Claiming Labor Rights as Human Rights:

Legal Mobilization at the European Court of Human Rights

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Abstract

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In recent years, labor activists have increasingly started mobilizing human rights in order to draw attention to precarious working conditions and restrictions on labor activism. Through analyzing the legal mobilization of labor activists at the European Court of Human Rights (ECtHR), this research answers the following questions: (1) Why have labor activists in recent years turned to the ECtHR to claim labor rights? (2) Does this labor rights mobilization at the ECtHR signal an expansion of human rights law in Europe and beyond? (3) What is the impact of this litigation process in terms of providing remedies for labor rights violations and transforming labor activism? In investigating answers to these questions, this dissertation

provides a comprehensive analysis of the causes and consequences of litigating workers' rights as human rights. Despite the increased number and importance of this case law, the mobilization efforts of workers at the ECtHR have garnered little attention from social scientists and we lack a comparative study that shows the various factors that affect legal mobilization at the international level. This research generated the first database of labor cases before the ECtHR in order to analyze this unexpected expansion of labor jurisprudence. It also draws on qualitative analyses of two cases of grassroots labor activism in Turkey and the UK to take a view from below and examine the actual impact of ECtHR rulings and the workers' perspective on human rights litigation.

I conducted my analysis of workers' mobilization of human rights at three different levels—*international*, *state/domestic*, and *grassroots*. I argue that the ECtHR presents a new avenue for labor activists to seek remedies for labor rights violations in a political environment in which domestic institutions have become unresponsive to labor's demands. The case studies show that the direct remedies provided by the ECtHR fail to fulfill the expectations of trade union activists. The effects of ECtHR law on strengthening workers' mobilization efforts, however, is more transformative than are the direct remedies provided to workers by the ECtHR in violation judgments. In cases where workers engage in grassroots mobilization in conjunction with litigation at the ECtHR, they are able to pressure the government to take action on labor rights violations even before the ECtHR delivers its final ruling. However, in cases where activists do not have the capacity to mobilize due to state repression, litigation may turn into a strategy of despair rather than a catalyst for grassroots mobilization. Winning more cases before the ECtHR fails to produce meaningful change on the ground unless litigation efforts are buttressed by pressure from below. I further show that workers engage in *strategic mobilization*

of human rights. Labor activists, deeply skeptical of the limited remedies and the depoliticizing potential of human rights, do not shape their solidarity ties or identity constructions in this way. Rather, they use this language to gain entry to a public discourse in which human rights has become the dominant idiom to address social justice issues.

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DEDICATION

To Zach.

Chapter 1: A NEW WEAPON İN THE ARMORY TO COMBAT NEOLİBERALİSM?

"[Litigating at the European Court of Human Rights] is just another weapon in the armory."

Victoria Phillips, Solicitor, London, UK.

Introduction

A New Resource for Labor at the International Level

After decades of falling fortunes, organized labor seems to have identified a new avenue to combat precarious work conditions and restrictions on unionization. From the survivors of the 2013 Rana Plaza collapse in Bangladesh to sex workers in Canada, from the teachers' union in Wisconsin to sweatshop workers in Mexico, workers around the world are claiming labor rights as human rights. In Europe, this trend has been marked by the rulings of the European Court of Human Rights (ECtHR, or the Court). Recent case law at the ECtHR suggests that activists are increasingly turning to the Court to claim labor rights as human rights and that, after years of shunning labor cases, the Court has become more responsive to these claims. Does the new case law signal a new era for labor activism? And can human rights law and institutions become counter-forces against declining labor membership and power?

The 2008 case of *Demir and Baykara v. Turkey*, which became a landmark judgment, is illustrative of this new trend. This case emerged in 1993 when a Municipal Council in Turkey failed to fulfill its obligations under its collective bargaining agreement with the public sector workers' union. The Turkish courts dismissed the case, ruling that public servants were not allowed to enter into a collective agreement or even form a union. Losing hope in the Turkish justice system, the labor leaders decided to take their case to the ECtHR. Reversing its earlier

jurisprudence,[1] the ECtHR recognized collective bargaining as "an essential element" of the right to association (Article 11). *Demir Baykara* sent shock waves throughout Europe. It marked a turning point, leading to the rapid development of new case law.

This ruling by the Court and other recent decisions signal a dramatic departure for the ECtHR. In its early years, the ECtHR specifically eschewed making decisions on labor cases and left the settlement of these contentious issues to national courts. Earlier legal studies indicated that the ECtHR's response to the few labor cases brought before it was "formalistic" (Wedderburn 1991: 144) and that the Court was more interested in the "defense of individual autonomy than collective solidarity" (Novitz 2003: 238). Yet, in the past thirty years, the Court's case law has increased tremendously and, following the "judicialization" trend around the world (Tate and Vallinder 1995; Hirschl 2007; Simmons 2009; Stone Sweet 2010; Alter 2014), it started weighing in on important policy decisions, including prisoners' right to vote, the treatment of terrorism suspects, and women's right to wear a headscarf, as well as labor issues. The Court adopted an integrated approach towards human rights not only in trade union rights cases, as showcased in the *Demir Baykara* case, but also in other areas, including workers' health and safety, surveillance in the workplace, and undocumented migrant workers' rights cases. The sudden growth in the number of labor rights cases brought before the ECtHR and the dramatic change in the Court's approach to labor rights could be described, in Epp's (1998) terms, as a "rights revolution."

This new case law raises the following questions: (1) Why, given the Court's historic relegation of labor issues to secondary status, have labor activists in recent years turned to the

[1] In *Swedish Engine Drivers v. Sweden* (1976) and *National Union of Belgian Police v. Belgium* (1975) the Court decided that Article 11 did not impose any specific mechanisms on member states for the protection of trade union rights. See Chapter 3 for a detailed discussion.

ECtHR to claim labor rights? (2) Does this labor rights mobilization at the ECtHR signal an expansion of human rights law in Europe and beyond? (3) What is the impact of this litigation process in terms of providing remedies for labor rights violations and transforming labor activism? In other words, do the judgments of a distant international court matter for the lives of aggrieved workers on the ground? What does this "rights revolution" mean for workers? In investigating answers to these questions, this dissertation provides a comprehensive analysis of the causes and consequences of litigating workers' rights as human rights.

Studies on the impact of international tribunals generally examine the formal steps states take in order to comply with violation judgments. This research examines not only legal institutions (i.e., courts, legal documents, and judges) and policy outcomes but also practices and effects that are reproduced and contested by activists in the shadows of official law (Scheingold 1974; Cover 1983; McCann 1994; Ewick and Silbey 1998). I conduct my analysis of workers' mobilization of human rights at three different levels—*international*, *state/domestic*, and *local/grassroots*—paying particular attention to the conditions under which international human rights law becomes a resource for activists. First, I analyze the changing political opportunity structures at these three levels to examine the factors that drive workers to seek remedies at the international level. Next, I investigate the impact of human rights litigation by examining the expansion of human rights law at the *international level*, the changes in state behavior that result from Court rulings at the *domestic level*, and the changes in the dynamics of mobilization at the *grassroots level*. I show that this move from the domestic to the supranational arena has amplified human rights law, altered the governance of employment relations, and transformed mobilization strategies.

The growing number and importance of labor case law before the ECtHR has garnered surprisingly little attention from social scientists; there not been no comparative studies on the mobilization efforts of labor activists at the ECtHR. In order to make sense of the recent labor cases at the ECtHR, I created an original database of 1,267 labor cases brought before the it (1960-2013). This is the first database on labor case law at the ECtHR. The database documents the trajectory of change on the litigation front: How has the ECtHR expanded its jurisprudence on labor cases? Which countries are bringing the highest number of cases? What kinds of issues are litigated the most? What kind of remedies does the ECtHR provide for workers? And, what kinds of novel rights claims does the Court strike down? On the whole, the database analysis provides an overview of the Court's changing jurisprudence on labor rights, documenting "the rights revolution" since its inception. Based on analysis of this database, I argue that the ECtHR has become a new terrain for labor activists to seek remedies for labor rights violations in a political environment in which domestic institutions have been unresponsive to labor's demands.

I supplement this ECtHR data with two comparative case studies of grassroots labor activism in Turkey and the United Kingdom (UK). The case studies allowed me to take a view from below and examine the actual impact of ECtHR rulings and the workers' perspective on human rights litigation. Consequently, I combine an examination of the political institutional context, legal support structures, resource mobilization, organizational capacity, and forms of worker activism outside of litigation, as well as the aspirations, norms, and discourses expressed by activists at the local level, to construct a holistic understanding of the legal mobilization of labor activists before the ECtHR. My analysis of the ECtHR data and the case studies shows that, the indirect impact of human rights litigation on grassroots mobilization have been much more transformative than the direct remedies of ECtHR rulings.

Why are workers turning to international human rights?

Workers' rights, along with other socioeconomic rights, have historically held a secondary position within human rights frameworks. While the protection of civil and political rights—such as the right to life and freedom of expression—required states to take immediate action, the implementation of a living wage or the protection of trade union rights were viewed as aspirational goals to achieve in the long run, depending on the availability of resources. Scholars and practitioners have pointed out the indivisibility of human rights and criticized existing schemes that prioritize civil and political rights over socioeconomic rights (Jihabvala 1987; Shue 1996; Alston 2005). Nonetheless, leading international institutions, most prominently, the United Nations (UN), favored civil and political rights over socioeconomic rights.[2] The Council of Europe (CoE) system, established in the aftermath of World War II, adopted a similar structure by delegating the protection of socioeconomic rights to the European Committee on Social Rights (ECSR), with a much weaker supervision system. It is not, therefore, surprising that the ECtHR, established primarily to protect civil and political rights enshrined in the European Convention on Human Rights (the Convention), did not express commitment to labor rights during its first four decades.

What is puzzling, however, is the growing number of labor cases in the Court's docket since the 1990s. What explains the dramatic increase in the number of labor cases before the ECtHR? Why did workers in Europe turn to an international human rights court during this period? In order to examine how an international human rights court became a resource for labor

[2] The International Labor Organization (ILO) was established much earlier, in 1919, than the implementation of the two covenants under the UN. However, scholars point out the weaknesses of the ILO in enforcing basic labor rights. See the discussion in Chapter 3.

activists, I analyze the changing political opportunity structures at the international, domestic, and grassroots levels.

By political opportunity structures, I refer to the particular set of power relations, resources, and institutional arrangements defining a political environment that either encourages or discourages mobilization (Eisenger 1973; McAdam, McCarthy, and Zald 1996; Tarrow 2011). Initial research by social movement scholars limited the examination of political opportunity structures to the national level, for instance by evaluating the relative openness of a domestic institutional setting for mobilization. Later, others began to examine the opportunities presented by changing institutional configurations at the international level (Risse, Ropp, and Sikkink 1999; Alter 2000; Brysk 2000; Simmons 2009) and by assessing the availability of political opportunity structures for different movements within the same national context (Caraway 2006; Guigni, Berclaz and Füglister 2009). Nonetheless, dominant theories on human rights—many of which focus on civil and political rights—rely on broad generalizations about how regime type or rule of tradition determines opportunities for human rights activism in a country, without regard to different issue areas within human rights (Neumayer 2005; Hathaway 2002; Simmons 2009). My study brings insights from socio-legal research, international relations theory, and social movements theory to examine the changes in political opportunity structures for workers at three levels.

First, I analyze the change in political opportunity structures at the *international level*. In its earlier case law, the ECtHR, as a civil and political rights court, dismissed the few labor rights cases brought before it. However, starting in the 2000s, the ECtHR started to fold some core labor rights into the existing Convention rights. Labor activists brought a wide range of issues, yet the cross-national and longitudinal database shows that the Court's pro-worker judgments

have been the most dramatic in the area of trade union rights. The Court has extended associational rights to include some fundamental trade union rights—such as the right to unionize, the right to collective bargaining, and the right to strike—and thereby started bringing a *collective dimension* to the civil and political rights that are mainly protected by the Convention.

Scholars of law and courts point out a number of factors that explain why courts become more involved in politically contentious issues (judicialization) or take a more activist stand on protecting rights (rights revolution). These include institutional changes within the court structure, e.g., the expansion of judicial review powers (Alter 2014; Conant 2002; Cichowski 2007; Keohane, Moravcsik, and Slaughter 2000); increased demand for courts as a result of institutionalization (Stone Sweet 2000; Kelemen and Sibbitt 2004); changes in world historical events (Alter 2011); groups flooding the courts with new rights-claims (Epp 1998; Cichowski 2007); and elite level interactions, such as legislative/executive deferrals or judges' preferences based on ideological and normative commitments or will to power (Graber 1993; Weiler 1994; Moravcsik 2000; Hirschl 2004; Lovell 2003; Pevehouse 2005; Woods and Hilbink 2009). I argue that a confluence of endogenous and exogenous factors explains the ECtHR's changing attitudes towards labor rights. I identify some of the most significant changes occurring during this period that provided a more conducive environment for the Court to take on these new rights claims: the Court's expanding judicial review powers, the Court's increased legitimacy and confidence to expand its jurisdiction, the inclusion of new member states doubling the Court's membership size, the rise of socioeconomic rights all around the world, and the demand from below, i.e., workers' increasing expectations of remedies from the Court. Linking my analysis from above to below, *I show that mobilization by workers and the development of labor case law at the ECtHR have been mutually constitutive of each other*. The litigation efforts of labor activists have played

a fundamental role in pushing the Court to expand human rights law to include new labor rights. At the same time, the ECtHR's responsiveness to labor rights signaled labor activists to bring new claims before the Court.

