandı bulunduracaklardır.

b) Misafirleri karşılayacaklar, yakalarına misafir kartı veya plaketini takacaklar, isimlerini, konuşma isteklerini tesbit ederek divana vereceklerdir.

c) Delegeler tarafından divana verilecek söz alma kağıdını ve takrirlerini alarak divana verecekler.

d) Genel Kurul çalışmaları başladıktan sonra divan başkanlığının izni olmadan salonda gazete, bülten, bildiri, yiyecek ve içecek dağıttırmayacaklardır.

e) Basın uzmanı tarafından tesbit edilmiş günlük çalışmaları ve olayları bir daktilo sekreter, bülten haline getirecektir. Bu bültenler gerekirse kongre açılmadan önce salonda bulunanlara dağıtılacak, basına gönderilecektir.

Madde 10-Delegelerin yükümlülüğü:

a) Delegelerin Genel Kurul çalışmalarını takip etmeleri asli görevleridir.

b) Tanıtma kartlarını Genel Kurul salonunda daima yakalarında bulunduracaklardır.

c) Salonda ayrılmış yerlerine oturacaklardır.

d) Konuşma isteklerini, söz alma kağıdına göre ve bu kağıttaki sıraya göre yapacaklardır.

e) Kürsüdeki konuşmacının sözü delegelerin müdahalesi ile kesilmez. Ancak, bir usulsüzlük varsa buna Genel Kurul karar verir.

f) Kürsüdeki konuşmacı Divan başkanının ikazına uymak zorundadır.

g) İkaza uymayan konuşmacının direnişi Divan Başkanınca Genel Kurulun oyuna sunulur. Genel Kurulca alınan karara göre hareket edilir.

h) Genel Kurulun çalışmalarını engelleyen terbiye ve adaba aykırı söz sarf edenlere divan başkanlığınca ihtar cezası verilir. İkinci defa aynı hareketi yapanların cezası Genel Kuruldan çıkarılmaktır.

i) Konuşmaya başlamadan evvel şubesi ve kendisini tanıtmalıdır.

j) Delegeler tanıtma kartlarının haricinde aşağıda belirtilen belgelerden bir tanesini,

1. Nüfus hüviyet cüzdanı.

2. Resimli üye kimlik cüzdanını Genel Kurul süresince yanlarında bulundurmak mecburiyetindedirler.

Madde 11 - Genel Kurulda Komisyon çalışmaları:

Genel Kurulda aşağıdaki komisyonlar ve duruma göre gerekli komisyonlar kurulur.

a) Hesap Tetkik Komisyonu,

b) Tüzük Tadil Komisyonu,

c) Tahmini Bütçe komisyonu,

A - Komisyonların Teşekkülü:

a) Her Komisyon için Yönetim, Denetleme ve Disiplin Kurulları dışında en az 3 kişi açık oyla seçilir.

b) Kendi aralarından bir başkan, bir raportör ve bir sözcü seçerler. Başkanlık ile sözcülük veya raportörlük bir kişide toplanabilir.

B - Komisyonların Çalışması:

a) Komisyonlar Yönetim Kurulunun göstereceği yerde çalışırlar.

b) Komisyonlara gerektiğinde Yönetim Kurulu üyeleri ile konu ile ilgili yetkili bir uzman ve personel müşahit olarak katılabilirler.

c) Komisyonun herhangi bir şekilde bilgisine müracaat ettiği yönetici, delege ve personel bu isteğe uymak mecburiyetindedirler.

d) Müşahitler oylamaya katılamaz.

e) Komisyon çalışmalarının neticesinde hazırlanan raporun teksir edilerek gündemdeki müzakere sırasında yetiştirilmesi şarttır.

C - Komisyon Raporlarının Müzakeresi:

a) Komisyon üyeleri ayrılmış olan yerlerine topluca otururlar.

b) Raporun tümü raportör tarafından okunur. Müzakerelerde madde madde okunur ve karara bağlanır.

c) Maddeler üzerinde leh ve aleyhte en fazla iki kişi konuşmakla beraber, maddenin iyi aydınlanması yönünden Divan Başkanlığı konuşmacı adedini artırabilir.

d) Komisyon sözcüsü konuşmaları cevaplandırır ve raporlarının haricinde olan teklifi veya ilaveyi kabul edip etmediklerini belirtir.

Madde 12 - Oylamalar ve oran:

Genel Kurullarda tüzük değişikliği için oran, genel kurula katılan delege sayısının 2/3'dür. Ancak, kanunla zorunlu kılınan hallerde ve yetkili merciin talebi halinde bu oran aranmaz.

Genel kurulun toplantı yeter sayısı üye veya delege tam sayısının salt çoğunluğudur. İlk toplantıda yeter sayı sağlanamazsa ikinci toplantı en çok on beş gün sonraya bırakılır. Bu toplantıya katılanların sayısı, üye veya delege tam sayısının üçte birinden az olamaz.

Genel Kurulun karar yeter sayısı toplantıya katılan üye veya delege sayısının salt çoğunluğudur. Ancak bu sayı üye veya delege tam sayısının dörtte birinden az olamaz. Üst kuruluşun veya uluslararası kuruluşun kurucusu olma, üst kuruluşlara ve uluslararası kuruluşlara üyelik ile üyelikten çekilme hâllerinde karar yeter sayısı üye veya delege tam sayısının salt çoğunluğudur. Tüzük değişikliği, fesih, birleşme ve katılma, hallerinde karar yeter sayısı üye veya delege tam sayısının 2/3'dür.

Ancak, kanunla zorunlu kılınan hallerde ve yetkili merciinin talebi üzerine yapılacak tüzük değişikliklerinde (ilgili yasal hüküm saklı kalmak kaydıyla) Ana tüzüğün 16. maddesi hükmü uygulanır.

Tüzük değişikliği dışındaki, oylamalarda oran Genel Kurula katılan delege sayısının salt çoğunluğudur. Ancak bu miktar delege tam sayısının 1/4'ünden az olamaz.

ÜÇÜNCÜ BÖLÜM: SEÇİMLER

Madde 13 - Seçimlerde Uyulacak Esaslar:

Genel Kurula katılacak delegelerin listesi ile toplantının gündemi, yeri, günü, saati ve çoğunluk olmadığı takdirde yapılacak ikinci toplantıya ilişkin hususları belirten bir yazı ile birlikte iki nüsha olarak Yönetim Kurulu tarafından toplantı tarihinden en az 15 gün önce seçim kurulu başkanı olan Hakime ve mahalli mülki amire tevdii edilir. Seçim Kurulunca onaylanan delege listeleri ile diğer hususlar toplantı tarihinden 7 gün önce üç gün süreyle sendika merkezinde asılmak suretiyle ilan olunur.

Madde 14 - Oy Pusulalarının Tanzimi:

Oy pusulaları organlara göre Yönetim, Denetleme, Disiplin asil ve yedek kurul üyeleri ile üst kurul delegeleri olmak üzere müştereken bir liste halinde düzenlenir. Düzenlenen liste aday olanların organ sırasına göre yazılır.

Kullanılacak oy pusulalarının seçim kurulu tarafından mühürlenmiş olması şarttır. Madde 15 - Oylar serbest, eşit ve gizli oy açık sayım ve döküm esasına göre nüfus hüviyet cüzdanı veya resimli üyelik, delegelik kimlik kartı ile seçim kurulunca onaylanmış delege listesi imza edilmek ve mühürlü oy pusulalarında tercih edilen adayın hizasında bulunan boş kareye çarpı (x) işareti konularak kullanılır.

Madde 16 – Yönetim Kurulu Genel kurulu oluşturan ve en çok oyu alan delegeler arasından seçilecek bir Genel Başkan, üç Genel Başkan Yardımcısı, bir Genel Mali Sekreter olmak üzere 5 asıl üyeden oluşur. Asil üye adedi kadar da yedek üye seçilir.

Denetleme Kurulu için üç asil, üç yedek, Disiplin Kurulu için beş asil beş yedek üye seçilir. Denetleme ve Disiplin kurulu üyeliği seçimlerinde asil ve yedek üyeler aldıkları oy sırasına göre değerlendirilirler.

Üst Kurul delegeliği için yapılan seçimde adayların aldıkları oylar oy sırasına göre tutanağa kaydedilir. Ve tasnif kurulunca imzalanır.

Organlar için yapılan seçim sonuçları tutanak tanzim edilerek seçim tasnif kurulunca imzalanır.

Seçim sonuçlarını belirten tutanakların birer sureti seçim mahallinde asılmak suretiyle ilan olunur.

Seçimlerde kullanılan oylar ve belgeler tutanağın bir sureti ile birlikte üç ay süre ile saklanmak üzere seçim kurulu başkanlığına teslim edilir.

İKİNCİ KISIM: Şube Genel Kurulları

BİRİNCİ BÖLÜM: Genel Kurulun Teşekkülü

Madde 17 - Genel Kurulun Teşekkülü:

Şube Genel Kurulları, şubenin en yetkili organı olup şubenin faaliyet sahasındaki işyerlerinde genel kurul kararı alındığı tarihte aidat ödeyen ve fiilen çalışan üyeleri ile

Şube Yönetim, Denetleme ve Disiplin Kurulu asıl üyelerinden oluşur. Aidat ödeyen ve fiilen çalışan üye sayısı 500'ü aştığı takdirde genel kurul delegeler ile Şube Yönetim, Denetleme ve Disiplin Kurulu asıl üyelerinden oluşur.

a) Şube Yönetim, Denetleme ve Disiplin Kurulu asıl üyeleri, bu sıfatları devam ettiği sürece kendi genel kurullarına delege olarak katılır.

b) Yukarıda (a) fıkrasında belirtilen delege toplamı delege tam sayısından çıkarılır. Şubenin genel kurul kararının alındığı tarihte aidat ödeyen üye sayısı geri kalan delege sayısına bölünerek bir delege seçmek için gerekli anahtar üye sayısı bulunur. Yine her işyerindeki aidat ödeyen toplam üye sayısı anahtar üye sayısına bölünerek bulunacak sayı kadar delegelik ilgili işyerlerine verilir.

c) Yukarıdaki (a, b) fıkralarında belirlenen delegeler toplamı şubenin delege tam sayısından azsa, eksik delegeler (b) fıkrası uyarınca yapılan bölme işlemi sonucu en çok artık üyesi bulunanlardan başlamak üzere işyerlerine birer delegelik daha olmak üzere bölüştürülür. Bu bölüşümden sonra da eksik delegelik kalırsa işbu eksik delege sayısı en çok üyeli işyerlerinden başlayarak her işyerine birer delegelik daha verilmek suretiyle delege tam sayısı tamamlanır. Ancak işyerindeki üye sayısı, anahtar sayısının altında ise, bu işyerleri, eksik delegeliğin tamamlanma işlemi dışında bırakılır.

d) Yukarıdaki (a, b) fıkralarına göre hesaplanacak delegeler toplamı delege tam sayısından çok olursa artan delege sayısının bir fazlası kadar delegelik, en az üyeli işyerinden başlamak üzere geri alınır, söz konusu az üyeli işyerleri tek bir işyeri olarak birleştirilir ve kalan bir delege bu işyerinden seçilir.

