In most of the democracies, it is with the emergence of strong trade unions that many major social progresses have been achieved. Trade unions are an inseparable part of contemporary societies, and freedoms to create and join unions, as well as to take part to union activities are among the fundamental rights universally recognized by international conventions and many constitutions. Among union activities, collective bargaining plays an important role and is rightly considered as an integral part of the freedom to organize.

The ILO Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively provides that:

“Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles” (art. 3).

Furthermore:

“Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements” (art. 4).

In this study, the issue of the feeble union density and collective agreements coverage among workers in Turkey will be examined (I). After that, the existing legal measures aiming to protect and promote union membership and activities, coupled with the system of authorization and coverage of collective agreements shall be presented (II). The study will end with a brief analysis of the eventual drawbacks and disadvantages of the present system and ways to remedy to the situation (III).

I. THE LOW UNION DENSITY IN TURKEY

A. Official Figures on Union Density and Collective Agreements Coverage

According to the official statistics established by the Ministry of Labor, concerning January 2016, union members represent 11.96% of the
workforce in Turkey. This rate is considerably higher for civil servants (71.32% for 2015).

However, some considerations should be taken into account: The official figures on union density do not reflect the exact situation, because around 35% of employees working under employment contracts are unregistered labor. While establishing those statistics the Ministry of Labor and Social Security takes into account the number of employees that have been declared to the Social Security Institution (Sosyal Güvenlik Kurumu): and thus unregistered labor is ignored in these data.

Under the Laws No. 2821 and 2822 that were in force between 1983 and 2012, membership applications had been made through public notary; and many employees who afterwards quit the sector or were no longer members still remained on member lists. It is for such reasons that, for example the last official rate calculated under the previous legislation was, in July 2009, “59.88%” of union members. Academicians and experts claimed that an accurate union density rate should be much lower.

Nowadays, under the recent Law No. 6356 on Unions and Collective Agreements (Sendikalar ve Toplu İş Sözleşmesi Kanunu) the mode of acquisition and loss of membership is different, and is more adaptable to changes of current situations. Since 2013, it is based on a procedure initiated by employees with an electronic application system through an e-State portal. Accordingly, recent union member numbers and density rates are dramatically lower: The present rate, around 11%, is relatively accurate.

Still, informal work does not appear on these data, which thus remain questionable.

The coverage by collective agreements is even lower, and is estimated around 6-7% of the workforce. At this regard this situation in Turkey is dramatically different compared to some striking examples such as France, where the low union density (beneath 10%) is comparable with Turkey, whereas collective agreements coverage is considerably higher (98%). This should lead us to examine more closely the reasons of such a difference.

Beneath will be shortly summarized some aspects that might throw a light to the feeble union density in Turkey. Then the issue of low collective agreements coverage will be better understood later, after having analyzed, in section II, the collective bargaining system that differs largely from those of countries with vast collective agreements coverage.
B. Some Causes of the Low Union Density

The weak union density is due to several reasons, among which some are economic and structural:

The high unemployment rate and chronic economic crises are leading to a fear of loss of employment for potential union members.

On the other hand, the weight in the structure of labor has shifted from industries to services, where the workforce is less concentrated locally.

Perhaps above all, the persisting weight of informal economy and informal labor is a real obstacle to union membership, for which declared work is a prerequisite.

Privatizations and harsh global competition between companies lead employers of the private sector to be very sensitive about increasing labor costs and employers seek to avoid social unrest and concerted action. Some employers would recourse to different means to prevent union organization within their workplace.

One may add that the growth of different forms of employment, such as at home work and work by telecommuting leads to a certain isolation of employees, which remain remote from organization and concerted action.

Forms of employment have evolved; in particular increased recourse to outsourcing is due to specialization and need of skilled workers. Outsourcing is utilized also with a concern about production costs. *Contract work,* despite many restrictions in the Labour Code is widely practiced, and leads to a fragmentation of labor and splitting of sectors. In Turkish law, subcontractor’s employees engaged to do a work within the premises of a main employer, are legally deemed to work at the subcontractor’s workplace, and Courts consider the work operated by subcontractors independently from the main activity of the workplace. Thus, subcontractor’s employees often cannot join the same union as the other employees and are not covered by a collective agreement applicable in the workplace.

As a result, it would not be wrong to say that recourse to subcontracting weakens unions and creates disparities among workers. Such as applied, it is perhaps sometimes rightly considered as a major obstacle for unions that prevent them from obtaining authorization and bargain collective agreements.