My analysis shows that the labor cases constituting benchmarks in the ECtHR case law and the highest number of trade union rights cases primarily come from Turkey and the UK. In order to make sense of why workers in these countries turned to an international human rights court for remedies, I examined the changing political opportunity structures at the *domestic level* in Turkey and the UK. In particular, neoliberal policies, albeit in different forms, severely undercut the power of organized labor in both countries. Neoliberalism features to a broad range of changes in economic policies that aim to liberalize trade and foreign capital entry, privatize state enterprises, dismantle social welfare provisions, provide tax cuts, weaken trade unions, and deregulate financial institutions (Harvey 2005). At the same time, other scholars drew attention to the broader transformations of state-society relations in the neoliberal era: as the state retreats from their redistributive role, it promotes individual self-sufficiency, entrepreneurship, and adaptation to unpredictable market conditions in non-economic spheres of life (Brown 2003; Keil 2009; Ong 2006). In my analysis of political opportunity structures, I focused on the ways in which neoliberal policies directly aimed at undermining collective labor rights.

Notwithstanding key differences between Turkey and the UK, labor activists in each of these countries were confronted with domestic authorities unresponsive to their demands. Despite its long history of commitment to democratic values and its status as one of the founding members of the CoE system, the UK is one of the leading examples in Europe of instituting neoliberal policies undermining the once formidable power of organized labor. Turkey, on the other hand, despite being one of the fastest growing economies in the world and having been

singled out as a model democracy in the Middle East until recently, has one of the worst labor rights violation records in Europe. Each of these countries, one an exemplar of democracy and the other with a spottier democratic record, has experienced neoliberal transformations over the past couple of decades. In both, labor activists have been driven to look outside of the domestic structures to voice their demands. Consequently, the most important and the highest number of trade union rights cases have been brought by activists in Turkey and the UK. Indeed, the UK is the site of the first successful challenge at the Court to elevate trade union rights issues to a new level. Starting with *Wilson, the National Union of Journalists and Others v. the United Kingdom* in 2002, the Court began to recognize trade union rights as a core set of rights within human rights law. And, labor activists from Turkey set numerous precedents before the ECtHR, including the landmark case mentioned above, *Demir and Baykara*.

Social movement literature shows that, while a changing political climate may create an opening for activists to advance their agenda, mobilization cannot take place unless activists identify the change as an opportunity to take action (McAdam 2010; McAdam, Tarrow, and Tilly 2001). Mobilization is determined not only by what is advantageous for activists but also by what activists perceive as an opportunity within an institutional and cultural context. Similarly, legal mobilization theorists have pointed out that "legal support structures," such as legal advocacy groups and financial resources, play important roles in leading litigation efforts (Epp 1998; Gauri and Brinks 2008). International relations scholars also point out the importance of NGOs and transnational advocacy networks in documenting human rights violations at the domestic level and drawing the international community's attention to these issues (Keck and Sikkink 1998; Hafner-Burton and Tsutsui 2005; Neumayer 2005). Scholars of the ECtHR, in

particular, show that transnational links are critical for activists to collaborate across Europe in taking cases to the ECtHR (Hodson 2013; Holzhacker 2013; Cichowski 2016; Kurban 2017).

My findings corroborate the importance of local legal advocacy groups in identifying the ECtHR as an institution towards which mobilization can be directed. Rather than NGOs, or transnational networks, however, I find that in each of my case studies, a small group of labor lawyers and scholars worked together with trade unions to strategize on ECtHR litigation. The lack of transnational networks is an indication that, despite the growing responsiveness of human rights law to workers claims, NGOs still paid more attention to civil and political rights violations. The collaboration of lawyers and unions has been particularly significant since in order to leverage policy outcomes, these lawyers have worked together with unions in deciding which cases to take to the ECtHR rather than taking individual cases themselves. Additionally, these legal advocacy groups have communicated their knowledge on human rights law to workers in order to inform them about new ways to address labor rights violations.

My analysis of the political opportunity structures shows that *the pull from the Court's new and integrated approach* towards labor rights, coupled with *the push from repressive domestic regimes*, led workers in these two countries to seek remedies at the international level. Furthermore, the *presence of a dense network of legal advocacy groups* with expertise in international law has been crucial for initiating and driving litigation at the international level in both countries. The presence of these three factors explains why workers in these two countries, in particular, have turned to the ECtHR. Perhaps the more important question is the impact of these judgments on the ground and whether or not a rights revolution in a distant international court actually matters for workers on the ground.

Direct Impact of Human Rights Rulings: Compliance with ECtHR Rulings

In response to the violation judgment in *Demir Baykara*, Turkey paid €20,500 in damages to the applicants and revised the relevant domestic law to allow public workers to engage in annual collective agreements directly with the government. The right of public workers to unionize had already been granted before the final judgment of the ECtHR. After reviewing the new regulations and the relevant jurisprudence of the Turkish courts on the right of trade unions to engage in collective bargaining, the Committee of Ministers—the body responsible for overseeing the execution of the ECtHR judgments—became convinced that Turkey had undertaken all necessary measures to comply with the judgment and decided to close the case in 2011. The result seemed like a big success for trade unions and proof of the efficacy of the Court in protecting workers' rights.

The quick response of the Turkish government—taking measures to remedy the issue even before the ECtHR delivered its final judgment—is in line with the predictions of international relations scholars. Studies show that transitioning democracies have many incentives to comply with international human rights law (Keck and Sikkink 1998; Risse, Ropp, and Sikkink 1999; Simmons 2009). In contrast to autocracies, where governments have little regard for international treaties, or liberal democracies, where violations occur less frequently, transitioning democracies strive to prove themselves as countries who value and abide by human rights standards. Hence, they are more vulnerable to international pressure. A recent study showed that transitioning democracies have taken steps more quickly in order to comply with ECtHR judgments, although in the long run, democracies have fulfilled the requirements of a greater number of cases (Grewal and Voeten 2015). Additionally, for the transitioning democracies of Europe, joining the EU constitutes a significant pressure mechanism

(Schimmelfennig and Sedelmeier 2005; Kochenov 2008; Holzhecker 2013). While the ECtHR is a separate institution, the EU takes compliance with ECtHR judgments seriously in reviewing candidate countries' human rights performance. Indeed, since the 1990s many of the reforms were undertaken in order to fulfill EU requirements by Turkey.

A closer look at the implementation of this judgment on the ground, however, reveals a different story. The Turkish government's response to the case was a great disappointment to the union that had taken the *Demir Baykara* case, Kamu Emekçileri Sendikaları Konfederasyonu (KESK, Confederation of Public Workers' Union). Public workers continued to confront insurmountable challenges—both practical and legal—in exercising their right to collective bargaining. The restrictions included, but were not limited to, the narrow scope of the collective agreements, the inability to take strike action, and the representation of workers at the bargaining table. The scope of the annual collective agreements was almost exclusively restricted to the yearly annual salary increase, which makes it more appropriate to call this process a salary-fixing regime, rather than a collective bargaining agreement. Furthermore, if the parties are unable to reach an agreement, the conflict shall be resolved by an arbitration council, which is a government agency. This requirement effectively prevented public workers from taking a strike action in the event of a conflict during the bargaining period. And, most importantly, the public sector unionization has evolved into a corporatist-clientelist structure within the past 15 years under the ruling Justice and Development Party (Adalet ve Kalkınma Partisi, AKP). Memur-Sen, a trade union known for its close ties with the regime, has taken over the public sector by increasing its membership 20 times its size in 2002. Today, more than half of unionized public workers are members of Memur-Sen, which leads the trade union side of the annual collective

agreements signed directly with the government. Hence, the ECtHR judgment, by itself, was unable to grant Turkish public workers the right to collective bargaining in real terms.

The corporatist structure of the public sector unionism in Turkey indicates that the problem is not a lack of state capacity or resources to implement the human rights rulings (Chayes and Chayes 1995; Hafner-Burton 2008; Englehart 2009). On the contrary, Memur-Sen's "success" in membership rates has been a result of the consolidation of state power under the AKP regime. The government has been able to establish a corporatist union system in the public sector particularly because the AKP brought state institutions largely under control and increased state capacity. Other scholars have pointed out that the rule of law tradition, the existence of an independent judiciary, and regime type are also important factors in explaining compliance with international human rights law (Hafner-Burton and Tsutsui 2005, 2007; Neumeyer 2005; Simmons 2009; Hillebrecht 2014). Deficiencies in democratic checks and balances undoubtedly make it more difficult to ensure the effective execution of judgments and to prevent further violations. However, this grim picture on the implementation of the ECtHR's labor rights rulings was paralleled in the UK—a liberal democracy with a strong tradition of the rule of law—although the severity of violations is surely less than that of Turkey. In *Wilson*—the first pro-union judgment issued by the ECtHR on trade union rights—the Court contended that a company offering better contracts to non-unionized workers amounts to a violation of workers' trade union rights. Later in *ASLEF*, the Court recognized the right of a trade union to deny membership to a person who was a member of a far-right political party. The UK government, like Turkey's, did the absolute minimum in order to fulfill the requirements of the Court in each case and to have the case closed by the Committee of Ministers. But, the legislative changes failed to take effective measures to prevent further violations and left trade unionists dissatisfied.

Understanding the conditions under which states take measures to comply with the rulings of an international court constitutes a major part of the human rights scholarship. Enforcing human rights rulings to improve human rights protection at the domestic level is a constant challenge for human rights practitioners (Carozza 2003; Goldsmith and Posner 2005; Hafner-Burton and Tsutsui 2005). Compared to other international tribunals, the ECtHR assumes a unique position with the rare ability to enforce its judgments, despite lacking the hard power to compel states into compliance. Scholars have cited European cultural values' congruence with human rights (Moravsic and Slaughter 2000), the strength of the peer pressure mechanism entrenched in the ECtHR's executive branch (Çalı and Koch 2014; Bates 2010), and the strength of democratic mechanisms (Helfer 2008; Hillebrecht 2014) as reasons behind this high compliance record. Studies show that states much more readily pay reparations to applicants or take individual measures, rather than undertake legislative changes in order to comply with ECtHR rulings (Hillebrecht 2014; Helfer and Voeten 2014). Nonetheless, the overall compliance with the ECtHR rulings is singled out for its success.

A large majority of studies on the impact of the ECtHR focus on data provided by the Court. Scholars measure the impact of the Court by analyzing whether member states pay the damages awarded to individual applicants or undertake relevant legislative changes in order to comply with Court judgments (Hawkins and Jacoby 2010; Grewal and Voeten 2015; Hillebrecht 2014). The ECtHR's well-organized and detailed online database on the execution of judgments provides great incentives for scholars to conduct quantitative analyses on compliance with ECtHR rulings. Merry (2016) calls this ease in measuring human rights as compliance with a set of rules as the "seductions of quantification." In the case of the ECtHR, the new set of standards does not need to be invented by researchers, as the Committee of Ministers (the Committee)—

composed of foreign affairs ministers of each member state—oversees the compliance of states with ECtHR rulings and closes the cases where states comply with all the requirements. While the peer pressure model of the Committee provides strong incentives for compliance (Çalı and Koch 2014), the final decision on whether or not a state has made satisfactory progress is made by a distant institution that does not have the capacity to review the actual impact from the perspective of workers. Even though NGOs and human rights organizations may submit reports on compliance to the Committee, this is a voluntary system. The participation of civil society in monitoring compliance is dependent on the biases, preferences, and resources of local NGOs. In the case of the trade union rights cases from Turkey and the UK, no NGO reports were submitted to the Committee to support the monitoring of the execution of judgments.

Relying on data provided by the Court on compliance provides a misleading picture of actual compliance. Findings from the case studies show that satisfying these standards does not effectively mean that states have taken all the necessary steps to improve human rights protection on the ground. My study contends that, though policy outcomes and the increased frequency of domestic judges' references to ECtHR law cannot be underestimated, the legislative changes that result from litigation at the ECtHR are limited and often fail to fulfill the expectations of labor activists. Therefore, I argue that in order to better assess the compliance with ECtHR judgments, we need to look beyond the data provided by courts and pay closer attention to the actual impact of states' compliance measures on aggrieved workers on the ground.