Madde 18 - Genel Kurul toplantısı ve çağrı:

Olağan Genel Kurul toplantısı dört senede bir ve Sendika Genel Kurul toplantısından en az iki ay önce genel yönetim kurulunun mutabakatını almak şartıyla şubenin faaliyette bulunduğu mahalde şube Yönetim kurulunun tesbit edeceği yer, gün ve saatte toplanır.

Sendika Yönetim Kurulunca hazırlanacak toplantı gündemi, yer, gün ve saati toplantı tarihinden en az 15 gün önce Şube Yönetim Kurulunca mahalli günlük bir gazetede, çoğunluk sağlanamadığı takdirde yapılacak ikinci toplantının yer, gün ve saati de belirtilerek ilan edilir. (Örnek Ek-1)

Şube Genel Kurullarının toplantı esas, usul ve karar nisabı hakkında Sendika Genel Kurulları için uygulanan usuller uygulanır.

Madde 19 - Şube Olağanüstü Genel Kurulu:

Şube Olağanüstü Genel Kurulu Tüzüğün 30. maddesinde belirlenen şartlarda toplanır.

Olağanüstü Genel Kurullarda gündem dışı konular görüşülemez ve teklifte bulunulamaz.

Madde 20 - Şube Delege Seçim Kurulu:

Şube genel kuruluna katılacak delege seçimi, Sendika Genel Yönetim Kurulu üyelerinden biri veya Sendika Genel Sekreteri/Sendika Genel Sekreter Yardımcısı başkanlığında ve bu başkanın şube yönetim kurulu, temsilciler veya üyelerden seçeceği iki kişi ile birlikte üç kişilik şube delege seçim kurulu oluşturulur. Şube delege seçim kurulu, seçimlerle ilgili her türlü kararlarını yazmak için bir karar defteri tutar.

Madde 21 - Şube delege seçim kurulu seçimden en az 10 gün önce (her işyerinde 23. maddeye göre belirlenen yerler dikkate alınarak) yeteri kadar sandık, her sandık için, üç kişilik, biri başkan ve raportörünü belirler. Delege seçim sandık kurulu oluşturulur. Bu kurullara asil kadar yedek üyede tesbit edilebilir. Oy kullanma mahallinide belirterek ilgili yerde ilan eder. (Örnek Ek-2)

Madde 22 - Delege Tesbiti:

Şubeye kayıtlı aidat ödeyen ve fiilen çalışan üye sayısı 500'ü aşan şubelerin delege miktarı aşağıdaki cetvel esas alınarak tesbit edilir.

1) 501-1000 arasında ise 100,

2) 1001 - 2000 arasında ise 125,

3) 2001 - 3000 arasında ise 150,

4) 3001 - 4000 arasında ise 175,

5) 4001 = 5000 arasında ise 200,

6) 5001 - 6000 arasında ise 225,

7) 6001 ve daha yukarı ise 250 delege,

Madde 23 – Delege Seçimleri:

Delege seçimlerinin yapılacağı mahal, şube delege seçim tarihinden bir ay önce kayıtlı üyelerin çalıştıkları işyerleri gözönünde bulundurularak Delege Seçim Kurulunca hazırlanacaktır.

Delege seçimleri işyerinin bütününde veya kısımlar esas alınarak, kısım kısım da yapılabilir.

Madde 24 - İlan:

Delege seçimlerinin yapılacağı tarihten en az 15 gün evvel sendika şubesi ve seçim yapılacak kısımlarda ilan edilir.

Yapılacak ilanda delegeliğe adaylıklarını koyacak üyelerin müracaat şekli ile en son müracaat tarihinin de belirtilmesi zorunludur. (Örnek Ek-3)

Madde 25 - Delege Seçimleri ile İlgili İşlemler:

Delege seçimlerine katılacak üye listeleri açık kimlikleri yazılarak seçim tarihinden en az 15 gün evvel onaylanmak üzere Sendika Delege seçim kurulu başkanına tevdi edilir.

Sendika Delege seçim kurulu başkanınca onaylanan listeler delege seçim tarihinden en az 7 gün önce üç gün süreyle sendika şubesine ve seçim yapılacak kısımlara asılmak suretiyle ilan olunur. (Örnek Ek-4)

Madde 26 - Delege Aday Tesbiti:

Delege adayları delege seçim Tarihinden 7 gün evveline kadar (Örnek Ek-5) deki müracaat formunu doldurarak şube yönetim kuruluna müracaatlarını alındı belgesi karşılığında vereceklerdir.

Madde 27- Delege adaylığına müracaat edenlere ait 23. maddeye göre düzenlenecek oy kullanmaya esas olacak aday listeleri seçimlerden en az üç gün evvel sendika şubesi ve

seçim yapılacak yerlerde ilan edilir. (Örnek Ek-6) İlan edilen aday listeleri yeterli sayıda çoğaltılarak mühürlenmek üzere seçimlerden en az üç gün evvel delege seçim kurulu başkanına teslim edilir.

Madde 28 - Oy kullanma usulü:

Oylar serbest eşit ve gizli oyla onaylanmış üye listesi imza edilmek ve mühürlü aday listesinde o kısımdan seçilecek delege sayısı kadar adayın ismi hizasındaki kareye çarpı işareti konularak kullanılacaktır. (Örnek Ek-7).

Oy kullanmada üyenin yanında kimliğini belirtecek bir belgenin bulunması zorunludur.

Madde 29 - Sayım:

Kısımlarda kullanılan oylar ayrı ayrı açık sayım döküm esasına göre tasnif edilerek her kısım için adayların aldıkları oyları belirten seçim tutanağı tanzim edilerek Delege Seçim Sandık Kurulu Başkanı ve üyeleri tarafından imzalanacaktır. (Örnek Ek-8)

Madde 30 - Sayım Sonuçlarının ilanı ve itiraz:

Sayım sonuçları ilgili kısımlar ile sendika şubesinde ilan edilir. (Örnek Ek-9) İlan süresi üç gündür. Seçim sonuçlarına itiraz üç gün içinde Sendika Delege Seçim Kurulu Başkanına yapılır ve iki gün içinde karara bağlanır.

Madde 31 - Genel Kurulun Toplanması:

İlan sonunda kesinleşen delege seçim sonuçlarına göre delege seçilenler Şube Yönetim, Denetleme ve Disiplin Kurulu üyeleri ile ilan edilen yer, gün ve saatte toplanır.

Şube Genel Kurullarının toplantısı esas ve usulleri ile karar nisabı hakkında sendika Genel kurulları için uygulanan usuller uygulanır. Ancak Şube Genel kurullarının mali ibra yetkisi yoktur.

Madde 32 - Şube Genel Kurul seçimleri:

Üyelerin iştiraki ile toplanan Genel Kurullarda üyelerden, delege ile toplanan genel kurullarda delegelerden şube organlarına adaylıklarını koyanlar Divan Başkanınca belirlenecek sürede adaylık müracaatını Divan Başkanına vermek zorundadır. (Örnek Ek-10).

Genel Kurul Divan Başkanı yapılan müracaatları toplayarak (Ek 11) deki örneğe göre yeter sayıda liste hazırlattırmak ve mühürlenmek üzere seçim kurulu başkanına teslim etmekle yükümlüdür.

Madde 33 - Oy Verme Usulü:

Genel Kurul seçimlerinde oylar serbest, eşit ve gizli oy açık sayım döküm esasına göre seçim kurulunca mühürlenmiş oy pusulasındaki tercih edilen adayın ismi hizasındaki kareye (x) işareti konularak isim listesi imza edilerek kullanılır.

Oy kullanma işlemi sırasında delegenin yanındaki kimliğini tesbite yarayacak belge bulundurması zorunludur.

Madde 34 - Sayım:

Şube zorunlu organları Ana tüzüğün ilgili hükümlerine göre teşekkül eder. Şube Genel Kurullarında yapılan seçimlerde Şube Başkanı, Şube Sekreteri, Şube Mali Sekreteri,

Şube Teşkilatlanma Sekreteri ve Şube Eğitim Sekreteri olmak üzere şube yönetim kurulunu oluşturan 5 asil üyenin seçimi yapılır. Asil üye adedi kadarda yedek üye seçilir.

Yönetim, Denetleme ve Disiplin Kurulu üyeliği seçimlerinde asil ve yedek üyeler aldıkları oy sırasına göre değerlendirilirler.

Üst Kurul delegeliği için yapılan seçimlerde adayların aldığı oy miktarına göre tutanak tanzim edilir. Asil yedek ayrımı yapılamaz.

ÜÇÜNCÜ KISIM

Genel Hükümler

Madde 35 - Seçimlerde Üye ve Adayların Sorumluluğu:

Seçimlerin düzen içerisinde ve sağlıklı bir biçimde yürütülmesi amacıyla Hakim ve Sandık Kurulunun aldığı tedbirlere uymak zorunludur.