As will be seen later, in view to prevent proliferation of weak unions and insure a certain order in the workplaces, the law-maker in
Turkey had opted for the principles of a “single union membership” and “unique collective agreement” at an enterprise or workplace. However, those fundamental principles in collective labor legislation are in practice breached by the intensive recourse to subcontracting.

Reasons of the low coverage of collective agreements may find some other explanations under the light of the legal aspects discussed in part (B) of section II.

II. THE EXISTING LEGAL PROTECTION AND PROMOTION OF UNION MEMBERSHIP

Guarantees Against Dismissals and Unfair Practices

The Law on Unions and Collective Agreements provides a protection against unfair treatment and dismissal for union membership and activities, with a specific compensation (of a minimum amount of one years’ gross wage) coupled with a lawsuit for reinstatement (art. 25). Upon employee’s lawsuit the burden of proof lies on the employer who has to give evidence of a valid cause of dismissal. It is after this evidence is given that the employee will allege facts which may reasonably establish that the dismissal was due to union membership or activities.

The same article 25 protects the worker against discrimination for being union member at the beginning of employment; and at this stage the burden of proof lies on the future employee.

2. A stronger protection is granted to union representatives at the workplace (art. 24): Union representatives cannot be dismissed without a just cause. In such cases if they have not been reinstated after a Court decision, the representative will claim all dues and rights accrued during the whole duration of their office as representative. Furthermore, the law provides that a shift of the place of work or job must have been formally accepted by the representative, otherwise the shift is invalid (art. 24/4).

The same guarantees apply to union officials (members of the governing board of the union or its branch) who continue to work in the company (art.24/5).

Thus the legislation protects and promotes union membership. These provisions are also coupled by some legal advantages attached to being member to (some) unions.

B. Collective Bargaining Levels and Coverage

1. Levels and conditions of bargaining

Collective agreements are negotiated and concluded at workplace
or enterprise level (art.45 of CLL). Although the recent CLL brings a new type of collective agreement based on industry level, named “framework agreement” (çerçeves sözleşme), this new type of convention is not considered as a (real) collective agreement such as defined by the Law (art.2/1 h). A framework agreement may be only signed by unions members to confederations represented at the Economic and Social Council, and bring provisions on “occupational training, work health and safety, social responsibility, and employment policies”. Such conventions are of purely consensual character and their negotiation is not enforceable by industrial action.

In the current system, collective bargaining may encompass one or more companies within a sector provided they have been negotiated in the same process by a (single) authorized union (grup toplu iş sözleşmesi, art. 34/3 of CLL).

2. Unions authorized to be party of a collective agreement

The law requires a double condition of representativeness: To have as members at least 1% of the workers of the sector (Article 41 of the CLL), and represent as members, the majority of workers, or at least 40% of the workers in workplaces taken as a whole belonging to a same company of a same sector. If more than a single union has 40% of members, the one having a bigger rate will be granted authorization. The authorization is given by the Ministry of Labor, based on membership statistics collected by the electronic application system and Social Security data. The process can be challenged at labor courts.

3. Field of application

Collective agreements apply to union members. A collective agreement is thus concluded by a unique and “most representative union”; other unions are left out of the bargaining, and their members out of the collective agreement’s coverage.

However some notable exceptions exist: Firstly, the wording of article 25/2 implies that non pecuniary provisions should cover all employees; whereas financial provisions’ (i.e. on wages, bonuses and other premiums) benefit is reserved to members of the union party (art.39). Secondly, concerning these pecuniary provisions, non members may apply for their application, if they accept to pay “solidarity due” deducted from the wages, and of which the amount cannot exceed the membership due.

The law regulates also, under certain conditions, the possibility of “extension” (teşmil) of the collective agreement by decree of the government (art. 40). However, such extensions are seldom operated, and
are unpopular especially among employers, but also among unions who wish not to see their role diminished.

Apart from those cases, the employer cannot legally apply and grant a collective agreement’s financial benefits to non members. If he does so, the union may sue the employer and claim a compensation amounting to the solidarity dues that should have been paid. We must note that in practice the employer is free to fix wages and other benefits in function of the qualifications and performance of each employee.

4. The low coverage of collective agreements is then understandable under the above mentioned legal system. This short description shows that not all unions can sign collective agreements. In January 2015, it has been noted that 98 unions out of 147 could not pass the threshold of 1% of members required by law\textsuperscript{18}. Moreover, those who had passed this threshold have to meet the condition of majority or 40% at enterprise level.

As a result, an estimated rate of around 25% of union members is not covered by collective agreements.\textsuperscript{19}

Thus, membership to a union party to the collective agreement is a condition that apparently seems to promote union membership, seen from a formal legal point of view. Furthermore, the system protects not only union membership, but also requires joining - an authorized - union to be covered by the collective agreement. The legislator seems then to have taken every measure to insure a high union density.