The limited impact of ECtHR judgments seems to confirm the pessimism of international relations realists who argue that human rights commitments of states are "empty promises" (Hafner-Burton and Tsutsui 2005) or that the measures states take serve merely as "window dressings" (Keith 2002; see also Hathaway 2002; Neumeyer 2005; Vreeland 2008). Many labor

scholars are also skeptical about the promises of human rights. They argue that human rights law undermines the collective nature of labor claims by encouraging workers to seek remedies for their individual problems on their own (Ewing 1998; Savage 2009; Gearty 2011). Others have pointed out the concurrent development of neoliberalism and judicialization at the international level, whereby courts are replacing collective bargaining schemes. After all, the judicialization of politics increased precisely as social welfare states in Europe began retreating from their redistributive role and increasing demand for flexible labor (temporary or subcontracted work, often with no benefits or welfare safety nets) left workers in a vulnerable position (Fudge 2011). Consequently, the legalization of employment relations is bad news for labor (Gill 1995; Munck 2005).

Skepticism regarding the promises of what human rights law can offer is reasonable. Yet, so far, I have discussed the direct impact of ECtHR rulings on state behavior and pointed out the limits of ECtHR's remedies for labor. While state behavior is an important measure of compliance, solely observing states' changing behavior provides an incomplete understanding of the impact of international courts. The broader impact of these rulings on mobilization and the long-term effects on labor rights can be much more transformative than the Court's direct impact.

Broader Impact of Human Rights Rulings: Beyond Compliance

My purpose in examining the broader impact of ECtHR rulings is to shift our attention away from the relationship between the Court and states to the grassroots level. By broader impact, I refer to two phenomena. First, I refer to the ways in which activists leverage ECtHR litigation to influence state behavior through lobbying, organizing protest activities, and creating media stories. The focus on the indirect effects of litigation allows me to analyze the impact of

human rights law in cases where activists pressure the state to take action before the ECtHR delivers its final ruling (some cases take more than ten years before the Court) as well as those cases where the labor activists lose the case. Second, I refer to the ways in which human rights litigation changes the dynamics of litigation, for instance, by leading to the adoption of human rights language by activists in their mobilization efforts, fostering new alliances with other human rights activists, and formation of a new human rights identity among labor activists.

In order to analyze the impact of the ECtHR judgments beyond compliance, I examine two case studies of grassroots mobilization on trade union rights, from Turkey and the UK. The case study of the Blacklist Support Group (BSG) in the UK documents the activism of construction workers who had been blacklisted due to their trade union activities. Recent evidence suggests that the police collaborated with 42 construction companies in creating a blacklist of more than 3,200 workers. The corporations used the list in making hiring and firing decisions, and, as a result, blacklisted workers have been unable to find jobs in construction work due to their trade union activities or raising concerns about health and safety in the workplace. BSG activists took two cases, which were pending during the time I conducted research, to the ECtHR. In Turkey, I focused on the activism of the trade union confederation for public sector workers, KESK. This trade union was formed thanks to the successful use of international human rights law in the 1990s, a time when public sector workers were not allowed to unionize in Turkey. KESK has since taken the highest number of trade union rights cases to the ECtHR from Turkey, and the Court has recognized some of the most significant trade union rights (such as the right to collective bargaining and the right to strike) as fundamental human rights in response to these cases. Through an examination of these two grassroots movements, I analyze the indirect

effects of human rights litigation on state behavior, mobilization strategies, and discursive changes among workers.

I employ a *legal mobilization* framework, which provides nuanced theoretical tools to analyze law and social change. In addition to examining the official law that we find in legal documents and courtrooms, legal mobilization scholars analyze the "radiating effects" of law, including changing norms and discourses, social relations, and modes of contestation. (Galanter 1983; see also Cover 1983; McCann 1994; Scheingold 1974; Ewick and Silbey 1998). While the legal mobilization theory grew out of studies based in the US (Scheingold 1974; Zemans 1983; McCann 1994), many scholars in recent years have applied this theory to the study of domestic courts outside of the US (Epp 1998; Gauri and Brinks 2008) and of international courts (Cichowski 2007; Simmons 2009). These scholars demonstrated the importance of the role of "legal support structures," such as legal advocacy groups and financial sources, in driving litigation efforts to push for changes in the legislative or institutional framework. Similarly, international relations scholars have argued that transnational activist networks and NGOs leverage international law to stop human rights violations. These studies show that activists' use of international law can lead to democratization, increased individual right claims, and international awareness of human rights violations (Sikkink and Walling 2007; Simmons 2009; Anagnostou 2013; Holzhecker 2013; Cichowski 2016;). Even quantitative studies, most of which are generally pessimistic about the potential of human rights law, show that high level of NGOs activities can lead to better human rights practices.

While legal support structures and NGOs have strong explanatory power in legal mobilization, solely focusing on institutionalized organizations and litigation efforts may provide an inadequate picture about law and social change. Emphasizing the constitutive nature of law

and mobilization, many other legal mobilization scholars (McCann 1994; Holzmeyer 2009; Vanhala 2011) have developed a "bottom-up approach" to explore how litigation strategies can be used in conjunction with other forms of activism, such as grassroots protest activities, lobbying, and media attention. As such, activists push not only for legislative and case law changes, but also for changes in the dynamics of mobilization in a broader sense, including developing new strategies, norms, and discourses by aggrieved workers and other actors.

Recently, other scholars adopting a bottom-up approach to law and social change have pointed out the indirect and symbolic effects of the law in various different contexts, including in South Africa (Madlingozi 2014), Columbia (Rodríguez Garavito and Rodríguez-Franco 2015), and East Asia (Chua 2014; Gallagher 2017). Findings from these studies similarly signal the need to examine the radiating effects (Galanter 1983) of courts and legal mobilization beyond policy outcomes by paying attention to how legal strategies can help build advocacy coalitions and reshape social understandings of socioeconomic rights. A similar scholarship on contentious politics, which has evolved out of the social movements literature, has also focused on the ways in which changes in grassroots political struggles and formal institutions are mutually constitutive (McAdam, Tarrow, and Tilly 2003). Other scholars who focus on the mutual responsiveness between local dynamics and international human rights norms, however, draw attention to the ways in which human rights can impose limitations in social justice struggles (Rajagopal 2003; Santos and Rodriguez-Garavito 2005; Merry 2006a; Gaventa and Tandon 2010). These studies, which parallel legal mobilization analysis, recognize that human rights frameworks not only sometimes marginalize certain groups by blocking radical criticisms to existing power relations but that they also legitimize certain forms of state violence (Rajagopal 2003).

Despite the increased attention given to legal mobilization in comparative and international perspectives, however, no scholar has yet studied the transformative effects of legal mobilization directed at an international court on activism on the ground. This research takes the legal mobilization theory a step further by documenting the effects of rights claiming at an international court on changing dynamics of activism from a comparative perspective. I argue that when activists take immediate action on the ground by mobilizing the grassroots in support of the pending ECtHR case they are able to achieve better outcomes than by simply waiting for the final ruling of the Court. When activists engage in mobilization on multiple fronts, including lobbying and organizing protests and other creative activities, they can achieve some of their goals even in cases where they lose the ECtHR.

This seemingly counterintuitive finding leads to the following question: If workers are able to achieve their goals without the judgments of the Court, is there no need for international human rights law? I show that human rights law can, sometimes, provide workers a legal resource on which to build their mobilization campaign. At a time when domestic authorities set serious legal impediments for trade unionists to organize, workers are able to legitimatize their rights claims based on international law. This sense of legitimacy provides powerful encouragement for workers in building their movement.

The catalytic effect of international law on social movements parallels the findings of legal mobilization theorists who analyzed domestic contexts. In line with the findings of legal mobilization theory at the domestic level, my research demonstrates that international human rights law can, in some circumstances, also become a resource for grassroots mobilization, despite the limits of direct remedies taken by human rights courts. Contrary to skeptics who argue that human rights law individualizes and depoliticizes workers' movements, I show that international

law can help build movements on the ground. The effect of international law on the dynamics of mobilization, however, differs from legal mobilization at the domestic level. The ECtHR, as an international court, is more distant from workers' legal consciousness than are domestic courts, and hence, has less influence in shaping subjectivities and in-group solidarity ties among workers than do domestic litigation efforts. Workers' primary activist identity and solidarity ties are based on class concepts rather than human rights. Although, I found both in Turkey and the UK that movement leaders and lawyers—who are directly engaged in leading human rights litigation efforts and are more readily using human rights language in public talks, media presentations, and collaborative work with other human rights activists—are more keen on identifying themselves as human rights activists than are the workers themselves.

Strategic mobilization of human rights

The role of labor activists and lawyers in expanding human rights norms is best articulated through the concept of "vernacularization of human rights." Based on a series of field studies on women's rights conducted in several different countries, Merry and co-authors have shown that legal experts and human rights activists serve as intermediaries by making human rights knowledge accessible to local people, thereby linking the global to the local.[3] Perhaps the most important contribution of their work to studies on "global norm diffusion" is that norm diffusion is not a trickle-down process, where norms, once created, are either adopted or rejected by local groups. Instead, they show that human rights norms are more easily adopted by local groups if they are reframed and embedded into local concepts, beliefs, and value systems. They call this process the "vernacularization of human rights." Furthermore, they show that the

[3] See for instance, Merry (2006a); Merry et.a; (2010); Merry and Stern (2005).

intermediaries are composed of different groups, whose loyalties may lie more with the local groups or international donors/NGOs based on their class, race, education level, and other factors.

My case studies of labor activism in Turkey and the UK suggest that there is a two-tiered structure of vernacularization. The first level is composed of legal advocacy groups who lead litigation efforts, identify the ECtHR as a target institution, and translate human rights laws to local activists. The second level is composed of grassroots activists who undertake a discursive change on human rights (and labor rights) in society at large through their campaigning efforts. I find that workers, rather than embracing human rights wholeheartedly, *engage in a strategic mobilization of human rights law* in order to enter into a public discourse where human rights language has become the dominant discourse with which to articulate social injustices. By using human rights language, activists aim to cast trade unionists as bearers of human rights, rather than a drag on the economy (as suggested by neoliberal discourse). Hence, contrary to Merry and co-authors' findings, I show that grassroots activists are contributing *agents*, rather than mere *targets* of the vernacularization of human rights.

I show that the strategic approach to human rights pursued by workers exhibits itself in the difference between the *on-stage* and *off-stage* behavior of labor activists. *Off stage,* during their private meetings and away from cameras, workers do not make many references to human rights. An important result of this dualism is that even BSG activists, who widely use human rights language in their campaigns, do not identify themselves as human rights activists. Instead, workers use human rights language on-stage to tap into a public discourse that is receptive to human rights abuses but not the plight of workers and trade unions. Workers also express resentment about having to resort to international law to seek remedies and about having lost the

power they once had in domestic politics. And, they are very well aware of the limited remedies human rights law provides. Therefore, *on stage*, workers mobilize human rights law and language to seek remedies and have their voices heard. But, class-based concepts still prefigure the solidarity ties among workers and their primary activist identity.[4]

My study on the blacklisted workers in the UK shows that, by embedding human rights language in their campaigns, labor activists gained media attention, built new alliances with other human rights groups, and increased the organizational capacity of their movement. Using this renewed mobilization power, the blacklisted workers have been able to leverage policy outcomes and win a large settlement in a domestic trial even though their application was eventually dismissed by the ECtHR. Perhaps more importantly, mobilizing human rights strategically, they aimed to undertake a change in the perception of unionized workers as bearers of human rights, at a time when trade unions were viewed as a regressive force on the economy. Human rights allowed workers to enter into a public discourse to have their voices be heard, while their collective identity and in-group solidarity ties were still animated primarily by class-based concepts.

In Turkey, KESK activists overcame a blanket ban against public sector workers' unionization through legal mobilization at the international level. Once again, international human rights law served as a legal basis to constitute their movements and expand. Establishing their movement in the early 1990s, a time when human rights had not yet become the dominant framework to talk about social justice issues, KESK activists did not widely use human rights

[4] The on-stage and off-stage behavior I describe here in some ways resembles Goffman's (1956) argument about front stage/back stage behavior, yet my usage here is fundamentally distinct. Goffman uses this this model to explain the everyday behavior of individuals. My study, however, explains the behavior of workers who consciously put up a performance for the media and the general public, as opposed to their behavior amongst themselves.

language in their campaigns. By the 2000s, KESK activists started to incorporate human rights language more in their mobilization efforts, due both to increased ECtHR litigation and to their alliance with human rights activists in the Kurdish movement. However, during this period, KESK lost significant power as a result of the structural disempowerment of public sector unionism. Unable to mobilize grassroots support, KESK started flooding the ECtHR with violation claims. The Turkey case study shows winning a high number of cases before the ECtHR does not lead to improved human rights on the ground in the absence of pressure from below.

On the whole, the case studies show that, rather than generalizing human rights outcomes based on regime type, we need to pay closer attention to the determinants of grassroots mobilization. In cases where workers face violations collectively, yet retain some grassroots mobilization power, they are more able to leverage human rights litigation for better outcomes. However, when state repression has crippled union strength completely, and organized labor has lost all rank and file mobilization capacity, human rights law fails to provide remedies for aggrieved workers. Although cases from such a repressive context more easily resonate with the ECtHR as obvious labor rights violations, the measures states take to implement violation judgments do not alter the underlying problems of trade union rights violations faced by workers. Thus, the strength of organized labor—i.e. trade union membership rates and the ability to organize protests, lobby, and create media stories—and the level of state repression faced by workers are critical in determining when and how litigation at an international court can become a resource for labor activists.