Madde 36 - Aday Listelerinin Tanzimi:

Sendika ve Şube aday listelerinin tanziminde yönetmelik ekindeki örneğe göre divanca hazırlanacak oy pusulaları kullanılır. (Örnek Ek 11 ve 12-1,2,3)

Madde 37 – Oyların Değerlendirilmesi:

Sendika organ seçimlerinde ve delege seçimlerinde seçilecek organı oluşturan üye sayısından fazla adayın işaretlendiği oy pusulaları ile diğer kağıtlara yazılan oylar geçersizdir.

Madde 38 - Oyların Eşitliği:

Sendika organları için yapılan seçimlerde oyların eşitliği halinde eşit oy alan adaylar arasında kura çekilerek kazanan bir tutanakla tesbit edilir.

Madde 39 – Delegelik Süresi:

Sendika ve Şube Genel Kurulları için delegelik sıfatı, müteakip olağan genel kurul için yapılacak delege seçimi tarihine kadar devam eder

Madde 40 - Oy Verme Esasları:

Sendika genel kurulları ile şube genel kurulları için yapılan seçimlerde oy verme işlemi serbest, eşit, gizli oy ve açık sayım döküm esasına göre yapılır.

Madde 41 - Bu yönetmelikte, mevcut veya çıkacak kanunlar ile anatüzüğe aykırı olan maddeler hükümsüz sayılır. Yerine Kanun veya anatüzük hükmü geçerlidir. İlk olağan genel kurulda hükümsüz olan madde kanuna ve anatüzüğe uygun hale getirilir. Kanun veya anatüzük değişikliği halinde, bir sonraki olağan genel kurula da sunulmak üzere kanuna ve anatüzüğe uygun olarak Genel Yönetim Kurulu gerekli değişikliği yapar.

Madde 42 - Genel Yönetim Kurulunun 31/03/2009 tarih ve 738 sayılı kararına istinaden 42 madde ve 12 Örnek Ek olarak hazırlanan ve 03-05 Nisan 2009 tarihli 13. Olağan Genel Kurulda kabul edilen işbu Genel Kurul ve Seçim Yönetmeliğinin ilgili maddeleri; 01-02 Ağustos 2015 tarihinde yapılan 15. Olağan Genel Kurulca yeniden değiştirilmiş olup, yönetim kurulu kararına istinaden yürürlüğe girecek olup; mevzuat ve uygulamanın gereği olan değişiklikleri yapmaya Genel Yönetim Kurulu yetkilidir.

(İşbu yönetmelik 01-02 Ağustos 2015 tarihli Türk Metal Sendikası 15. Olağan Genel Kurulda kabul edilen değişiklik metnini kapsamaktadır.)

Appendix E:

Birleşik Metal-İş Representative Regulations

BİRLEŞİK METAL-İŞ TEMSİLCİ YÖNETMELİĞİ

MADDE 1- YÖNETMELİĞİN AMACI:

İşbu yönetmelik, Birleşik Metal İşçileri Sendikası Anatüzüğü ve Genel Kurul kararları ile kabul edilen amaç, ilke ve çalışma yöntemi doğrultusunda faaliyet gösterecek işyeri sendika temsilcilerinin sayı, nitelik, görev, yetki ve sorumluluklarıyla seçim işlemlerinin belirlenmesi ve bu yönden sendikanın tüm şubelerinde uygulama birliğinin sağlanmasını amaçlamaktadır.

MADDE 2- TEMSİLCİ SAYISI:

2821 sayılı yasanın 34. maddesi uyarınca, işyeri sendika temsilci sayısı

- Elliye kadar işçi çalıştıran yerlerde bir baştemsilci,
- Ellibir-yüz işçi çalıştıran yerlerde bir baştemsilci, bir temsilci,
- Yüzbir-beşyüz işçi çalıştıran yerlerde bir baştemsilci, iki temsilci,
- Beşyüzbir-bin işçi çalıştıran yerlerde bir baştemsilci, üç temsilci,
- Binbir-ikibin işçi çalıştıran yerlerde bir baştemsilci, beş temsilci ve
- İkibinden fazla işçi çalıştıran yerlerde bir baştemsilci, yedi temsilci'dir.

MADDE 3- GÖREV, YETKİ VE SORUMLULUKLARI:

Sendika temsilcileri işyerinde sendika adına hareket ederler.

İşyerinde sendikanın amaç ve ilkelerinin yaşama geçmesi için çaba harcarlar. Çalışmalarında mevzuat, anatüzük ve yönetmelikler ile yetkili organların kararlarını dikkate alırlar.

Sendika temsilcileri,

a) İşçilerin talep ve ihtiyaçlarını tespit eder, çözümlenmesi için çaba harcar.

b) İşyerinde mevzuat ve toplu iş sözleşmesi hükümlerinin uygulanması, işçilerin hak ve çıkarlarının korunması, çalışma barışının oluşturulup sürdürülmesi için çaba gösterir.

c) Sendikal politikaların saptanması ve belirlenen politikaların yaşama geçirilmesini işyerindeki üyelerin aktif katılımı ile işyerinde yapılacak çalışmaların yararlı ve amaca uygun olarak gerçekleşmesini ve iletişimin hızlı ve sağlıklı yapılmasını sağlar.

d) Şube Yönetim Kurulu ve ilgili sendika birimlerinin görüşlerini de alarak, üyelerin yasalar ve toplu iş sözleşmeleriyle ilgili her türlü şikayetlerini işyerinde çözümlemeye çalışır ve bu amaçla işveren vekilleriyle sendika adına görüşmeler yapar. Görüşmeleri kayıt altına alır, görüşmelerden çıkacak olumlu veya olumsuz sonuçları Şube Yönetim Kuruluna yazılı ya da sözlü olarak bildirir. Gerektiğinde şubenin devreye girmesini sağlar.

e) Sendikanın ve üyelerin nitelik ve nicelik olarak gelişip güçlenmesi için çaba harcar, işyerinde ve işyeri dışında sendikanın amaç ve ilkelerinin yaşama geçmesi için çalışır,

f) Sendikanın yeni üyeler kaydetmesi ile üyelerin vatandaş ve işçi olarak bilinç düzeylerinin yükseltilmesini sağlayıcı faaliyetlerde bulunur.

g) Sözleşme türlerine bakılmaksızın işyerinde çalışanların tümünün üyeliği için çalışmalar yapar.

h) Yıllık ücretli izin, işçi sağlığı ve güvenliği kurulları hakkındaki yönetmelikler uyarınca kurulacak kurullara katılacak asıl ve yedek işçileri, temsilciler arasından veya gerek görülmesi halinde temsilci olmayan adaylar arasından belirleyerek Şube Yönetim Kuruluna bildirir ve atanmalarını sağlar, kurulların toplantı tutanaklarını Şube Yönetim Kurulu'na ulaştırır.

i) İşyeri Disiplin Kuruluna atanacak üyeler konusunda Şube Yönetim Kuruluna yazılı olarak öneride bulunur, kurulun toplantı tutanaklarını Şube Yönetim Kurulu'na ulaştırır.

j) Toplu iş sözleşme teklif metninin hazırlanmasında, uyuşmazlığa gitmede ya da anlaşmaya varmada, üyelerin istemlerinin saptanmasında Genel Merkez ve Şube yöneticileri ve sendikanın diğer görevlileriyle birlikte faaliyet gösterir.

k) İşyeri kurul ve komisyonlarının zamanında kurulması ve amaçlarına uygun faaliyetlerde bulunmaları için yönlendirici olur, kurullar arasında koordinasyonu sağlar.

l) Mevzuat, sendika anatüzüğü, yönetmelikler, ve yetkili organlarca alınan kararlar ile Toplu İş Sözleşmesinin kendilerine verdiği diğer görevleri yerine getirir.

m) İşyeri komiteleri yönetmeliğine göre, işyeri komitesinin oluşturulmasını ve çalışmalarının düzenli bir biçimde yürütülmesini sağlar,

n) İşyerinin tüm bilgilerini toplar, değişiklikleri izler, işverenin işyerindeki tüm uygulamalarını takip eder ve raporlar.

Sendika ve üyelerin temsili ile ilgili görev ve yetkiler Baştemsilci tarafından, yokluğunda ise sırasıyla diğer temsilciler tarafından kullanılır.

Sendika işyeri baştemsilci ve temsilcileri çalışmalarından dolayı Şube Yönetim Kurulu ve Genel Yönetim Kuruluna karşı sorumludur.

MADDE 4- TEMSİLCİLERİN NİTELİKLERİ:

Tüm sendika üyeleri temsilci seçimlerinde oy kullanmak ve aşağıda belirtilen niteliklerin varlığı koşulu ile seçilmek veya atanmak haklarına sahiptirler.

a) 2821 sayılı yasanın 5.nci maddesinde öngörülmüş nitelikleri taşımak,

b) Üyeliği askıya alınmamış veya sendika üyeliğinden çıkarılma kararı bulunmamak,

c) Daha once sendika temsilcisi olarak görev yapmakta iken işbu yönetmeliğin altıncı maddesinin (B) bendi uyarınca görevden alınma durumunda, görevden alındığı dönemi takip eden iki toplu iş sözleşmesi dönemini geçirmiş olmak,

d) Sendika tarafından verilen en az üç günlük düzey eğitimlerine katılmış olmak veya sendikanın organ ya da kurullarında ya da komisyon ve bürolarında görevli olmak. (yeni örgütlenilen işyerlerinde bu koşul aranmaz)

e) Bir yıldır sendika üyesi bulunmak (yeni örgütlenilen işyerlerinde bu koşul aranmaz)

f) Sendika temsilcisi iken herhangi bir sebeple istifa etmesi halinde, istifa tarihinden sonraki bir temsilci seçimi dönemini geçirmiş olmak.

MADDE 5- SEÇİM ESASLARI VE ATANMALARI

A- Sendikanın yeni örgütlendiği işyerlerinde yetki belgesinin alınmasını takip eden 15 gün içinde sendika baştemsilcisi ve temsilcileri; işyerindeki üye ve kadroların görüşlerini alan Şube Yönetim Kurulunun önerisi ile Genel Yönetim Kurulu tarafından atanır ve kimlikleri işverene bildirilir. Bu belirlemede üyelerin, sendika amaç ve ilkelerini kavrama ve uygulama, üyeler ve işçiler üzerindeki yönlendirici etki, örgütlenme sürecindeki katkıları ile sendikal bilinç, kararlılık ve temsil yetenekleri dikkate alınır. Bu işyerlerinde ikinci dönem toplu iş sözleşmesinin imza tarihini takip eden altıncı aydan itibaren üç ay içerisinde yapılacak temsilci seçimlerine kadar atanan temsilciler görevlerine devam eder.