However, the actual feeble union and collective agreements coverage show that such legal means are not sufficient to obtain the intended results.

III. HOW TO INCREASE UNION DENSITY AND COLLECTIVE AGREEMENTS’ COVERAGE?

A. Attitude and Responsibilities of Unions

Unions have their share in the responsibility for the feeble density and are in need of a reflection on their role and mission, as well as their means of action:

1. Not only should unions focus on collective bargaining - which is important - but also be visible and joinable at the workplace and provide other services, such as legal advice, instruction and social support. They have some significant legal means, such as in particular, Art. 26/2 of CLL that grants to unions power to represent their members in labor courts, upon a simple written application of their member. Such efforts include
also publications and workers’ education activities in view to raise the level of instruction and consciousness of workers.

*Union representatives* must play an important role in the promotion of union memberships and action. They are appointed by the authorized union, by law and may operate within the workplace to protect workers’ rights and act as a voice and intermediary between workers and the union and the employer. Union representatives enjoy a strong guarantee against dismissal and job shifts during their office, but after their office has ended (by change of the authorized union), they will remain without any protection, which is a problem to be considered.

2. *Membership fees* should not exceed a reasonable amount. The previous Law No.2821 had set a limit to monthly membership dues (which could not exceed a day’s gross wage). This cap has been suppressed with the new legislation and no limitation exists anymore: unions are now free to determine the amount of membership fees and other dues. These fees and also solidarity dues will be deducted from wages and directly paid to the union’s bank account, by the employer. It can be noted that this facility in collecting fees is reserved to the union that had obtained authorization to bargain, and is another advantage granted to such unions.

3. Unions too should *organize at different levels* and be able to embrace the whole production process. Unions could also cross existing frontier barriers, and be efficient within the system of global economy. It is within such a range of ideas that some union officials in Turkey point themselves at the need of a new generation of unionists who master technology and are able to communicate in foreign languages.

4. *Unions can join their efforts* to obtain a higher level of protection of the workers. Fundamental social and political orientations can bring unions together and lead them to joint actions aiming at legitimate political choices. One may remember the unified action within the *Emek Platformu* (Labor Platform) that at the time had some effects and aimed to promote social progress.

It is to be noted that, in Turkey academicians support organized labor and free trade unions. Some even said that nowhere else in the world unions gather a stronger support from universities.

*B. Legal Obstacles to Unionization and Remedies*

1. Criticisms have been addressed for a long time against the current system that tends before all to prevent proliferation of unions and is far from favoring the free development of new unions. Provisions of
the Law No.6356 on Unions and Collective Agreements aim, like before the previous legislation (Laws No.2821 on Unions and No.2822 on Collective Agreements, Strike and Lockout), give advantage to strong unions able to obtain authorization to bargain. Advantages granted to such unions seem well deserved because of the difficulties to obtain authorization, and also they have legitimacy: These unions represent a greater number of employees.

But, apart those “happy few”, other unions that do not fulfill conditions of authorization cannot benefit from those legal advantages. This issue has been discussed and debated for decades in Turkey: The main objective of the legislation, since the 1980’s, has been to set obstacles against proliferation of unions. But such policies might have had also some negative effects on union density and collective agreements coverage, which remain limited. ILO supervisory organs also criticized the double condition of representativeness and observed that the possibility for other minority unions to be able to bargain collective agreements for their members should be envisaged. Some authors in Turkey propose a system of joint parties. However this would necessitate a close collaboration between rival trade unions, to which they are not accustomed.

2. At a legal point of view, a multi-level bargaining system may be envisaged too, that would allow the conclusion of collective agreements at sector and enterprises levels, and thus broaden the coverage of collective agreements.

CONCLUSION

The present system of collective labor relations in Turkey rests on some definite principles that seem unmovable: a single collective agreement in the workplace or company; a single authorized union, and the right to strike that remains (but some higher court decisions go in a different way) attached to the conclusion of a collective agreement, with a “duty to maintain peace” during the term of the collective agreement. This system has such consistence that, it has been feared that should a single brick be moved, all the system might collapse.

As a last word, even if during the last decades (secular) ideologies seem to have lost their clear-cut formulation and influence, fundamental political and social orientations are to remain as important as ever. Joint action to support some fundamental political choices is within the responsibility of unions. Trade unions cannot stay away from politics and one cannot imagine a world, or unions without a global vision. Thus, a
certain ideological differentiation, motivation and action seem necessary. Such political mission could bring *stamina* and attract workers who want to join their efforts for a fairer and meaningful society.