Research Design and Case Selection

This research generates and analyzes original quantitative and qualitative data. The quantitative dataset (n=1267) is composed of labor cases brought before the ECtHR (1960-2014). The qualitative dataset draws on a comparative case study of grassroots labor activism in Turkey and the UK.

Database on Labor Cases at the ECtHR

In order to document and analyze the increasing number and types of labor cases and the Court's evolving approach to labor issues, I generated a database of labor cases brought before the ECtHR (1960-2013). The database catalogs all labor cases from Turkey and the UK, case reports[5] from all member states, and labor cases brought from all member states in every fourth year since 1960. All case law is available on the ECtHR's official website HUDOC.[6]

The database includes a broad range of cases brought by workers regarding the rights violations they experience due to work. When analyzing the Court's jurisprudence in a particular issue area, scholars of the ECtHR generally analyze the final rulings (judgments) of the Court, dismissing the failed cases brought before it (Cichowski 2016; Helfer and Voeten 2014; Hillebrecht 2014). However, these failed cases provide valuable insights into the grievances for which workers seek remedies and the boundaries drawn by the Court around what it considers to be fundamental human rights. These cases shed light on the process through which the ECtHR reads new labor rights into the existing Convention as well as the "novel rights claims" (Polletta

[5] These are cases categorized by the Court as the "most important" cases, or those which develop the case law and set precedents.
[6] The HUDOC database includes all judgments and a select number of decisions. The Court receives thousands of cases every year, a majority of which fail to fulfill the basic requirements of the Court and are declared inadmissible.

2000) the Court "kills" by declaring them inadmissible (Cover 1986; McCann, Lovell and Taylor 2016). Therefore, the database includes both decisions and judgments delivered by the Court.

The database provides information on the following categories: (1) General identifiers (such as the articles invoked, defendant country and the outcome of the judgment); (2) Types of international law on labor invoked (such as the ILO or the ESC); (3) Basic facts of the issue (claims of the applicants) and the Court's reasoning (in summary); and (4) Advocacy group participation (such as human rights organizations or other activist networks). Cases from Turkey and the UK also include information on the names of the lawyers who represented the applications and the relevant domestic laws. These last two categories provided guidance for determining which lawyers to contact in each country during fieldwork.

Since the ECtHR was established primarily as a civil and political rights court, there are not any articles that primarily protect labor rights, except freedom from slavery and servitude (Article 4) and a vague reference to trade union rights under freedom of association (Article 11).[7] In order to document the developing labor rights claims under different articles, I had to determine what counts as a labor rights claim, absent the Court's own categorization. To decide what to include in the case law, I used the existing scholarship by legal scholars on the development of labor law under different articles of the ECtHR, other international law that explicitly protects labor rights (such as the ILO), and the Court's summary judgments under "work and business" available on its own website. While triangulating these different resources, my purpose was to be as broad as possible and include all rights violation claims that arise in the workplace or are experienced by workers due to their employment. Appendix I provides detailed

[7] See detailed Convention articles and protocols in Appendix II.

information on this decision process as well as the coding work.

Case Studies: Turkey and the UK

This research presents an ethnography of two cases of grassroots activism in Turkey and the UK to analyze bottom-up mobilization. I conducted my fieldwork over six months in the UK and eight months in Turkey from 2012 to 2015. During my fieldwork in Turkey, I was based primarily in Istanbul, where most labor activism was taking place, but also traveled to Ankara and Diyarbakir for interviews. In the UK, I was primarily based in London and traveled to New Castle and Bristol for interviews and meetings.

The primary purpose of the fieldwork was to explore the local dynamics of legal mobilization. Specifically, I sought to: (1) Analyze the experienced impact of ECtHR judgments from the perspective of workers on the ground; (2) Understand the role that different groups of activists play in legal mobilization, their organizational structure, and the power imbalances among these groups that may be determined by their access to financial, legal, political and international resources; (3) Document the forms of political mobilization efforts that labor activists use in relation to human rights litigation; and (4) Examine the process through which labor activists decide to mobilize human rights litigation and discourse, as well as document their views, expectations, disappointments, and skepticism about ECtHR litigation.

Both case studies, of the Blacklist Support Group in the UK and of KESK in Turkey, focus on trade union rights. I focus on trade union activism in part because it is the area of labor rights to which the ECtHR has been most attentive, but also due to its "enabling" role for all other labor rights protection. Labor scholars and activists generally view strong trade unions as guarantors of fair wages, social security, health and safety at work, and other labor rights, as

unions demand these rights collectively, adding strength to the efforts of otherwise isolated workers (Rosenfeld 2014). For this reason, in both Turkey and the UK, as well as in other parts of the world, discrediting and disempowering unions have been an integral part of neoliberal policies, which have dismantled the labor protections of welfare states (Swank 2002; Harvey 2005; Daniels and McIlroy 2009).

My field research was primarily grounded in qualitative methodology, including participant observation, interviews, and archival work. I conducted my participant observation and interviews with six different groups related to legal mobilization around labor rights (1) *Legal professionals*, composed of lawyers of trade unions or lawyers working at pro-union legal firms; (2) *Legal advocacy organizations*, which support litigation processes (e.g. Liberty in the UK); (3) *Pro-labor institutions*, such as advocacy networks or think-tanks (e.g. the Institute of Employment Rights) that provide information on labor rights to workers and issue policy reports, but may not mobilize wide grassroots support; (4) *Academics*, specifically those who work on labor law and/or the ECtHR; (5) *Trade unions*, including local unions such as KESK, or international unions, such as the European Trade Union Confederation (ETUC); and (6) *Grassroots organizations* that mobilize workers with or without the help of trade unions.[8] Overall, I conducted 35 semi-structured interviews in Turkey and 34 in the UK.

While interviews compose an important part of the ethnography and give voice to my respondents, I am mindful of the limitations of interviewing as a method that relies solely on the discursive consciousness of respondents. Interviews allow respondents to reflect on their actions, but they may also obscure the "unconscious cognitive processes" that shape motivations and

[8] These groups are not necessarily mutually exclusive. For example, some academics are engaged in grassroots mobilization, while some human rights associations count legal professionals and grassroots activists among their members.

intentions (Vaisey 2009). The BSG, in particular, was in the midst of an intense period of campaigning, and it provided a perfect opportunity to observe why and how activists use human rights language. Therefore, to a large extent, participant observation suited my research goals better than conducting formal interviews. It allowed me to explore the strategic decision-making processes and the new identity formations within grassroots labor groups. Since I was a regular participant in events organized by activists, after a while, I became a familiar face among them and attended campaigns and meetings regularly. I gathered data from observing discussions and engaging in informal talk, rather than just formally asking them what they thought about litigation strategies, campaign efforts, or human rights.

I undertook participant observation in conferences, meetings, dinners, protest activities, and labor trials at national courts. Furthermore, I collated and analyzed written documents of labor activism, both from online sources and in the form of printed brochures, pamphlets, and posters. In addition to formal meetings, I also attended seminars and workshops composed of training sessions organized by legal advocacy networks to inform workers and trade unions about human rights law and of conferences or talks organized by academics, politicians, and legal experts to discuss the evolving human rights law on labor rights and the policy outcomes. Thus, these seminars and workshops provided a critical source of data demonstrating the vernacularization of human rights law. During meetings organized by KESK and BSG, I closely analyzed how activists strategized, and whether and how they engaged with human rights in internal discussions.

In order to compare KESK's mobilization efforts in the 1990s to the 2000s, I conducted archival research on campaign materials, pamphlets, meeting reports, and annual reports of KESK. Eğitim-Sen, KESK's largest sub-union, has a great collection of campaign materials

encompassing the early 1990s, while KESK's documents started from 1995 when it was founded. I also conducted archival research on *Milliyet*, a mainstream daily newspaper in Turkey, in order to collate additional data on how KESK's use of human rights language changed in their campaigns and how the frequency of protests and mass mobilization activities changed over time.

Chapter Outline

The following three chapters of the dissertation address the question of why workers have begun to turn to the ECtHR in recent years, based on an analysis of changing political opportunity structures at the domestic, international, and the grassroots levels.

Chapter 2 shows that the largest number and the most significant trade union rights cases come from Turkey and the UK. By providing a comparative historical analysis of the changing domestic political opportunity structures at the domestic level, I argue that, rather than regime type, the restrictive trade union political environment instigated by neoliberal policies explains why workers sought alternative remedies at the international level. While neoliberal policies took aim at structurally disempowering trade unions in both countries, I argue that the violent repression of the organized labor ensuing the 1980 military coup in Turkey severely undercut prospects of mobilization for years to come.

Based on my analysis of the ECtHR labor cases dataset, Chapter 3 demonstrates that the Court's approach to the growing number of labor cases has changed dramatically within the past two decades and that it set landmark cases on a wide range of labor cases brought by workers across Europe. By examining the evolving jurisprudence of the Court, I show that the Court has become an important institutional authority on labor rights within the context of shrinking

welfare states in Europe. I show that the "labor rights revolution" at the ECtHR is the result of a mutually constitutive relationship between, on the one side, workers' mobilization at the ECtHR by way of flooding the Court with labor claims, and, on the other, the Court's expansion of human rights law to incorporate labor rights through its adoption of a pro-worker interpretation in new cases.

The fourth chapter documents the critical role of legal advocacy groups in driving workers' attention to the ECtHR and engaging in strategic litigation in collaboration with labor unions. The chapter argues that the process of the vernacularization of human rights is composed of two tiers—legal advocacy groups and grassroots mobilization—and focuses on the role of legal advocacy groups. I show that a small group of committed lawyers, rather than institutionalized advocacy groups, led litigation efforts on trade union rights in both countries. Despite similarities, the litigation strategy took different forms in Turkey and the UK. In the UK, a small group of committed lawyers and scholars carefully devised an ECtHR litigation strategy with an eye towards changing domestic legislation put in place during the Thatcher era. A similar strategy was adopted by public sector unions organized under KESK during its foundational years in the 1990s. In later years, however, as KESK lost its ability to mobilize its rank and file members to influence the state's behavior, lawyers started to bombard the Court with cases.

The second part of the dissertation analyzes the impact of the ECtHR judgments at the domestic and grassroots level. Chapter 5 analyzes the direct impact of trade union rights cases, focusing both on the impact on the domestic judiciary and the legislative outcomes. While the cases from Turkey are markedly greater in number due to highly restrictive trade union policies and KESK's strategy of flooding the Court with violation claims, the findings show that both states do the absolute minimum in order to comply with the rulings of the Court. The slow

incorporation of Convention rights into domestic judicial systems and increased references to ECtHR rulings—although not instituted systematically—are promising and significant. However, the ECtHR judgments fail overall to provide enough incentives for states to grant basic trade union rights to workers in Turkey and the UK. Despite the positive portrayal of the ECtHR's effectiveness in the execution of judgments in the literature, my analysis of the actual implementation of these rulings shows that, often, domestic legislative reforms fail to reflect the spirit of ECtHR judgments.

In Chapter 6, I shift my analysis away from the direct impact of the ECtHR to analyze the broader effects of litigation at the ECtHR. Drawing on the case study of the BSG in the UK and KESK in Turkey, I show that the effect of the ECtHR on grassroots movements can be much more transformative than the rulings it delivers. In cases where activists combine litigation efforts with mobilization on the ground, they are able to achieve tangible gains for labor. More specifically, human rights provide workers a legal ground to build their movement, a language with which to articulate their claims in a political climate unresponsive to the demands of labor, and an opportunity to increase their organizational capacity by building alliances with other human rights activists. Therefore, grassroots labor activists constitute the second level of the vernacularization of human rights by spreading through their campaigns the idea that workers' rights are human rights. At the same time, workers are aware of the limitations of human rights law, and even exhibit a resentment about having to resort to an international court in order to claim basic trade union rights. The chapter shows that workers mobilize human rights law strategically to have their claims be heard by a general audience while remaining skeptical of human rights. Hence, despite using human rights language in their campaigns, workers' subjectivities and in-group solidarity ties are still primarily determined by traditional class-based

concepts, rather than by human rights.

The final chapter provides a summary of the major findings of this dissertation and discusses the question of whether litigation at the international level is a recourse or a curse for labor activists in combatting neoliberalism. Based on the case studies of the BSG and KESK, I lay out the factors that facilitate engagement in legal mobilization at the international level. Furthermore, the chapter also considers the conditions under which workers' skeptical approach to human rights might change in the future.

CHAPTER 2. CHANGING POLITICAL OPPORTUNITY STRUCTURES UNDER TWO VARIANTS OF NEOLIBERALISM

"*Devrim vaktiyle bir ihtimaldi, ve çok güzeldi."*[9]

Murat Uyurkulak, *Tol*.