İşyeri ya da işletmelerde yürürlükte bulunan toplu iş sözleşmesi sona erdikten sonra yetki belgesi alınması durumunda, yetki belgesinin alınmasını takiben bir önceki temsilciler, toplu iş sözleşmesinin imza tarihini takip eden altıncı aydan itibaren üç ay içerisinde yapılacak temsilci seçimlerinin gerçekleştirilmesine kadar temsilci olarak atanırlar.

B- İşyeri sendika temsilcileri, işyerlerindeki üyeler arasından ve üyelerin katıldığı seçimle belirlenir.

Sendikanın ve üyelerin hak ve çıkarlarını etkileyebilecek olağanüstü durumlar ve bu maddenin (A) bendinde belirtilen işyerleri dışında, tüm işyerlerindeki temsilci seçimleri, toplu iş sözleşmesinin imza tarihini takip eden altıncı aydan itibaren üç ay içerisinde yapılır.

Seçimlerde aday olanlar arasından en çok oyu alan bir baş temsilci ile oy sırasına göre yeteri kadar temsilci seçilir.

Genel Yönetim Kurulu, seçimlerin kesinleşmesini izleyen 15 gün içinde seçilen temsilcilerin atama işlemini yaparak kimliklerini yazılı olarak işverene ve ilgili yerlere bildirir.

C- Seçim yapılacak işyerinde çalışan kadın ve erkek işçilerin oranı, çalışan işçilerin %25'ini geçiyorsa, işyerinde yapılan temsilci seçimlerinde -aday bulunması ve işyeri toplam temsilci sayısının birden fazla olması kaydıyla-, seçilen temsilciler arasında duruma göre kadın veya erkek işçilere en az bir kişilik temsil olanağı sağlanması zorunludur.

Bu maddede düzenlenen ve kota uygulanması gereken durumlarda, öngörülen kota tamamlanıncaya kadar, kadın veya erkek işçilerden en yüksek oyu almış bulunanlar seçimi kazanmış sayılır ve kalan eksik üyelikler için, kadın veya erkek işçi olup olmadığına bakılmaksızın en çok oy alanlar sıralaması dikkate alınır.

D- Üyeler tarafından imza toplanması nedeniyle yapılmasına karar verilen seçimler, bu başvurunun yapılmasını takip eden 15 gün içinde yapılır. Seçim hazırlıkları ile ilgili işlemler bu süre içinde bitirilecek şekilde planlanır.

E- 6. maddenin (B) ve (C) fıkrası uyarınca gerçekleştirilecek seçimler hariç olmak üzere, herhangi bir nedenle temsilcilik görevi sona eren temsilciden boşalan yere görevi devam eden temsilciler bir üst göreve kaydırılarak atanır.

Bir üst göreve kaydırılma nedeniyle temsilcilerin kadrosunda azalma olması durumunda, en son gerçekleştirilen temsilcilik seçiminde aday olan ve üyeliği devam edenler arasından en çok oy alanlar sıralaması dikkate alınarak boş kalan temsilcilik yerine atama yapılır.

Görevde olan temsilcilerin çoğunluğunun herhangi bir nedenle görevlerinin sona ermesi durumunda temsilcilik seçimleri yinelenir.

MADDE 6- GÖREVDEN ALMA:

A- Genel Yönetim Kurulu, sendikanın amaç ve ilkeleriyle, anatüzük ve yönetmeliklerine aykırı hareket eden, yetkili organ kararlarına uymayan, sendikanın ve üyelerin hak ve çıkarlarını korumayan, görevlerini aksatan, yerine getirmeyen ve bunu alışkanlık haline getiren, temsilcilik görevini ve ünvanını kendi menfaati için kullanan, üyeler ve sendika çıkarları açısından göreve devamında sakınca görülen işyeri baştemsilci ya da temsilcilerini, ilgili şubenin de görüşünü alarak görevden alabilir veya Disiplin Kuruluna sevkedilebilir.

B- İşyerindeki baştemsilci veya temsilcilerden biri veya birkaçı ya da tamamı hakkında yukarıda belirtilen ve görevden alınmalarını gerektirecek nedenlerin bulunduğu konusunda başvuru veya duyum alındığı takdirde konu şube ve genel merkez tarafından araştırılır. Başvuru veya duyumların haklı olduğu ve görevden alma nedenlerinin varlığı tespit edildiği takdirde, söz konusu baştemsilci veya temsilciler görevden alınır.

C- İşyerindeki üyelerin yarısını aşan sayıda üye tarafından, baştemsilci veya temsilcilerden biri veya birkaçı ya da tamamı için seçim yapılmasının, gerekçeli ve yazılı olarak talep edilmesi halinde, durum ilgili Şube Yönetim Kurulunun da önerisi alınmak suretiyle Genel Yönetim Kurulunca değerlendirilir. 5.nci madde hükümleri uyarınca talep doğrultusunda gerekli seçimler yapılır. Bu süre içinde ilgililerin görevine devam edip etmeyeceği hususu da Genel Yönetim Kurulunca karara bağlanır.

D- Genel Yönetim Kurulunun görevden alma kararı vermesi halinde, bu kararını ilgililere ve Şube Yönetim Kuruluna yazılı olarak bildirilir ve işbu yönetmelik hükümleri uyarınca yeni seçimler yapılır.

Bu maddenin (B) ve (C) fıkrası uyarınca yapılan başvurular temsilcilerin tamamını kapsamasa bile Genel Yönetim Kurulu seçimin tüm temsilci kadrosu için yapılmasını kararlaştırabilir.

MADDE 7- SEÇİMİN DUYURULMASI VE ÜYE LİSTELERİ:

Şube Yönetim Kurulu, temsilci seçimleri için seçim günü ve saatini kararlaştırarak seçim gününden 15 gün önce Genel Merkeze bildirir. Genel Merkez Örgütlenme Dairesi

kendi kayıtlarına göre işyerindeki üye listesini iki nüsha olarak hazırlayarak en geç seçim gününden 12 gün önce ilgili şube başkanlığına gönderir.

Şube Yönetim Kurulu işyerinin üye listesini (EK T-1) form genelge ile birlikte seçim gününden 10 gün önce işyeri ilan tahtasına, yokluğunda üyelerin görebileceği ve duyuruların yapılmakta olduğu duyuru yerine asar ve üyelere duyurulmasını sağlar.

Bu ilan üç gün süreyle askıda kalır. Askı süresi içinde listedeki bilgilerin gerçeği yansıtmadığına ilişkin olarak Şube Yönetim Kurulu veya Genel Yönetim Kuruluna itiraz edilebilir. İtirazın yapıldığı yönetim kurulu bu itirazları askı süresinin bitmesini takip eden iki işgünü içinde kesin olarak karara bağlar. Bu kararlar ilgili üyeye bildirildiği gibi, Şube ve Genel Yönetim Kurulları derhal birbirlerini haberdar ederler. Kararlar arasında çelişki bulunması halinde Genel Yönetim Kurulunun kararı geçerlidir. Genel Yönetim Kurulu bu şekilde kesinleşen listeleri oy kullanmaya elverişli bir halde düzenleyerek derhal şubeye gönderir.

MADDE 8- TEMSİLCİ ADAYLIĞI BAŞVURUSU:

Temsilci adaylığı başvuruları seçim gününden önceki ikinci gün saat 19.00' a kadar Şube Yönetim Kurulu üyelerine veya genel yönetim kuruluna yapılır. Genel yönetim kuruluna yapılan başvurular zamanında ilgili şubeye bildirilir. Sendika Şubesinin bulunduğu il sınırları dışında bulunan işyerlerinde yapılacak seçimler için adaylık başvuruları baştemsilci veya onun yokluğunda yerine bakan temsilci veya temsilci ataması yapılmamış işyerlerinde Şube Yönetim Kurulunca belirlenerek ilanda duyurulmuş bulunan üyeye de yapılabilir.

Şube Yönetim Kurulu seçimin bir gün öncesi adayların gerekli nitelikleri taşıyıp taşımadıklarını kontrol eder ve oy pusulalarını hazırlar.

Adaylık başvuruları (EK T-2) örnek form ile yapılır. Adaylık için başvuran üyeye başvuruyu alan yetkili tarafından görevi ve adı soyadı yazılmak suretiyle imzalandıktan sonra (EK T-3) örnek formu verilir.

Seçim günü sabahı adayları gösteren ve şube yönetim kurulunun onayını taşıyan oy pusulasından bir örnek, işyeri ilan tahtalarında ve oy kullanma yerlerinde ilan edilir.

MADDE 9- OY PUSULALARI:

Temsilci adaylığı başvuru süresinin bitiminden sonra kesinleşen temsilci aday listeleri, Şube Yönetim Kurulunca oy pusulası haline getirilir.

Oy pusulasında adayların sıralaması, adları dikkate alınarak alfabetik esasa göre yapılır.

Oy pusulaları oy kullanacak üye sayısı kadar çoğaltılarak şube mührü ile mühürlenir.

MADDE 10- SEÇİM YERİ, SAATİ, VE SANDIK KURULU:

Temsilci seçimleri işyerinde, bu mümkün değilse şube binasında, bu da mümkün değilse şube tarafından belirlenerek üyelere duyurulan yerde ve saatler arasında yapılır.

İşyerinde çalışan üye sayısına göre yeteri kadar seçim sandığı konulur.

Her sandık için, o sandıkta oy kullanacak ve aday olmayan üyeler içinden sandık kurulunda görev almak isteyenler arasından kura ile belirlenen iki üye ile Şube Yönetim Kurulu üyesi veya Şube Yönetim Kurulu tarafından görevlendirilen biri Başkan olmak

üzere üç kişilik Sandık Kurulu oluşturulur. Sandık Kurulu üyelerinin okuryazar olmaları zorunludur.

MADDE 11- SEÇİMLER:

Seçimler, serbest, eşit, gizli oy, açık sayım ve döküm esasına göre yapılır.

Seçimler, seçim ilanında belirtilen görev yerlerinin yanısıra, seçimin yapılacağı günden iki gün öncesi saat: 19.00'a kadar herhangi bir nedenle boşalan tüm görevleri kapsayacak biçimde yapılır.

Oy verme işlemine sandık kurulu ve genel yönetim kurulu tarafından görevlendirilecek gözlemci nezaretinde başlanılır. Üyeler oylarını gizli olarak kullandıktan sonra üye listesindeki isminin karşısındaki yeri imzalar.

Oylar, oy verme sırasında sandık kurulu tarafından verilen mühürlü oy pusulalarında tercih edilen adayın isminin karşısında yer alan kutunun işaretlenmesi veya oyun kullanıldığı mahalde asılacak olan temsilci adaylarının arasından tercih edilenlerin isimlerinin oy pusulasına yazılması suretiyle kullanılır. Mühürsüz veya seçilecek temsilci sayısından fazla adayın isminin işaretlendiği veya yazıldığı oy pusulaları ile başka şekillerde kullanılmış oylar geçersizdir.

Oy verme işlemi sonunda tasnif, sandık kurulu tarafından ve açık biçimde yapılır.

Tasnif sonuçları (EK T-4) form örnekteki tutanağa geçilerek imzalanır. Üç nüsha düzenlenen tutanağın bir nüshası temsilcilik odasında veya şubede üç gün süre ile askıya çıkarılır. Birer nüshası Genel Merkez ve Şubeye verilir. Askı süresi içinde

yapılacak itirazları inceleme yetkisi Genel Yönetim Kuruluna aittir. Yapılacak itirazlar, askı süresini takip eden iki işgünü içinde kesin karara bağlanır.

Seçimlerde birden fazla adayın eşit oy alması durumunda yapılacak sıralamada seçimden önce temsilci olanlara öncelik tanınır. Burada farklılık yoksa sendika tüzüğünde belirlenmiş organlarla genel merkez veya şube düzeyindeki bir kurul veya komisyonda görev alınması hali öncelik sağlar. Burada da farklılık yoksa öğrenim durumu dikkate alınır. Öğrenim durumlarının aynı olması halinde, önce adayın sohbet ve değerlendirme toplantıları dışında sendikal eğitimlere katılması; daha sonra sendika üyeliğinin daha uzun olması, kriterleri dikkate alınır. Bu kriterlerde de eşitlik varsa kura yoluna başvurulur.

Oy pusulaları ve diğer belgeler iki ay süreyle şubede saklanır.

MADDE 12– YÜRÜRLÜK:

İşbu yönetmelik Genel Yönetim Kurulunun 18.09.2012 tarih ve 128 sayılı kararıyla kabul edilerek yürürlüğe girmiştir.

Appendix F:

Genel-İş Workplace Union Representatives, Workplace Representation Board and Branch Representatives Board Regulations

GENEL-İŞ İŞYERİ SENDİKA TEMSİLCİLERİ VE İŞYERİ TEMSİLCİLER KURULU İLE ŞUBE TEMSİLCİLER KURULU YÖNETMELİĞİ

BİRİNCİ BÖLÜM

AMAÇ, KAPSAM VE İŞYERİ SENDİKA TEMSİLCİLERİ İLE İLGİLİ HÜKÜMLER

MADDE 1: AMAÇ

Sendikanın işyerlerindeki en temel örgüt birimi olan işyeri temsilciler kurulunu güçlendirmek; demokratik sınıf ve kitle sendikacılığı ilke ve anlayışının doğru biçimde gerçekleşmesini ve temsilcilerin sendikal mücadelede etkin olmalarını sağlamak;

Şube yönetim kurulu'nun gerçekçi ve sağlıklı kararlar alabilmesi için şube danışma organı olarak şube temsilciler kurulu'nun çalışmalarını düzenlemektir.

MADDE 2: KAPSAM

Sendikalar Yasasının ilgili maddeleri ile Sendika Anatüzüğünün 44, 45 ve 46. maddeleri çerçevesinde ve Anatüzüğün 72. maddesi uyarınca çıkarılan bu yönetmelik; işyeri temsilciler kurulunun oluşumu ve görevleri; işyeri sendika temsilcilerinin seçimi, atanması, görev ve sorumlulukları, görevden alınmaları ile şube temsilciler kurulu'nun çalışma düzeni ve kurallarıyla ilgili hükümleri kapsar.

MADDE 3: İŞYERİ SENDİKA TEMSİLCİLERİNDE SENDİKANIN ARADIĞI NİTELİKLER

İşyeri temsilciler kurulunda görev alacak temsilcilerde aşağıdaki koşullar aranır:

a) O işyerinde en az altı aydır çalışır olmak,

b) DİSK'in ilkelerine ve Sendika Anatüzüğünün 4. maddesinde belirlenen Sendikanın amaç ve ilkelerine bağlı olmak,

c) İşçi sınıfının birliğine, örgüt disiplinine ve sendikanın mücadele anlayışına bağlı olmak,

d) Çalışma mevzuatına ait konularda asgari bilgi sahibi olmak,

e) Bilgi, beceri ve deneyim bakımından işyeri sendika temsilciliği yapabilecek niteliklere sahip olmak,

f) Son iki yıl içinde Sendika disiplin kurullarında ihtar cezası dışında ceza almamış olmak,

g) Sendikalar Yasasının 5. maddesinde belirtilen şartları taşımak.

MADDE 4: İŞYERİ SENDİKA TEMSİLCİLERİNİN SEÇİMİ, ATANMASI VE ATANMA ZAMANI

Sendika, 2822 sayılı Yasa'nın 16. maddesi uyarınca toplu sözleşme bağıtlamak üzere yetki belgesi aldığı tarihten itibaren işyeri sendika temsilcisi atama yetkisi kazanır.

İşyeri sendika temsilcileri, kural olarak Sendikalar Yasasının 34. maddesinde belirtilen sayılara göre işyerinde yapılan seçimle belirlenir ve Genel Yönetim

Kurulunca atanırlar. Ancak Genel Yönetim Kurulu, doğrudan ya da şubenin talebi üzerine işyeri özelliklerinin, örgütlenme gereklerinin ve Sendikanın çıkarlarının gerektirdiği durumlarda, doğrudan atama yoluna da gidebilir. İşyeri sendika temsilcilerinin doğrudan atanmaları durumunda ilgili şubenin de görüşü alınır.

Temsilci seçimleri, yetki belgesinin alınmasını takip eden günlerde yapılabileceği gibi, toplu sözleşmenin imzalanmasını takip eden günlerde de yapılabilir. Seçim zamanı işyerinin ve ilgili şubenin ihtiyaçlarına göre şubelerce belirlenir.

Eğer seçimler toplu sözleşmenin imzalanmasından sonra yapılacaksa, yetki belgesinin alınmasından sonra, bir önceki dönem atanan ve halen görevleri devam eden temsilciler, şubenin bildirmesi üzerine Genel Yönetim Kurulunca atanırlar. Şu kadar ki, bu temsilcilerin görev süresi, toplu iş sözleşmesinin imzalanması sonrasında yapılacak seçime kadardır.

Temsilci sayısının birden fazla olduğu işyerlerinde temsilciler, kendi aralarında bir baştemsilci seçerler.

MADDE 5: İŞYERİ SENDİKA TEMSİLCİLERİ SEÇİMİNE İLİŞKİN ESASLAR

İşyeri sendika temsilcileri seçimleri Sendikanın yetki belgesini almasından itibaren en geç bir ay içinde yapılır.

Şube yönetimi, işyerinde üyelerin çoğunluğunun katılabileceği bir tarih belirleyerek, bu tarihi, seçilecek temsilci sayısını, adaylarda aranan koşulları seçimlerden en az yedi gün önce tüm üyelerin görebileceği yerlerde ilan eder, ilan ile birlikte işyerine ait üye listesini aynı yerde askıya çıkarır ve seçim tarihini işverene bildirir.

Üyeler, askı günü dâhil olmak üzere, üç gün içinde listeye yazılı olarak itiraz edebilirler. İtirazlar şube yönetim kurulu tarafından iki gün içinde kesin karara bağlanır.

Seçimler gizli oy, açık sayım esasına göre şube yönetim kurulu denetiminde yapılır.

Üyeler, seçim sonuçlarına seçim günü dâhil olmak üzere üç gün içinde yazılı olarak itiraz edebilirler. Şube yönetim kurulu bu itirazları iki gün içinde kesin olarak karara bağlar.

Seçilenler, seçim sonuçlarının Sendika Genel Merkezine ulaşmasının ardından Genel Yönetim Kurulunca işyeri sendika temsilcisi olarak atanırlar. Şu kadar ki, Genel Yönetim Kurulunun bu yönetmeliğin dördüncü maddesindeki doğrudan atama yetkisi saklıdır.