The most significant and the highest number of trade union rights cases at the ECtHR have been brought by workers in Turkey and the UK—an odd and perhaps unexpected coupling of countries for human rights violations. The UK is an established liberal democracy that has played a leading role in drafting the Convention and has a long history of upholding human rights. Turkey, on the other hand, has a spottier democratic record that includes several military coups over the past half a century. Despite being one of the founding members of the ECtHR in the 1950s, Turkey did not accept the jurisdiction of the Court until 1990. Turkey also has the highest number of judgments delivered against it, comprising 20 percent of all violation judgments of the ECtHR, while the UK comprises only 0.02 percent of them. Given this incongruity, why would trade union rights cases primarily come from these two countries?

This chapter shows that the anti-union policies adopted by both countries in the post-1980 era drove workers to seek remedies at the international level. In the UK, trade unions were structurally disempowered through neoliberal policies, whereas in Turkey, the implementation of neoliberal policies took a distinctly violent form, undercutting the power of organized labor for years to come. The different shapes taken by neoliberalism in both countries is noteworthy, but the effects were the same: undermining organized labor. Hence, I argue that rather than regime

[9] "Revolution was once a possibility and it was beautiful." Translation by the author.

type, changing political opportunity structures at the domestic level which created a restrictive political environment, explains why activists look for alternative options at the international level. Policies aimed at undercutting union power were prevalent all across Europe, but this chapter shows that the effects of the neoliberal turn on organized labor were most dramatic in Turkey and the UK.

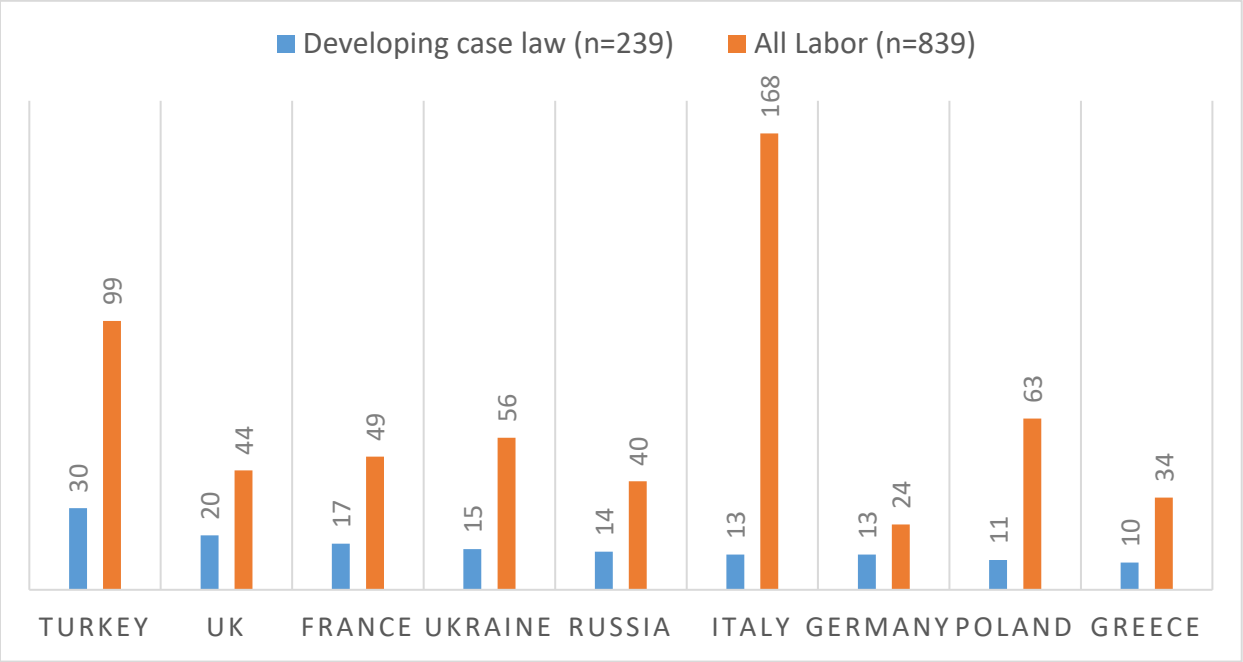
Labor Rights Litigation before the ECtHR

Throughout the 1990s the number of labor cases brought before the ECtHR rose dramatically. The analysis in the next chapter shows that the ECtHR's labor rulings rose exponentially, from a mere 14 in 1989 to 99 in 1997 and 163 in 2013. This chapter asks the following questions: Where are these cases coming from? Which countries are bringing the highest number of cases to the ECtHR? And, why are workers in these countries turning to an international human rights court?

Figure 2.1 shows the breakdown of ECtHR labor case law by country. The figure includes the nine countries that have the highest number of labor cases and the developing case law from 1997 to 2013. Most East European countries have accepted the Court's jurisdiction and the right of individual petition throughout the 1990s. Therefore the figure includes post-1997 data for country comparison. At first glance, Italy displays the most striking figure with 168 cases. However, this high number of case law from Italy is misleading. Italy has a structural problem with its judiciary, particularly with respect to the long length of the proceedings. By itself, Italy accounts for one-fifth of all length of proceedings cases before the ECtHR (ECtHR Statistics 2017). Likewise, in this figure, 136 out of 168 cases from Italy were procedural rights cases. While access to justice is an important aspect of labor rights, in these types of cases the

Court often does not rule on the substantive aspect of the labor dispute but, rather, on the fairness of proceedings at the domestic level.

Figure 2.1. Developing Case Law and Labor Cases at the ECtHR (1997-2013)



Labor judgments and decisions before the ECtHR, every four years, and all case reports 1997-2013
Source: Data compiled by the author

In order to offset the effect of repeat cases, the figure also illustrates the *developing labor case law* by country. The developing case law analysis is based on the "importance level" coding in the database, which uses the Court's own categorization. The Court assigns importance level to its own case law based on the significance of a given judgment or decision in developing the existing case law: case reports (cases that set precedents since the inception of the new Court in 1998); high importance (cases that make a significant contribution to the development of the case law); medium importance (cases that go beyond merely applying existing case law, while not making a significant contribution); and low importance (cases that simply apply the existing case law). My analysis shows that the highest number of developing case law on labor comes

primarily from Turkey and the UK. In other words, the most significant labor cases, where the Court sets precedents or cases that contribute to advancing the Court's interpretation of labor rights are brought by workers in these two countries. Furthermore, only 16 percent of cases from Turkey and the UK are procedural rights cases. In other words, an overwhelming majority of cases from these two countries are substantive labor rights cases. In short, trade union rights cases from Turkey and UK form the core of ECtHR's case law in this area.

Trade union rights comprise the most important part of the ECtHR labor case law. As the next chapter will show, the ECtHR delivered its most striking judgments on trade union rights. By overturning previous judgments delivered in its first decades, the Court recognized some basic trade union rights, such as the right to collective bargaining and the right to strike, as fundamental human rights. The ECtHR's special consideration in this area is significant because trade union rights are often viewed as a core set of labor rights that help strengthen the collective voice of workers, thereby serving an enabling purpose for all other labor rights (Rodŕıguez-Garavito 2005; Rosenfeld 2014). Strong trade unions are considered guarantors of fair wages, social security, health and safety at work, and other labor rights. Unions demand these rights collectively to add strength to the efforts of otherwise isolated workers.

Table 2.1. shows that cases from Turkey and the UK, once again, stand out among trade union rights cases. Of the 60 trade union rights cases, 20 are from Turkey, followed by seven cases from the UK. Chapter 4 will show that the reason trade union rights cases from Turkey are so high in number is that Turkish labor lawyers take almost all cases lost at the domestic level to the ECtHR in the post-2000 period. By contrast, British labor lawyers take only those few cases they believe can be won and can be used to influence policy outcomes, while avoiding repetitive cases. As a result, the numbers of developing case law from each country are similar, with seven

cases from Turkey and six from the UK. The next chapter demonstrates how the ECtHR set some of the most important precedents on trade union rights in cases from these two countries.

Table 2.1. Trade Union Rights at the ECtHR by Country

	All Trade Union Rights	Developing Trade Union Rights
Turkey	20	7
United Kingdom	7	6
Sweden	4	2
France	4	1
Spain	3	3
Romania	3	2
Ukraine	2	2
Other	17	6
Total	60	29

Trade union rights judgments and decisions before the ECtHR, every four years, and all case reports 1960-2013
Source: Data compiled by the author

Domestic Determinants of Human Rights Litigation

Why do so many—and such significant—labor rights cases come from Turkey and the UK? The differences between the two countries are apparent. The UK is an established democracy with a long history of commitment to the rule of law and human rights. Turkey's commitment to democracy is erratic, interrupted by intermittent military coups and populist authoritarian leaders. The puzzling coupling of Turkey and the UK raises the following question: under what conditions do activists turn to international law?

Scholarship on international law, sociolegal research, and social movements all show that having the means and the motives are the two key factors that lead people to take action. The first step in litigation is, undoubtedly, construction of a grievance. Earlier studies pointed out that people are more likely to engage in collective action or litigation when they experience a "relative deprivation," that is, a perceived disparity between what their material conditions are and what they believe those conditions should be (Gurr 1970; Smelser 1963; Turner and Killian 1972). Later, social movement scholarship showed that a perceived rights gap is not sufficient to motivate people to participate in collective action; people need to have the capacity to organize and mobilize resources (McAdam, McCarthy, and Zald 1996; Tilly 1973). Similarly, sociolegal scholars showed the importance of being a repeat player (Galanter 1974) and access to legal and financial resources, or support structures, to engage in legal mobilization (Epp 1998).

More recently, legal mobilization and social movement scholars have developed the concept of political "opportunity structures" to analyze the configuration of power relations, resources, and institutional arrangements determining the political environment which either encourages or discourages mobilization. Initial research limited the examination of political opportunity structures to the national level, for instance by evaluating whether a domestic institutional setting is relatively opened or closed. Others have started to develop a more nuanced understanding of the term by examining the opportunities presented by changing institutional configurations at the international level (Risse, Ropp, Sikkink 1999; Alter 2000; Brysk 2000; Simmons 2009) and by assessing the openness and closure of a regime for different movements within the same national context (Caraway 2006; Guigni, Berclaz and Füglister 2009).

Nonetheless, dominant theories on international law and human rights—many of which focus on civil and political rights—rely on broad generalizations about how regime type or rule of tradition determines opportunities for human rights activism in a country, without regard for different issue areas (Neumayer 2005; Hathaway 2004; Simmons 2009). In particular, scholars point out that transitioning democracies, rather than liberal democracies or autocracies, provide a more fertile ground for mobilizing international human rights due to the vulnerability of these states to international pressure (Keck and Sikkink 1998; Risse, Ropp, and Sikkink 1999; Simmons 2009). The reasoning behind this proposition is that citizens in liberal democracies have little need for international treaties, since there is already a system of protection for rights and liberties in these countries. Conversely, autocracies have little regard for international treaties, despite higher levels of human rights violations faced by citizens. It is transitioning democracies, therefore, that provide the greatest means and motives for human rights activism. Some scholars even pointed out that liberal democracies can assume the role of "global good Samaritans" (Brysk 2009) or "stewardship" (Hafner-Burton 2013) in promoting human rights in such transitioning democracies, which are more vulnerable to international pressure.