MADDE 6: İŞYERİ SENDİKA TEMSİLCİLERİNİN GÖREV VE YETKİLERİ

İşyeri sendika temsilcilerinin görevleri şunlardır:

a) İşyeri temsilciler kurulu çalışmalarına etkin olarak katılmak; görev almak,

b) İşyerindeki üyelerin sözleşme ve yasalar uyarınca belirlenen hak ve yararlarını işverene karşı korumak, uygulamada birlik ve etkinlik sağlamak,

c) İşyerinde Sendikanın güçlenmesi için gerekli mücadeleyi sürdürmek, işyerinde çalışan işçilerin tamamının, Genel-İş'e üye olmasını sağlayarak Örgütün gelişmesine katkı sunmak,

d) İşçi ve işveren arasındaki diyalogu sağlamaya dönük çaba içinde olmak, çalışma ilişkilerinin düzenli ve verimli sürdürülmesine yardımcı olmak,

e) Sendikanın gücünü, bütünlüğünü, etkinliğini ve saygınlığını korumak,

f) Toplu sözleşmelerin kendilerine verdiği görevleri yerine getirmek,

g) İş, işyeri, işveren ve üyeler hakkında şube yönetim kurulunun gerçekçi bilgiler edinmesine etkin biçimde yardım etmek,

h) Üyelerde sınıf bilincinin yaratılması, pekişmesi ve kökleşmesi, demokratik sınıf ve kitle sendikacılığının güçlenmesi ve işçi sınıfının her türden gerici, tutucu ve baskıcı ideoloji ve eğilimlerin saldırı ve etkilerinden korunması için yol gösterici, ikna edici ve güven duygusu aşılayıcı çabalarda bulunmak,

i) İşyerine diğer bütün işçiler gibi zamanında gelmek, görevleri dışında, işçilerle birlikte bulunmak,

j) Şube yönetim kurulu'nun belirlediği tarihlerde şube temsilciler kurulu toplantılarına katılmak,

k) İşyeri sendika temsilcileri, kolektif çalışma esaslarını dikkate alarak faaliyetlerini şube yönetim kurulunun bilgisi dâhilinde ve şube yönetim kurulu ile işbirliği içinde yürütmekle yükümlüdür,

l) Sendika Anatüzüğünün, şube yönetim kurulunun ve işyeri temsilciler kurulunun ve toplu iş sözleşmesinin kendilerine verdiği diğer görevleri yapmakla yetkili ve görevlidirler.

MADDE 7: İŞYERİ SENDİKA TEMSİLCİLERİNİN GÖREV SÜRESİ VE GÖREVDEN ALMA

İşyeri sendika temsilcilerinin görevi, toplu iş sözleşmesi için yetki belgesi alınmasının ardından yönetmeliğin 3 ve 4. maddelerindeki hükümlere göre atanmalarıyla başlar ve sonraki dönem için yetki belgesi alındıktan sonra yine aynı usule göre yeni temsilcilerin atanmasına kadar devam eder. İşyeri sendika temsilcilerinin sonraki dönemde de atanmalarında engel yoktur.

Görevlerinde başarı sağlayamayanların, seçildikten sonra 8. maddede sayılan niteliklerini yitirenlerin, haklarında işyerindeki üyelerin salt çoğunluğunca imzalı ve gerekçeli olarak görevden alınma istemi bulunanların veya ilgili şube yönetim kurullarınca görevden alınması gerekli görülenlerin temsilcilik görevleri şube yönetiminin istemi ve Genel Yönetim Kurulunun kararı ile sona erer. Herhangi bir nedenle olağan görev süresinin bitiminden önce görevinden ayrılan ya da alınan temsilcilerin yerine, yine bu yönetmelik hükümlerine göre en geç iki ay içinde yeniden atanma yapılır. Yeniden atanması yapılan temsilcilerin görev süresi, bu maddenin birinci fıkrasında belirtilen süre kadardır.

İKİNCİ BÖLÜM

İŞYERİ TEMSİLCİLER KURULU İLE İLGİLİ HÜKÜMLER

MADDE 8: İŞYERİ TEMSİLCİLER KURULU VE ÇALIŞMA YÖNTEMİ

İşyeri temsilciler kurulu, o işyerindeki işyeri sendika temsilcilerinden oluşur. Kurul başkanı baştemsilcidir.

Temsilciler, aralarından birini baştemsilci olarak seçerler. Baştemsilci olarak atanan temsilci, temsilciler arasında eşgüdümü sağlamak, işyeri temsilciler kurulunu işler kılmak ve şube ile ilişkileri canlı tutmaktan birinci derecede sorumludur.

İşyeri temsilciler kurulu, işyerindeki genel durumu görüşmek, görüş alışverişinde bulunmak, işyeri sorunlarını ele almak, Sendikanın işyerindeki etkinliğini yükseltecek çalışmaları ve Sendika tarafından kendilerine verilen görevleri hakkıyla yerine getirebilmek vb. için, en az 15 günde bir olağan olarak, baştemsilcinin başkanlığında, toplanır. Toplantılar, daima somut ve ilerletici bir karara varacak biçimde yapılır.

Toplantılar şubeye rapor edilir.

İşyeri temsilciler kurulu kolektif çalışma esaslarını dikkate alarak, faaliyetlerini şube yönetim kurulunun bilgisi dâhilinde ve şube yönetim kurulu ile işbirliği içinde yürütmekle yükümlüdür.

MADDE 9: İŞYERİ TEMSİLCİLER KURULUNUN GÖREV VE YETKİLERİ

İşyeri temsilciler kurulunun görev ve yetkileri şunlardır:

a) Toplantıları zamanında yapmak, İşyeri sendika temsilcilerinin görevlerini düzenlemek, planlamak ve kurul üyeleri arasında işbölümü ve işbirliğini sağlamak,

b) Üyelerle belirli aralıklarla toplantılar yapmak, bu toplantılarda üyelerin her türlü düşünce ve önerilerini alarak, bunları kurul toplantılarında değerlendirmek,

c) İşyerinde bulunan taşeronların dökümünü (iş süresi, çalışan işçi sayısı taşerona verilen iş vb. her türlü bilgi) çıkarmak, bu konudaki değişiklikleri izlemek,

d) Taşeron işçilerin örgütlenebilmesi için yürütülecek çalışmaları değerlendirmek,

e) Toplu sözleşme çalışmaları ve görüşmeleriyle yakından ilgilenmek, bu konuda üyelerin taleplerini değerlendirerek şubeye rapor etmek, üyeleri bilgilendirmek,

f) Toplu iş sözleşmesi ve Yasa gereğince oluşturulan kurulların çalışmalarını, işyeri sendika temsilcileri toplantılarında ele almak, kurulların oluşturulması ve daha iyi işler duruma gelmesi konusunda şubeye öneride bulunmak ve yardımcı olmak,

g) Üst organ kararlarının ve şube yönergelerinin zamanında, bütünlük içinde ve üye tabanında en geniş katılımıyla hayata geçirilebilmesi için gerekli inisiyatifi kullanmak; üyeleri Sendika etkinlikleri konusunda aydınlatmak,

h) Sendikanın yayınlarını (gazete, dergi, bülten, broşür, bildiri gibi) işyerlerinde dağıtmak, üyelerce okunup tartışılmasını sağlamak, bu yayınlara yazı, haber, resim vb. göndermek,

i) Sendika aidatlarının Sendikanın ilgili banka hesabına zamanında yatırılmasını ve kesinti listelerinin Sendikaya iletilmesini sağlamak konusunda şube yönetimine destek olmak,

j) Sendikanın düzenleyeceği eğitim çalışmalarına ve diğer etkinliklerine en geniş katılımın gerçekleşmesini sağlamak,

k) İşyeriyle ilgili bütün konuları, bilgileri, durumları ayrıca kurul toplantılarını, alınan kararları, değerlendirme sonuçlarını vb. Şubeye rapor etmek,

l) Şube temsilciler kurulu toplantılarına katılmak ve çalışma önerileri sunmak,

m) Şube yönetim kurulunun verdiği diğer görevleri yapmakla yetkili ve görevlidirler.

ÜÇÜNCÜ BÖLÜM

ŞUBE TEMSİLCİLER KURULU İLE İLGİLİ HÜKÜMLER

MADDE 10: ŞUBE TEMSİLCİLER KURULUNUN OLUŞUMU VE ÇALIŞMA DÜZENİ

Şube temsilciler kurulu, Sendika Anatüzüğünün 46. maddesi uyarınca şube başkanın yönetiminde şube yönetim, denetim ve disiplin kurulu üyeleri ve şubeye bağlı işyeri sendika temsilcilerinden oluşur. Şube temsilciler kurulu, şube kapsamında bir danışma kuruludur; şube yönetim kurulu çalışmalarına katkıda bulunacak tavsiye kararları alabilir ve bu kararlar şube yönetim kurulları tarafından değerlendirilir.

Şube temsilciler kurulu, şube yönetim kurulunun çağrısı üzerine ve ilgili şubenin coğrafi konumu da değerlendirilerek yılda en az bir defa toplanır. Şube yönetim kurulu, şube temsilciler kurulunun toplanma tarihlerini yıllık şube çalışma programında belirler.

Şube temsilciler kurulu toplantılarının gündemi şube yönetim kurulu tarafından belirlenir ve şube temsilciler kurulu üyelerine makul bir süre öncesinde bildirir.

Toplantı sonuçları Genel Yönetim Kuruluna bir raporla bildirilir.

MADDE 11: ŞUBE TEMSİLCİLER KURULUNUN GÖREVİ

Şube temsilciler kurulunun görevleri şunlardır:

a) İşyeri sendika temsilcileri arasında işbirliği ve yardımlaşmayı sağlamak,

b) Şubenin örgütlenme, işyeri politikaları ve sorunları, toplu iş sözleşmeleri, üye ve temsilci eğitimleri konularındaki önerileri ile ilgili olarak görüş bildirmek,

c) Şube çalışma programı önerisini görüşerek tavsiyede bulunmak,

d) Sendika Anatüzüğünün 49. maddesi uyarınca oluşturulan bölge eşgüdüm kurulunun toplantıya çağırması durumunda, bu toplantılara katılmakla görevlidir.

DÖRDÜNCÜ BÖLÜM

DİĞER HÜKÜMLER

MADDE 12: BİLDİRİM

İşyeri sendika temsilcilerinin atamaları, Örgütlenme Dairesi tarafından ilgili işverene ve bölge çalışma müdürlüklerine iadeli taahhütlü olarak, şube başkanlıklarına diğer tebligat yöntemleriyle bildirilir.

MADDE 13: BİRDEN FAZLA GÖREV

Şube yönetim, denetim veya disiplin kurulunda görevli olanlar, zorunlu durumlarda ayrıca işyeri sendika temsilcisi olarak da görev üstlenebilirler.

MADDE 14: YÜRÜRLÜK

Bu yönetmelik Genel Yönetim Kurulunun 13.08.2008 tarih ve 692 sayılı kararı ile kabul edilmiş ve kabul tarihinden itibaren yürürlüğe konulmuştur.

Appendix G:

Türk Metal Duties of Workplace Union Representative and Appointment and Election Regulations

TÜRK METAL SENDİKASI İŞYERİ SENDİKA TEMSİLCİSİNİN GÖREVLERİ İLE ATAMA VE SEÇİM YÖNETMELİĞİ

Madde 1- AMAÇ

Bu yönetmeliğin amacı Türk Metal Sendikası İşyeri Sendika Temsilcilerinin sayı, nitelik, atanma veya seçim işlemleriyle, sendika işyeri temsilcilerinin görev, yetki ve sorumluluklarını Türk Metal Sendikasının genel amaç ve ilkeleri doğrultusunda belirlemektir.

Madde 2- SEÇİMLE BELİRLENECEK OLAN İŞYERİ SENDİKA TEMSİLCİLERİNDE ARANACAK NİTELİKLER

İşyeri Sendika Temsilcilerinin ve/veya adaylarının Yasada ve Türk Metal Sendikası Ana Tüzüğü'nde aranan koşullara ek olarak aşağıda belirtilen niteliklere sahip olmaları zorunludur. a) İşyerinde en az 3 yıllık kıdemi olmak. (Kıdemin hesabında aynı veya hâkim hissedar firma, holding, kurum veya kuruluş bünyesinde yapılan çalışmaların tamamı esas alınır. Ayrıca örgütlenmesi veya faaliyeti 5 yıla kadar olan işyerlerinde kıdem şartı 2 yıl olarak uygulanır.) b) Sendikaca zorunlu kılınan eğitimlere önemli bir mazeret ya da mücbir sebep haricinde katılmış olmak. c) Sendika disiplin kurulunca herhangi bir cezai müeyyide almamış olmak. d) Daha önce Sendika İşyeri temsilciliği görevinden alınmamış olmak. e) Örgütlenmesi bir yılı geçen işyerlerinde sendikanın en

az bir yıllık üyesi olmak. f) Sendika üyesiyken üyelikten istifa halinde istifa tarihinden sonraki bir TİS dönemini geçirmiş olmak, g) Bu yönetmelik yürürlüğe girdikten sonra İşyeri Sendika Temsilciliğinde aranılan şartları taşımayan atanmış/seçilmiş işyeri sendika temsilcilerinin görevi sona erer. Ancak yeni temsilci atanana/seçilene kadar bu görevlerini sürdürürler.

Madde 3- TEMSİLCİ SAYISI

Toplu İş Sözleşmesi yetki belgesi alınan işyerlerinde yürürlükte olan Sendikalar ve Toplu İş Sözleşmesi Yasası ve Türk Metal Sendikası Ana Tüzüğü'ne uygun sayıda İşyeri Sendika Temsilcisi seçilir/atanır. Buna göre; 50'ye kadar işçinin çalıştığı işyerinde bir, 51-100 işçinin çalıştığı işyerinde iki, 101-500 işçinin çalıştığı işyerinde üç, 501-1000 işçinin çalıştığı işyerinde dört, 1001-2000 işçinin çalıştığı işyerinde altı, 2000'den fazla işçinin çalıştığı işyerinde sekiz temsilci seçilir/atanır. Birden fazla temsilcinin olduğu işyerinde temsilciler seçimle belirlenmişse seçilen temsilcilerden biri genel merkez veya yetkilendirilmesi halinde ilgili şube tarafından baş temsilci olarak atanır. Eğer işyeri temsilcileri atama yoluyla belirlenmişse baş temsilci de genel merkez/ şube tarafından atanır. Temsilcinin seçim veya atama ile belirlenmesi hususunda sendika yönetim kurulu veya yetkilendirilmesi halinde şube yönetim kurulu yetkilidir.

Madde 4- GÖREV, YETKİ VE SORUMLULUKLARI

İşyeri Sendika temsilcileri kesinleşen yetki akabinde ve en fazla Toplu İş Sözleşmesi yürürlük süresi bitimine kadar görev yapmak üzere seçilir/atanırlar. Yeni temsilci atanana/seçilene kadar yetkisi kesinleşen işyerlerindeki temsilcilerin bu görevleri devam eder. A) İşyeri Sendika Temsilciler Kurulu 1) İşyeri Sendika Temsilciler Kurulunun

Başkanı İşyeri Baş temsilcisidir. Kurul ayda en az bir kez olağan olarak toplanır ve üyelerden gelen sorun ve öneriler ile işyerindeki durum ve koşulları görüşür. Görüşülen bu konulara ilişkin kendi düşüncelerini de beyan ederek ilgili Şube Başkanlığı'na yazılı olarak iletir. 2) İşyeri Baş temsilcisi kendi bireysel çağrısıyla, işyeri temsilcileri de toplam temsilci sayısının yarısı kadar çoğunluğun isteğiyle Kurulu olağanüstü toplayabilir. 3) Sendikal politikaların saptanması ve belirlenen politikaların yaşama geçirilmesini işyerindeki üyelerin aktif katılımı ile işyerinde yapılacak çalışmaların yararlı ve amaca uygun olarak gerçekleşmesi için Sendika Şubesi'ne yazılı öneriler sunar. 4) İşyeri Disiplin Kurulu, Yıllık Ücretli İzin Kurulu, İşçi Sağlığı ve İş Güvenliği Kurulu gibi kurullara katılacak işçileri, şube yönetim kurulunca belirlenmemişse, temsilciler arasından veya gerek görülmesi halinde temsilci olmayan adaylar arasından belirleyerek Şube Yönetim Kuruluna bildirir. 5) İşyeri kurul ve komisyonlarının zamanında kurulması ve amaçlarına uygun faaliyetlerde bulunmaları için yönlendirici olur, kurullar arasında koordinasyonu sağlar. 6) Gerektiğinde İşyeri Komitelerinin oluşturulmasını ve düzenli bir biçimde çalışmasını sağlar. 7) Şube Yönetim Kurulu ve ilgili sendika birimlerinin görüşlerini de alarak, üyelerin yasalar ve toplu iş sözleşmeleriyle ilgili her türlü şikayetlerini işyerinde çözümlemeye çalışır ve bu amaçla işveren vekilleriyle şubenin/genel merkezin bilgisi dahilinde sendika adına görüşmeler yapar. Görüşmeleri kayıt altına alır, görüşmelerden çıkacak olumlu veya olumsuz sonuçları Şube Yönetim Kuruluna/Genel Merkeze yazılı ya da sözlü olarak bildirir. Gerektiğinde şubenin devreye girmesini sağlar. B) Baştemsilci: Baştemsilci İşyeri Sendika Temsilciler Kurulunun başkanıdır. İşyerinde Sendikayı temsil eder. Sendika Şubesinin yönerge ve denetimi altında çalışır. İşyeri Sendika Temsilcilerinin uyumlu

çalışmasından, toplantı ve eylemlerinden sendikaya karşı sorumlu ve yetkilidir. Temsilciliğin defter, belge, evrak ve hesaplarının tutulmasından ve saklanmasından sorumludur. Baştemsilci yokluğunda diğer temsilcilerden biri vekil olarak görevlendirir.

C) İşyeri Sendika Temsilcileri: 1) İşçilerin talep ve ihtiyaçlarını tespit eder, çözümlenmesi için çaba harcar. 2) İşyerinde mevzuat ve toplu iş sözleşmesi hükümlerinin uygulanması, işçilerin hak ve çıkarlarının korunması, çalışma barışının oluşturulup sürdürülmesi için çaba gösterir. 3) Sendikanın ve üyelerin nitelik ve nicelik olarak gelişip güçlenmesi için çaba harcar, işyerinde ve işyeri dışında sendikanın amaç ve ilkelerinin yaşama geçmesi için çalışır, Sendikanın yeni üyeler kaydetmesi ile üyelerin vatandaş ve işçi olarak bilinç düzeylerinin yükseltilmesini sağlayıcı faaliyetlerde bulunur… 4) İşyerinde çalışanların tümünün üyeliği için çalışmalar yapar. 5) Toplu iş sözleşme teklif metninin hazırlanmasında, uyuşmazlığa gitmede ya da anlaşmaya varmada, üyelerin istemlerinin saptanmasında Genel Merkez ve Şube yöneticileri ve sendikanın diğer görevlileriyle birlikte faaliyet gösterir. 6) Mevzuat, Sendika Ana Tüzüğü, yönetmelikler ve yetkili organlarca alınan kararlar ile Toplu İş Sözleşmesinin kendilerine verdiği diğer görevleri yerine getirir. 7) Sendikanın düzenleyeceği eğitim çalışmalarına ve diğer etkinliklerine en geniş katılımın gerçekleşmesini sağlamak, 8) Şube temsilciler kurulu toplantılarına katılmak ve çalışma önerileri sunmak, 9) Şube yönetim kurulunun verdiği diğer görevleri yapmakla yetkili ve görevlidirler. 10) Sendikanın yayınlarını (gazete, dergi, bülten, broşür, bildiri gibi) işyerlerinde dağıtmak, üyelerce okunup tartışılmasını sağlamak, bu yayınlara yazı, haber, resim vb. göndermek, 11) Üst organ kararlarının ve şube yönergelerinin zamanında, bütünlük içinde ve üye tabanında en geniş katılımıyla hayata geçirilebilmesi

için gerekli çalışmaları yapmak; üyeleri sendika etkinlikleri konusunda aydınlatmak, 12) İşyerinin tüm bilgilerini toplar, değişiklikleri izler, işverenin işyerindeki tüm uygulamalarını takip eder ve raporlar. Sendika işyeri temsilcileri çalışmalarından dolayı Şube Yönetim Kurulu ve Genel Yönetim Kuruluna karşı sorumludur.