These broad generalizations on regime type, however, provide a simplistic picture of human rights. There is now a fairly well-developed literature documenting that most states from all around the world deviate from and contribute to developing human rights frameworks (Corroza 2003; Rajagopal 2003; Sommers and Roberts 2008; Waltz 2002). In the area of women's rights, for instance, scholars have shown that "the dichotomous view of us (culture-free women's rights proponents) vs. them (tradition-bound misogynists)" is far from reality (Zwingel 2012: 120; see also Merry 2006a). Closer attention to labor rights, similarly, reveals that liberal

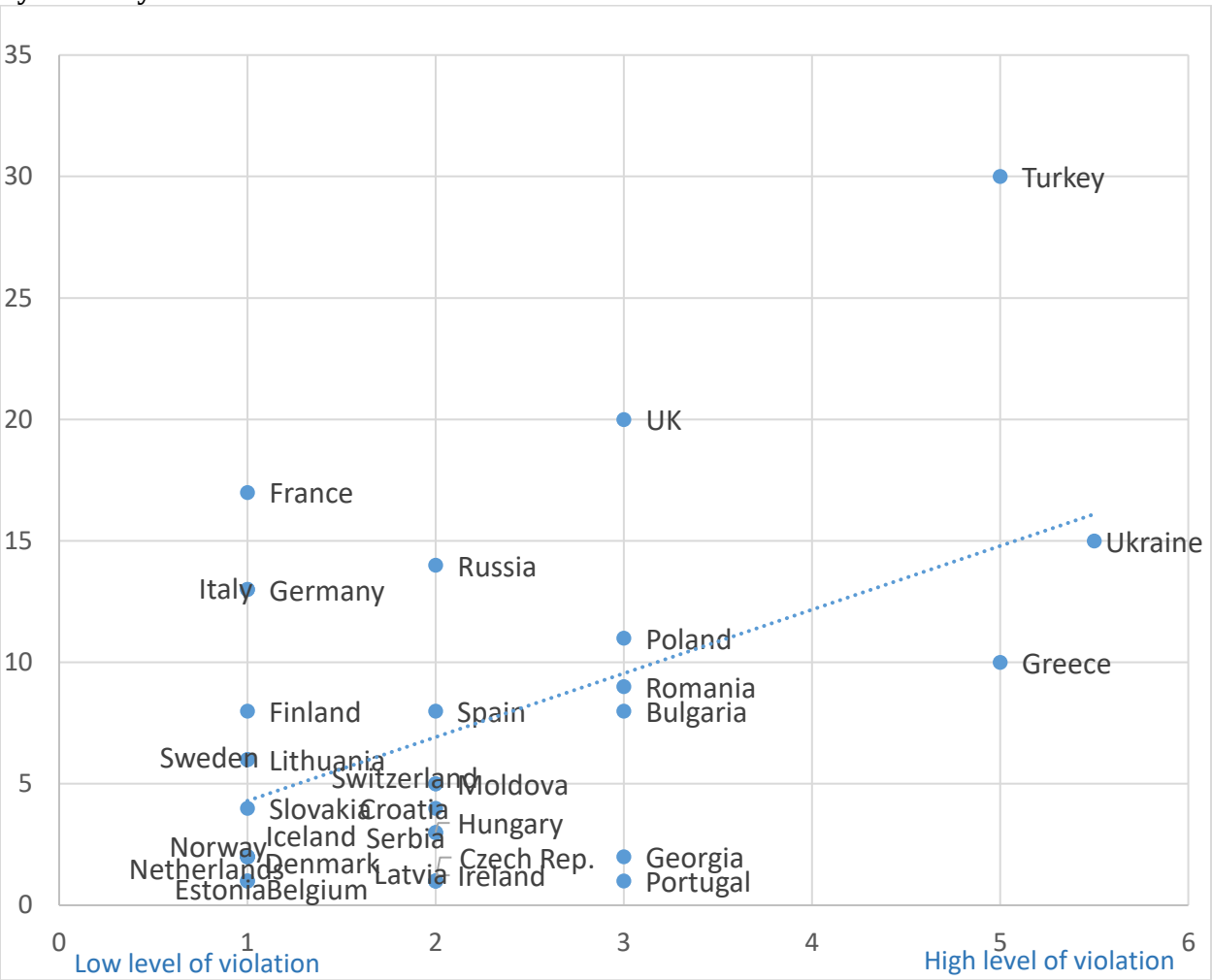
democracies do not fare well as norm-abiding countries, much less act as stewards for other norm-violating states.

I argue that we need to pay closer attention to the availability of political opportunity structures for taking action and engaging in human rights litigation at the domestic level. By political opportunity structures, I refer to the particular set of power relations, resources, and institutional arrangements defining a political environment that either encourage or discourage mobilization. This chapter shows that the primary reason workers from Turkey and the UK have brought the most important labor rights cases before the ECtHR is the repressive labor conditions these workers have faced at the domestic level since the 1980s. While the level and form of repression varied in the two contexts, workers in both countries have experienced relative deprivation and have been unable to seek remedies for deteriorating working conditions and restrictions on trade union activism at the domestic level. The next chapter will show that the availability of legal support structures in these two countries has mobilized collective litigation efforts at the ECtHR. Thus, the sustained attack on organized labor motivated labor activists to look for remedies elsewhere, while legal advocacy groups served as a means to facilitate and coordinate litigation at the international level.

Figure 2.2. illustrates the correlation between the quantity of developing case law before the ECtHR and the labor rights violation score of each country. The UK is the only Western European country with a long-standing liberal democracy that has a labor rights violation score of 3 or above. However, other Western liberal democracies like France and Germany follow the UK in the number of labor rights cases before the ECtHR, even though their labor rights violation score is 1. Further research would be required to examine these case studies, but two aspects of political opportunity structures I propose could explain the high number of cases from

these countries. First, as the next chapter will show, legal advocacy networks and human rights organizations are often more prolific in liberal democracies. These groups generally have better access to human rights law, due to the financial and legal resources available to them, and are able to coordinate litigation efforts when violations occur. Transnational legal advocacy groups can also facilitate these efforts. For instance, many scholars have documented the role of

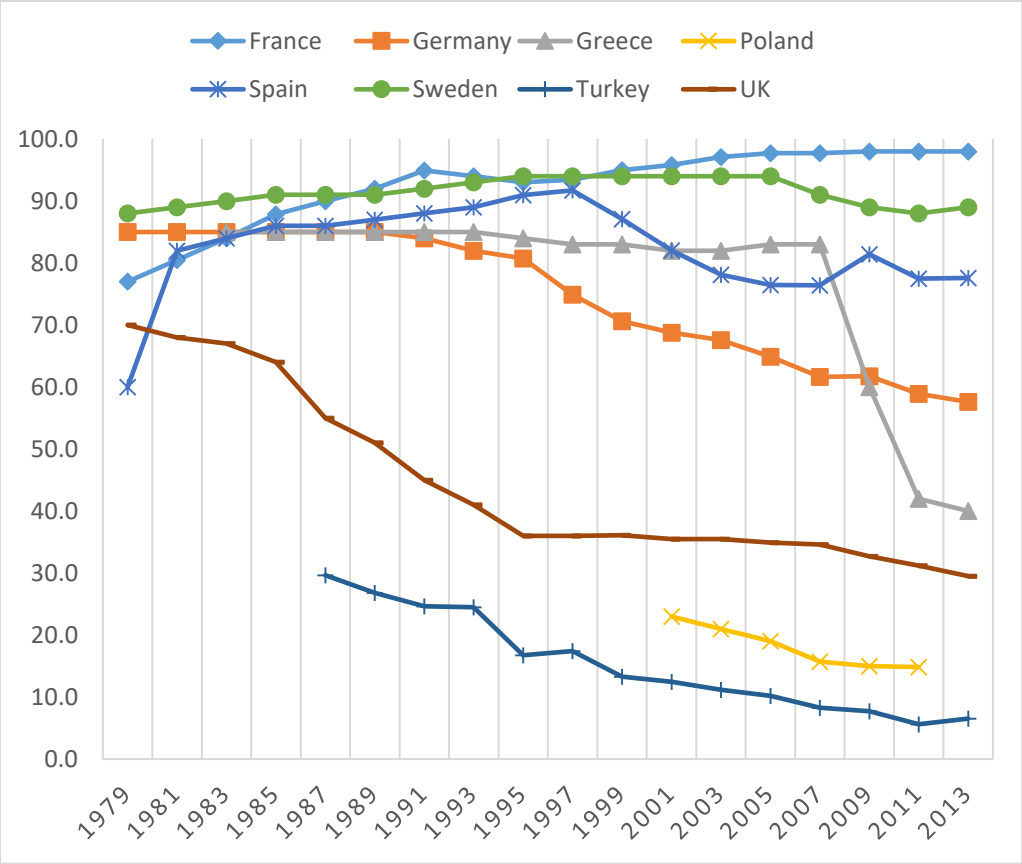
Figure 2.2. Developing Labor Case Law at the ECtHR and Labor Rights Violation Scores by Country



Labor judgments and decisions before the ECtHR, every four years, and all case reports 1997-2013, n=239
Source: ECtHR data compiled by the author; Labor rights violation scores are based on International Trade Union Confederation's World's Worst Countries for Workers' Report 2014

transnational ties between a UK-based human rights organization and lawyers in Turkey in the legal mobilization of Kurdish activists at the ECtHR. There is also now a burgeoning literature on a similar trend occurring in Russia in taking both labor and other human rights cases to the ECtHR.

Figure 2.3. Collective Bargaining Coverage in Eight European Countries

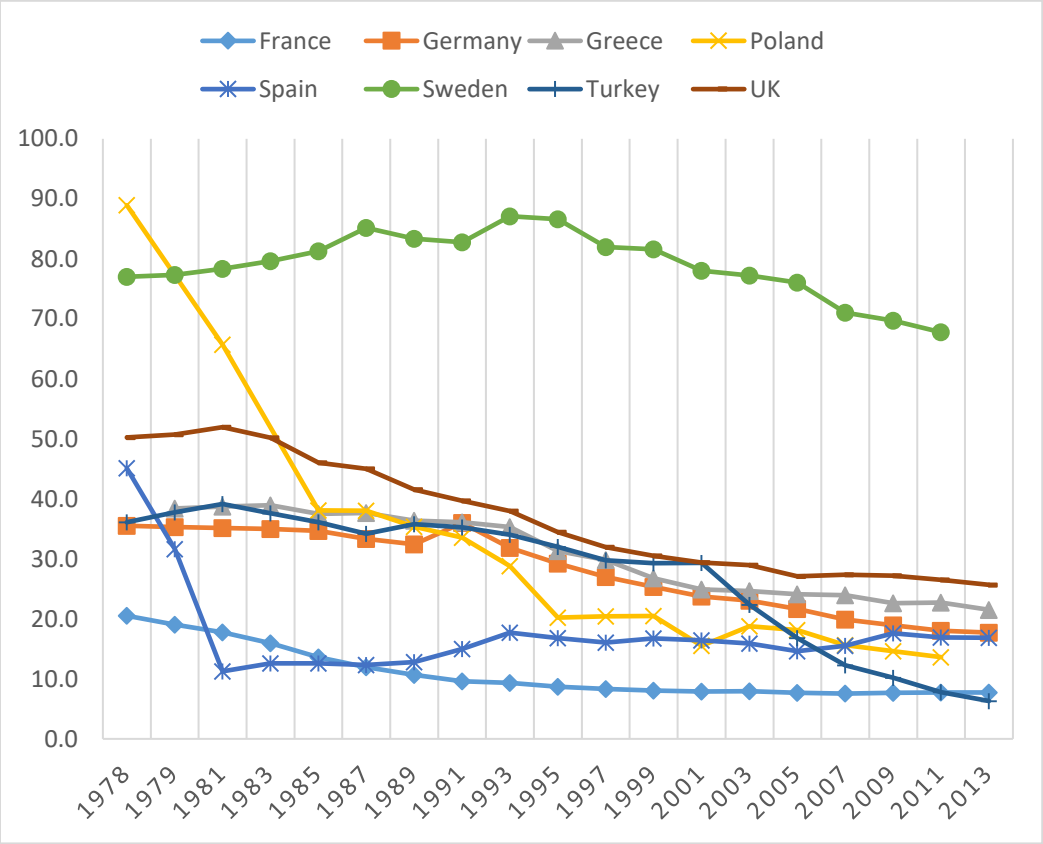


Source: Visser Database Version 5.1 (variable adjcov) and updated with ILOSTAT 2017.

Second, even though these countries have relatively better labor rights conditions, organized labor in all European liberal democracies has been significantly weakened through the institution of neoliberal policies. Figures 2.3. and 2.4. illustrate the decline of collective bargaining coverage and trade union density in eight European countries, including countries from different geographical regions and levels of economic development. The figures show that

even in Germany, once singled out as an alternative success model to extreme neoliberalism, collective bargaining coverage declined and trade unions lost power.[10] The collective bargaining

Figure 2.4. Trade Union Density in Eight European Countries



Source: OECD. Stat. 2017

coverage has not declined in France, but trade union involvement in the process has been undermined. Trade union density[11] dropped by 65 percent since 1978 in the country, and currently, it is well below the OECD average of 17 percent.[12] Turkey and the UK once again stand out as the two countries that have experienced the highest percentage decline in collective bargaining coverage, by 77 and 58 percent, respectively. Trade union density fell drastically in

[10] See also Baccaro and Howell (2016) and Hassel (1999); Kitschelt and Streeck (2003).
[11] Trade union density refers to the ratio of trade union members among wage and salary earners.
[12] See also Baccaro and Howell (2016) and Howell (2009).

almost all countries, including in Turkey, by 83 percent, and in the UK, by 50 percent. Both indicators are notably lowest in Turkey today.

Labor Rights Under Two Variants of Neoliberalism

Organized labor has been in decline in many parts of the world since the late 1970s. In Europe, while the decline of social welfare states has taken many forms,[13] recent research shows that there is a neoliberal convergence (Baccaro and Howell 2016; Harvey 2005).[14] The neoliberal turn is often contrasted with the demand-side economics of the Fordist era and is characterized by a range of economic policies that aim to liberalize trade and foreign capital entry, privatize state enterprises, dismantle social welfare provisions, provide tax cuts, weaken trade unions, and deregulate financial institutions (Harvey 2005). The most significant feature of neoliberalism distinguishing it from classical liberalism is the involvement, rather than the retreat, of the state in the economy, *i.e.* intervention on behalf of capital through bail-outs, tax cuts, subsidies or policies that favor investors and employers. The legitimacy of the state is tied to its efficiency in *governance*—not only in the sphere of production, but also in non-economic spheres through promoting individual self-sufficiency, entrepreneurship, and adaptation to unpredictable market conditions (Rose 1996; Brown 2003; Ong 2006; Smith 2005; Keil 2009; Tugal 2012; Dardot and Laval 2013).