Madde 5- İŞYERİ SENDİKA TEMSİLCİLİĞİ SEÇİMİ VE ATANMASI

A) Yeni Örgütlenilen İşyerleri: İlk defa yetki alınan veyahut yetkisi el değiştikten sonra yeniden yetki alınan işyerlerinde TİS yetkisinin kesinleşmesinden itibaren 3 ay içinde işyeri temsilcileri atanır veya seçimi yapılır. B) Toplu İş Sözleşmesi Bulunan İşyerleri: Toplu İş Sözleşmesi bulunan işyerlerinde işyeri sendika temsilciliği seçim/ataması yeni Toplu İş Sözleşmesi'nin imzalanmasından itibaren iki ay içinde yapılır. Eğer ara dönemde çeşitli sebeplerle yeni bir temsilcilik seçimi/ataması olmuşsa bu işyerlerinde de yeni Toplu İş Sözleşmesi imzalanmasından itibaren iki ay içinde atama/seçim yapılır. C) İşyerinde çalışan sendika üyesi işçilerin salt çoğunluğunun ilgili sendika şubesine veya genel merkeze yazılı başvurması halinde temsilciler görevden alınabilir. Bu hallerde temsilcilik seçimleri 15 gün içinde yenilenir veyahut genel yönetim kurulu 15 gün içinde yeni bir atama yapar. D) İşyeri sendika temsilcilerinin, temsilcilik için gereken nitelikleri kaybetmesi veya işten ayrılma, sendika üyeliğinden istifa etmesi halinde ya da herhangi bir rahatsızlık veya hastalık halinde işe 3 ay ve üzerinde devamsızlık yapacağı hallerde yerine atama veya seçim yoluyla yeni temsilci belirlenir.

Madde 6- TEMSİLCİLİK SEÇİMLERİNE ADAY OLMA

Temsilcilik seçimlerinin tarihi ve adaylık başvuru süresi, saati ile oy kullanacak işçi listesi ve oy kullanma saatleri ilgili şube tarafından işyerindeki ilan panosuna en az bir

hafta önce asılarak ilan edilir. (EK-1) İsmi listede yer almayan işçiler sendika şubesine başvurarak oy kullanmak için müracaat ederler. İlan tarihiyle birlikte adaylık müracaatları (EK-2) sendikanın ilgili şubesince alınmaya başlanır. Aday olacak kişinin bizzat başvuru yapması gerekmektedir. Seçimlerin yapılacağı günün 2 gün öncesine kadar adaylık başvuruları kabul edilir. Adaylık başvuru süresinin bitme saatinden itibaren derhal aday olan isimler ilan panosunda ilan edilir. Temsilci seçilme yeterliliğine sahip olmayan adaylara karşı itiraz Sendika Yönetim Kurulu veya yetkilendirilmesi halinde Şube Yönetim Kuruluna yapılır. Yönetim kurulu ilgili itirazı derhal inceleyerek adaylık hakkında seçim gününden bir gün öncesine kadar karar verir. Ayrıca ilgili adayların seçilebilme koşulları hakkında Sendika Yönetim Kurulu veya yetkilendirilmesi halinde Şube Yönetim Kurulu re'sen de inceleme yapar. Kesin Aday listesi ile oy kullanacak üye listesi seçim gününden bir gün öncesinde ilan panosunda ilan olunur.

Madde 7- SEÇİMLERDE UYULACAK ESASLAR

1) Genel Yönetim Kurulunca veya yetkilendirilmesi halinde Şube Yönetim Kurulunca İşyeri Sendika Temsilciliği'nin seçimle belirlenmesinin kararlaştırdığı durumlarda işyerinde ilgili Yasa ve Sendika Ana Tüzüğü dikkate alınarak seçim yapılır. 2) Seçimler görevlendirilmesi halinde Yönetici veya Genel Sekreter/Genel Sekreter Yardımcıları veya diğer Genel Merkez Görevlileri nezaretinde gizli oy, açık sayım ilkesiyle, demokratik hukuk Devleti düzenine bağlı bir şekilde yapılır. 3) Seçimlerde kaç sandıkta oy kullanılacağı Sendika Şubesince işyerinde oy kullanacak işçi sayısı dikkate alınarak belirlenir. 4) Seçimlerde 3 kişiden oluşan "işyeri temsilcisi seçim kurulu" oluşturulur. Ayrıca oy kullanılacak her sandık için yine 3 kişiden oluşan "sandık kurulu" belirlenir.

Seçim kurulu, sandık kurulu/kurullarınca sayımı yapılan oyların toplamını bularak seçim sonuçlarını ilan eder. Ayrıca seçim kurulu seçimlerin gidişatını da denetler. 5) Sandık/Seçim kurulu, varsa genel merkezce görevlendirilen nezaretçinin de görüşünü alarak/onayı ile ilgili şube yönetim kurulunca belirlenecektir. Sandık/Seçim kurulu işyerindeki işçilerden oluşacaksa bu işçilerin temsilcilik seçimlerine adaylık müracaatında bulunmamış olmaları gerekmektedir. Seçim kuruluna varsa genel merkezce görevlendirilen nezaretçi başkanlık eder. 6) Sandık/Seçim kurulu seçimlerden en geç bir gün öncesinde belirlenir. Ancak ilgili şube tarafından Genel Merkez bilgilendirilir. 7) Seçimlerde oy kullanılacak sandıklar şeffaf olacaktır. Yine sandık kapaklarının kapalı olduğu ve sandıkların içinin boş olduğu, ayrıca yeterli sayıda ve usule uygun sendikanın mührünü içeren seçim pusulalarının mevcut olduğu seçim kurullarınca seçim başlamadan tespit edilir ve tutanak altına alınır (EK-3) ve oylama işlemi başlar. 8) Oy kullanma işlemi bütün işçilerin oy kullandığının anlaşılması veya oy kullanamayacağını kimlik fotokopisi ekli ıslak imzalı dilekçeyle ilgili sendika şubesine önceden ileten işçilerin bulunması halinde bu işçiler haricindeki bütün işçilerin oy kullanması ile (her hal ve şartta vardiya bitiminde) seçim kurulunca bitirilir. Bu şekilde bütün sandıklardaki oy kullanma işlemi bitmeden sandık sayımına geçilemez. 9) Seçimlerde yalnızca sendika üyesi ve o işyerinde çalışan işçiler oy kullanabilir. Oy kullanacak işçinin resmi kimlik tespiti yapıldıktan sonra sendika mührünü taşıyan üye listesine imzası alınır ve işçi kapalı oy kullanma bölmesine yönlendirilir. 10) Seçimlerin çarşaf liste veya blok liste usulü ile yapılmasına seçim kurulu karar verir. Ancak tüm adayların yazılı başvurusu halinde blok liste ile seçim yapılmasına karar verilir. Bu durumda; a) Seçimler çarşaf liste usulü ile yapılacaksa kullanılacak oy pusulalarında

adayların isimleri soyadı sırasıyla yazılır ve oy pusulasında en fazla seçilecek temsilci sayısı kadar işaretleme yapılır. Daha fazla işaret konulan oy pusulaları ile herhangi başka bir işaret bulunan oy pusulaları geçersiz sayılır. b) Seçimler blok liste usulü ile yapılacaksa liste içerisinde yer alan her bir aday sandıktan çıkan blok liste sayısı kadar oy almış sayılır. Ancak adaylar birden fazla blok liste içerisinde yer alamaz. Kural olarak blok liste halinde hazırlanacak oy pusulaları renkli olamaz. Söz konusu listelerin farklı renklerde olup olmayacağına ilgili şube yönetim kurulu karar verir. 11) Blok liste usulü ile yapılan seçim sonucunda oyların eşit çıkması halinde veya çarşaf liste içerisinde yer alan adayların aldıkları oylar eşitse seçim kurulunca kazanan aday/adaylar kura yoluyla belirlenir. 12) Seçim sonuçlarına ilişkin tutanak derhal ilan panosunda ilan olur ve ilgili Şube ve Sendika Genel Merkezine gönderilir. (EK-4) 13) Seçim sonuçlarına itiraz; ilan tarihinden itibaren 2 gün içerisinde öncelikle ilgili seçim kuruluna yapılır. İtirazın bir örneği seçim kurulunca ilgili şubeye ve genel merkeze gönderilir. Yapılan itiraz 2 gün içinde karara bağlanır. Seçim Kurulu Kararına karşı yapılacak itirazlar ise Genel Merkez Yönetim Kurulunca 1 hafta içerisinde kesin olarak karara bağlanır. 14) Seçimde kullanılan oy pusulaları, tutanaklar ve diğer evraklar ilgili Şube'de güvenli bir alanda 2 ay boyunca saklanır. 15) Seçilen aday/adaylar Genel Yönetim Kurulu veya yetkilendirilmişse Şube Yönetim Kurulu Kararı ile göreve atanırlar. 16) Seçilebilme koşullarını sağlamadığı sonradan anlaşılan ve seçilmiş bulunan işçilerin ataması yapılmaz; eğer atanmaları yapıldıysa görevden alınırlar ve yeni temsilci Sendika Yönetim Kurulu veya yetkilendirilmişse Şube Yönetim Kurulu Kararı ile atama veya seçilme yoluyla yeniden belirlenir.

Madde 8- KAYIT VE DEFTERLER

Her işyerinde işyeri sendika temsilcisi/temsilciler kurulu dosya tutarlar. Bu dosyalara işyerinde meydana gelen, sendikal faaliyeti veya üyeyi ilgilendiren olaylara ilişkin tutanaklar, üye işçilerden gelen istek ve önerilere ilişkin imzalı kağıtlar ve sendikayı ilgilendiren evraklar konulur. Ayrıca Sendika temsilciler kurulunda görüşülen konularda farklı bir klasörde bir araya gelerek dosyalanır. Bu dosyalar 10 yıl müddetince temsilcilikte saklanır. İlgili şube yönetim kurulu bu dosyaların şubede muhafazasına da karar verebilir.

Madde 9- EĞİTİM ÇALIŞMALARI

Temsilciler üyelerin eğitim alması gereken konular varsa bunları belirleyerek sendika şubesine bildirirler. Ayrıca temsilciler yapılan eğitim çalışmalarından üyelerin eşit olarak faydalanabilmelerini sağlamakla görevlidirler.

GEÇİCİ MADDE-1

İşbu yönetmeliğin 2. Madde (d) ve (f) fıkrası yönetmeliğin yürürlük tarihinden sonra yapılacak ilk temsilci seçiminde uygulanmayacaktır.

Madde 10- UYGULAMA VE YÜRÜRLÜK

Bu yönetmelik hükümleri Sendika Yönetim Kurulunun 26.08.2015 tarih ve 16 sayılı kararı ile 24.08.2015 tarihinden itibaren uygulanmak üzere yürürlüğe girer.