For the purposes of the analysis of political opportunity structures in this chapter, the most important aspect of neoliberalism is the sustained assault on collective labor rights. The disempowerment of trade unions can partly be attributed to the changes in the global economy,

[13] The most prominent study of the resilience of domestic institutions despite economic liberalization is the varieties of capitalism literature (Hall and Soskice 2001; Hall and Taylor 1996); but see Ong (2006) and Brown (2003) for a discussion on the implications of neoliberalism on issues other than macroeconomic policy.
[14] See also Fourcade-Gourinchas and Babb 2002 and Golden, Wallterstein, and Lange 1999 for earlier studies of how implementation of neoliberalism takes different forms, albeit towards the same direction.

including the departure of manufacturing jobs in search of cheap labor in other parts of the world, a growing reliance on subcontracting and flexible labor, the rise of the service sector, and the dilemmas unions face in welcoming migrant workers (Disney, Gosling, and Machin 1995; Hardy, Eldring, and Schulten 2012). But direct government intervention also played a significant role. Baccaro and Howell (2016) provide a path-breaking analysis of neoliberalism by drawing on a statistical analysis of macroeconomic indicators in 15 advanced industrialized countries, 12 of which are Western European countries. Contrary to the dominant institutionalist approaches in political economy that emphasize path-dependence, they find a "common neoliberal trajectory" characterized by weakening trade unions, declining industrial conflicts, and decentralized collective bargaining. While these findings are common in both liberal market economies (LMEs) and coordinated market economies (CMEs), the UK as an LME stands out in their analysis as a country where "industrial relations underwent decollectivization on a massive scale in a relatively short period of time…through the direct erosion and ultimately the dismantling of existing institutions" (Baccaro and Howell 2016: 83).

In this section, I show both the commonalities and the differences of post-1980 regimes in Turkey and the UK from the perspective of trade unions. The implementation of neoliberal policies, despite variation in their form, have created a repressive environment for trade union activism in both countries. This commonality was important in pushing workers in each country to seek remedies at the international level. But, the defining aspect of neoliberalism in Turkey was the violent form it took following a military coup in 1980. As a result, trade unions lost all their organizing power as their relations with political parties were severed. There was no such repressive violence against unions in the UK. Still, neoliberal policies there structurally disempowered trade unions through restrictive policies on unionization, portraying unions as a

regressive force in the economy. During this period, unions' ties with the Labour Party also weakened. As Chapter 6 will show, the level of violence used in Turkey undermined the capacity of organized labor to take action and leverage successful ECtHR litigation in domestic politics.

UK: Institutional Disempowerment of Organized Labor

Former Prime Minister Margaret Thatcher's rise to power in 1979 did not only mark the beginning of a new era for the UK itself. Together with her US counterpart, Ronald Reagan, Thatcher assumed leadership in promoting neoliberal policies all around the world. After its formation in 1979, the Conservative government did everything in its power to curb union strength and to impose measures restricting collective action, famously defending its anti-union policies and austerity measures by claiming that "there is no alternative." Today, the UK has some of the worst conditions for trade union activism in Western Europe. As noted above, the UK has the lowest ranking (3 out of 5) on workers' rights among liberal democracies of Western and Europe (Figure 1.2.). Trade union density has halved since 1979 (Figure 2.4.),[15] collective bargaining coverage has shrunk even more drastically (Figure 2.3.), and the number of work stoppages fell by 90 percent from 1982 to 2002 (Colling 2006, 142).

The most defining victory of the government against organized labor was arguably its defeat of the striking mine workers in 1985. Thatcher's resolve in breaking the solidarity of thousands of workers after a year-long strike had symbolic importance, since the National Union of Mineworkers was considered among the strongest unions at the time, and the government policies that led to the strike were emblematic of the transformation of the UK labor market under neoliberal policies (Krieger 2014; Winterton and Winterton 1989; Towers 1989).

[15] Union membership fell from over 13 million in 1979 to 6.5 million in 2013 (Department for Business, Innovation and Skills 2014), and trade union density fell from 48.7 to 25.4 in 2013 (Figure 2.4.).

Many of the current violations of trade union rights and the negative perceptions of trade unions in the country owe a lot to Thatcher's effective crackdown on labor.[16] The Conservatives rolled out a series of policies aimed at curbing union power, banning closed shop agreements, restricting the right to take industrial action, and prohibiting certain groups, such as teachers, from engaging in collective action altogether. They introduced complex ballot mandates requiring member approval prior to taking industrial action, adding red tape and confusion to even routine union proceedings. This requirement was later unsuccessfully challenged in a case brought before the ECtHR by RMT (*RMT v. the UK 2014*). Tory leadership also tipped the balance of the public body responsible for preventing and resolving industrial disputes, the Advisory, Conciliation, and Arbitration Service, in favor of employers by removing its statutory duty to promote collective bargaining. The Thatcher government even went as far as breaking its own collective agreements with workers in the public sector, perhaps the most blatant example of the Tory approach to trade union rights. These neoliberal policies cast union power as a regressive force crippling economic growth at the same time as the government failed to provide any protection for individual workers against corporate power.

In addition to institutionally undermining organized labor, the government demonstrated a lack of regard for the UK's obligations under international law. During this period, the UK denounced 13 ILO Conventions, violated several of its obligations under the ESC, and failed to sign the new protocols of the ESC regarding workers' rights (Kang 2012). To many, the refusal of the UK—a founding member of the CoE, with a leading role in drafting the European Convention on Human Rights (the Convention)—to comply with important international agreements was a major embarrassment.

[16] The literature on neoliberalism in the UK is extensive. For an overview, see Harvey (2005); King and Wood (1999); Purcell 1993; P. Smith (2009); Wedderburn (1991).

Tony Blair's election success could in part be attributed to his promises to restore the UK's image in Europe as a regime committed to basic rights.[17] Unlike the previous government's rather isolationist policies, the UK made progress in strengthening ties with Europe, gave power to international treaties at the domestic level, and once again assumed a leading position in human rights in Europe. Yet, the pro-labor steps taken during New Labour seemed to be the unintended consequences of its commitment to human rights norms and treaties at the international level, rather than a genuine effort to restore union power in the UK, as would be expected from a Labour government.[18]

The Blair government became notorious among labor activists for denouncing the strong tradition of the pro-union stance of the Labour Party. Under his government, trade unions significantly cut ties with the Labour Party and reduced their funds to the party (Daniels and McIlroy 2009). The idea popularized by New Labour was to introduce more "flexibility" and "security" to work, while continuing the conservative attack on unions and decollectivizing industrial relations. The Labour Party continued the old rhetoric of portraying unions as a regressive force for economic development from which individual workers needed protection, while casting collective bargaining as coercive over workers. Consequently, Blair refused to reverse many of the restrictions on trade union activities introduced by the Conservatives, such as the ban on closed shops, prohibitions on secondary action (or solidarity strikes), and the onerous requirements imposed on unions for taking industrial action (Daniels and McIlroy 2009;

[17] In addition to the promise to introduce the HRA, the Labour Party pledged to "make the protection and promotion of human rights a central part of our foreign policy" in its election manifesto (Labour Party 1997, quoted in Vickers 2000: 38). See also Kang (2012).

[18] In order to differentiate the anti-union policies of New Labour from the Thatcherite period, some scholars have defined the prior as "social neoliberalism" (Crouch 1997: 358) or a "social-democratic variant of neoliberalism" (Hall 2003: 19).

P. Smith 2009). Without union power, the limited provisions aimed at providing security to workers failed to fulfill the Labour Party's promises.

Mobilization of British Workers at the ECtHR

Amidst this repressive domestic environment for labor, a new avenue became available for labor activists to combat anti-union policies as a result of New Labour's commitment to international instruments. In 1998, the Blair government showed no concerns about passing the Human Rights Act (HRA) and giving effect to the Convention articles and protocols at the domestic level. At the time, the Convention and the ECtHR protected primarily civil and political rights, which were deemed harmless by New Labour from an economic standpoint. Most recently in *Young, James and Webster v. the United Kingdom* (1981), the Court had upheld the government's ban on closed shop agreements. In *The National Association of Teachers in Further and Higher Education v. the United Kingdom (*1998), the Court had rejected the trade unions' complaints regarding the allegedly unfair restrictions on the right to strike. Thus, the Labour government could not have foreseen that, by giving teeth to the ECtHR rulings at the domestic level, it would allow an international body to weigh in on some of the major industrial disputes, such as anti-union discrimination, the right of unions to choose their members, blacklisting, and ballot requirements for collective action (see Chapter 3).

Under the HRA, judges are to interpret UK legislation in a way that gives effect to the Convention rights. In cases where the judges find the UK laws to be incongruous with the Convention or the ECtHR rulings, they can issue a "declaration of incompatibility," effectively placing the burden on the parliament to change the relevant legislation accordingly. The HRA is of utmost importance, as it embedded the Convention into British legal systems.

The legal battle of *Wilson v. the UK* (2002) took place during the period of transition away from the Thatcherite era, where trade union rights were most directly and blatantly violated despite international law, to the New Labour era, where Blair's efforts to rebuild ties with Europe opened new opportunities for organized labor to claim trade union rights as human rights. The case was brought by applicants who were members of two leading trade unions in the UK, the National Union of Journalists (NUJ) and RMT.[19] The succession of hearings concerned whether or not employers offering better contracts to non-unionized workers constituted an act of anti-union discrimination. As it progressed in the domestic courts of the UK, the case received nationwide attention. In its 1993 decision, the Court of Appeal declared that offering better individual contracts to non-unionized members intended to "penalize" union membership and thus constituted a discriminatory act towards unionized members. Days after ruling, however, the Conservative parliament hastily passed the Ullswater Amendment, which allowed employers to effectively deter their workers from engaging in collective bargaining or becoming union members, if the intention was to change the—vaguely defined—employer's relationship with the worker. When the trade unions and the lawyers decided to take the case to the ECtHR, they were unaware that *Wilson* would be the first pro-union judgment ever issued by the Court. As the next chapter shows, this case marked the beginning of a new era of labor rights litigation at the ECtHR.

Turkey: Violent Destruction of Organized Labor

Turkey's transition from an inward-looking economy to a market-oriented one took place in a much more undemocratic and violent political environment. Especially in countries like

[19] Although the applications were initially made separately by the two unions, the Court of Appeal joined the applications and considered them simultaneously in 1993. These cases, Associated Newspapers v. Wilson and Associated British Ports v. Palmer and Others, are now known as *Wilson/Palmer* cases in the UK.

Turkey, where the labor movement was strong and adherence to democratic values was weak, states resorted to violence rather than impose conservative values and liberal economic policies through institutional means and discursive ideology (Doğan 2010).[20] The military intervened in 1980, accusing the government of inability to manage the deeply polarized political demands from society. The coup facilitated the implementation of neoliberal policies by crushing and silencing all dissent. The political ties between labor and the state not only were severed, but the prospects of subsequent formation of such ties were also preempted by the restructuring of the political and economic system. The only option left available to trade unions was to accept the same old corporatist structure if they wanted to engage in a relationship with the state at all.

The democratic history of the Turkish republic is fraught with military coups and ensuing brand new constitutions. The 1961 Constitution, which also followed a military coup, had granted broad associational rights that set the ground for the golden age of organized labor as well as the rise of militant left-wing movements. As one observer noted, "the 1961 Constitution had permitted Turkish society to be politicized; the 1982 version attempted to reverse the process" (Ahmad 1985). Devrimci İşçi Sendikaları Konfederasyonu (DİSK, The Revolutionary Workers' Union) and its political correspondent Türkiye İşçi Partisi (TİP, Turkish Workers' Party), the first avowedly socialist party, were home to many radical left-wing activists and politicians. TİP acquired a surprising success in the 1965 elections by winning 3.3 percent of the votes and sending 15 members to the parliament. The establishment of DİSK, splitting from the then leading trade union Türk-İş, was a major blow to the corporatist union structure that

[20] The neoliberal restructuring in Turkey has often been compared to Latin American experiences by political scientists (Balkan and Savran 2002; Öniş 2006) For a discussion on military tutelage in Turkey and it's similarities and differences from the bureaucratic-authoritarianism in Latin America (O'Donnell 1973) see (Tachau and Heper 1983; Cizre-Sakallioglu 1997; Özbudun 1996).

dominated organized labor until then.[21] Leftist politics of the era was based strictly on achieving social justice through class politics. Human rights and democratization without class struggle were unfathomable in the political activism at the time. With few notable dissenters, activist groups rallied around the common cause of socialist revolution before prioritizing feminist and minority rights. Labor led the left.

In 1980, the military took over the government and silenced all leftist opposition in Turkey. Not only were many labor unions closed down and leaders and activists imprisoned, but the rights of workers, such as collective bargaining and strikes, were severely restricted with the new constitution of 1982 and the following employment law legislation. Collective bargaining was granted only to unions that unionized at least 10 percent of the relevant sector in addition to at least 50 percent of workers in an enterprise. Strikes, on the other hand, were only allowed when they did not violate the procrustean definition of "national security." The 10 percent threshold emerged as a major impediment for unions in the following decades. As a result, about one-third of unionized workers did not have the right to sign a collective bargaining agreement, and the overall coverage rate today is at a meager six percent (Figure 2.3.).

The regulation also prevented smaller, independent, and radical unions from representing workers. Figure 2.3. shows the dramatic decline in unionization since 1980. DİSK, however, suffered the worst of all unions at the time, with its assets being confiscated and 52 leaders being charged with the death penalty. It was allowed to reopen only in 1992. The Turkish economy took a sharp neoliberal turn through privatization of state-run industries and the liberalization of

[21] See Sakallioglu (1992) for a discussion on the logic of exchange based on corporate ties between Türk-İş and the governing Democrat Party at the time. In particular, the agreement between the two institutions rested on an understanding that Turk-Is would maintain its "above-party politics" line, meaning it would not engage in politics. This decoupling of union strategy and politics was the main source of the rift between DİSK and Turk-Is.

trade and foreign capital entry. In particular, throughout the 1990s, structural adjustment programs, familiar to many other developing countries at the time, encouraged public expenditure cuts, wage depreciation, and an economic transformation that resulted in a volatile economy dependent on capital influx and short-term investments (Boratav; Onis; Eder).

Until the authoritarian turn taken by the AKP government in recent years, Turkey's integration into the global economy had been hailed as a success story of structural adjustment, and its democratic reforms were recognized by the EU with candidacy status in 2005. Turkey has the 17th largest GDP (PPP) in the world (World Bank 2017 and the CIA, World Factbook), and after the 2008 crisis, its growth rate rebounded to 8.2 in 2010 (CIA, World Factbook).[22] This growth, however, came at the expense of deteriorating labor conditions and growing inequality. Turkey ranks among the worst countries in Europe for labor conditions and trade union rights. It has the highest percentage (46 percent) of workers who work more than 50 hours per week and the second lowest on trade union density and employment rate among all OECD countries. The rate of fatal occupational injuries in Turkey is also the highest among all European countries (ILO, Laborsta 2010). Every year more than 1,400 workers die due to unregulated, insecure working conditions (ISIG 2017).

Even more alarming is the unregulated working conditions due to subcontracting and the growing informal economy. Eighty-five percent of total employment is provided by small enterprises, in which most labor violations occur (Adaman, Buğra, İnsel 2009), and where at most 10 percent of all workers are unionized.[23] According to the Turkish Statistical Institute

[22] The growth rate fell to 3-4 percent range after 2014 particularly due to the political crisis and strained relations with Europe.

[23] The number of unionized workers is hard to determine, as both the state-sided unions and the Ministry of Labor and Social Security tend to exaggerate the numbers. One big problem in calculating these rates, of course, is the informal sector, where the unregistered and non-unionized work of millions goes unreported. The same goes for

(TurkStat), about 35 percent of workers in Turkey were in the informal sector between 2011 and 2015, but the actual numbers are likely to be much higher.[24] People working under precarious conditions do not have access to labor unions or any other rights, mostly are not covered by social security, and are paid much lower than the minimum wage. Therefore, Adaman, Buğra, İnsel (2009:179) describe the unsustainable labor conditions as "a shrinking island of privileged union members in a vast sea of underprivileged workers." Consequently, all these employment problems bring with them new forms of poverty and social exclusion in urban areas (Adaman and Ardic 2008; Buğra and Keyder 2003; Buğra 2007; Keyder 2005).

The end of the 1980s witnessed some powerful resistance movements, leading to limited gains by workers (Çelik 1996; Dogan 2010); but these movements were met with strong retaliation, both from the government and employers, in the form of dismissals and lockouts. By the end of the 1990s, these movements were silenced, killed off, and forgotten, never to be revived. Unions ceased to be important actors in addressing the economic demands of the working class in an era of growing informal work, rising unemployment, and new urban poverty. One of the biggest challenges before unionization in Turkey, the 10 percent threshold, was finally lowered to one percent for all unions in 2015.[25] But, this new regulation came at a time when unions had already become disempowered, having lost the momentum of the 1960-80 era. As unions weakened, they also lost their internal democratic governance and accountability to

estimations on collective bargaining coverage. For instance, the Ministry announced the 2016 unionization rates at 11.5 percent, but DİSK (2017) reported that the rate is at most 9.7 percent, and that one third of unionized workers is not covered by collective bargaining.

[24] TurkStat's estimate is based on household survey that identifies informality as being not registered with any social security system. But Acar and Tansel (2016) estimate the actual number to be at 65 percent, based on personal and job attributes, social security registration, scale of enterprises, and employment type.

[25] The threshold was first lowered to one percent for the three major unions (DİSK, TURK-IS, and HAK-IS) and three percent for others with a 2012 regulation. In 2015 the Constitutional Court decided that the law should apply to all unions equally and applied the one percent threshold for all unions.

their traditional base. Many became available to cooptation by the state and employers, as workers lost trust in the unions. An overwhelming majority of workers today do not have a collective voice to combat unregulated, unsafe, and exploitative work conditions.

Mobilization of Turkish Workers at the ECtHR

The post-1980 period was also when the rapprochement between Turkey and Europe finally became institutionalized. Turkey applied to become a member of the European Economic Community, the predecessor of the EU, in 1987. The EU accession period had a significant impact on Turkey's democratization process and prompted Turkey's commitment to numerous international human rights obligations. The same year, Turkey accepted the right of individual petition (Article 25) to the European Convention on Human Rights. Then, in 1990, Turkey also accepted the jurisdiction of the ECtHR. Additionally, in 1989, Turkey ratified the European Social Charter (ESC), albeit with major reservations, including the right to organize (Article 5) and the right to collective bargaining (Article 6). Nonetheless, in 1993, Turkey ratified the ILO Convention 87 on the freedom of association and the right to organize; Convention 98 on the right to organize and collective bargaining had already been ratified in 1952. Turkey's efforts finally came to fruition during the Helsinki Summit in 1999 when Turkey was recognized as a candidate for full EU membership, with formal negotiations to begin in 2005. Just as in the UK, these new international commitments yielded some unintended consequences for the Turkish state and opened up a new avenue for Turkish workers.

The slow relaxation of trade union restrictions, coupled with Turkey's new international obligations, set the ground for public sector workers' activism for the first time in the late 1980s. Prior to that, public sector workers had organized under associations (*dernek*) that provided them

some support and a solidarity network, though they never formed a union. Led primarily by teachers, public sector workers for the first time decisively demanded the right to organize and the right to collective bargaining. The first public sector union was formed by teachers under the name Egitim-Is in 1990 and changed its name to Egit-Sen the same year. Eğit-Sen was the first union that later formed the radical leftist trade union confederation, *Kamu Emekçileri Sendikaları Konfederasyonu* (KESK, Confederation of Public Employees' Trade Unions).

At the time, there was major controversy among jurists about public sector workers' right to organize. The first group contended that the 1982 Constitution did not include the right to unionize for public sector workers. Hence, public sector workers should be prohibited from forming a union or signing collective bargaining agreements. These jurists argued that civil servants could not be considered workers. The second group, on the other hand, held that the absence of a formally stipulated right in the constitution does not lead to the conclusion that there is no such right whatsoever (Gulmez 1988a, 1990; Işıklı 1986). On the contrary, the lack of an explicit prohibition on public sector workers' rights to organize and to engage in collective bargaining means that they should be able to form a union and engage in collective bargaining agreements. At the time, Article 51 of the Constitution safeguarded workers' rights to form and join trade unions and Article 53 protected the workers' right to conclude collective bargaining agreements. Neither specified the status of public sector workers.

The second group of legal scholars went a step further and argued that Turkey's international legal obligations under ILO Convention 87 and the European Convention on Human Rights indeed require Turkey to protect public workers' trade union rights. But there was a caveat to this claim. First, this was another point of contention among legal scholars on how to interpret Turkey's international obligations under Article 90 of the Constitution, which stated

that “international treaties that are duly in force are directly applicable in domestic law. Their constitutionality cannot be challenged in the Constitutional Court”. Consistent with their conservative approach to trade union rights, the first group of legal scholars did not find this article to provide a firm ground for granting public sector workers the right to organize. From their standpoint, international law could not regulate these contentious issues, which are Turkey’s internal affairs. The second problem was that at the time, the ECtHR had not issued any pro-trade union judgments yet. It was mainly a civil and political rights court. The ILO, on the other hand, lacked an effective enforcement mechanism to force Turkey into compliance (see discussion in the next chapter).

The disagreement came to a head in 1992 when Tum Haber-Sen, the first press workers’ union, was suspended by order of a District Court the same year it started its operations. The Court of Cassation upheld the decision, stating that in the absence of any statutory provisions governing the legal status of trade unions for public sector workers, public workers cannot form unions. In 1995, all branches of Tum Haber-Sen was dissolved by order of the Ministry of Interior. Having no other legal option at the domestic level, the trade unionists decided to take the case to the ECtHR (*Tüm Haber-Sen v. Turkey* 2006). In a surprising 2006 judgment, the Court decided that a blanket law prohibiting all public workers from joining a trade union was a violation of the right of freedom association. But, public sector workers naturally did not wait for the judgment of the Court to put pressure on the government to gain their right to unionize. A couple of months after Tum Haber-Sen was closed down, the Parliament yielded to the persistent mobilization from below and amended Article 53 to recognize public sector workers’ right to unionize. The critical role of KESK’s grassroots mobilization efforts is discussed in Chapter 6.

Tüm Haber-Sen later became a much referenced landmark judgment at the ECtHR. But, a trade union was no different from a *dernek* if trade unions were not allowed to engage in collective bargaining and to go on a strike. A year later, Tum Bel Sen took the famous *Demir and Baykara* case to the ECtHR. The success and the international fame the case would bring was unbeknownst at the time to the trade unionists and the supporting legal team. The restrictive trade union environment of the post-coup era in Turkey led Turkish workers to bring in trade union rights violations that the ECtHR could no longer ignore. The above-mentioned group of legal scholars played a vital role in preparing these cases for litigation (Chapter 4). As the next chapter shows, these cases formed the backbone of the newly developing trade union rights case law at the ECtHR.

The ECtHR cases took a long time to finalize, but in the meantime, the government--under pressure from unions, human rights organizations, and the EU—strengthened the position of international law in the legal hierarchy of norms. In 2004, Article 90 of the Constitution was amended to include: "In the event of conflict as to the scope of fundamental rights and freedoms between an international agreement duly in force and a domestic statute, the provisions of the international agreement shall prevail." Hence, the constitutional change concluded the scholarly dispute about the role of international law concluded once and for all, guaranteeing that the ECtHR judgments would have direct impact at the domestic level, at least from a legal standpoint. The impact of these cases on the ground is further discussed in Chapters 5 and 6.

Conclusion

This chapter examined the changing political opportunity structures under two variants of neoliberalism in Turkey and the UK. I argued that restrictive trade union rights regimes drove

British and Turkish workers to seek remedies at the ECtHR. These two countries have brought the highest number of and the most important trade union rights cases before the Court.

Despite being one of the fastest growing economies in the world, Turkey has some of the worst labor rights violation records in Europe, and labor activism has been severely restricted since the 1980s. The UK, on the other hand, despite its history of commitment to democratic values, assumed a leading position in the world on implementing neoliberal policies that undermined organized labor. I show that neoliberal policies took different forms in each country, with the level of state violence playing a determining factor. In the aftermath of the 1980 military coup in Turkey, the government crushed organized labor, killing and imprisoning trade unionists and banning trade unions for almost a decade. Trade unions have not been able to organize a strong movement since this harsh crackdown, nor have they been able to adapt to the needs of workers in a changing economic structure. In the UK, however, neoliberalism took the form of institutional disempowerment of organized labor through restrictive policies. Even though British trade unions have never witnessed a similar level of violence, organized labor in each country experienced "relative deprivation." In other words, trade unions lost their power and have given up on their socialistic ideals in the post-Cold War era. These repressive conditions at the domestic level pushed workers to seek alternative strategies to voice their demands.

At the same time, both governments have made new commitments to international law. When the Turkish and the British governments gave effect to ECtHR judgments at the domestic level, the ECtHR had not recognized any specific obligations for domestic governments on trade union rights. But starting in the late 1990s, the Court took a sharp turn on labor rights issues. The next chapter discusses why and how this change came about.

CHAPTER 3. A NEW AVENUE FOR WORKERS AT THE INTERNATIONAL LEVEL: THE EUROPEAN COURT OF HUMAN RIGHTS

"*Historically, trade unions in the United Kingdom, and elsewhere in Europe, were, and though perhaps to a lesser extent today are, commonly affiliated to political parties or movements, particularly those on the left. They are not bodies solely devoted to politically-neutral aspects of the well-being of their members, but are often ideological, with strongly held views on social and political issues*"
ASLEF v. the United Kingdom (2008)

Chapter 2 showed that, while the decline of social welfare states has taken different forms, neoliberal policies in the post-1980 period both in Turkey and the UK included states' retreat from their redistributive role in the economy and increased restrictions on workers' collective rights. The closing opportunity structures for labor at the domestic level led workers to seek alternative strategies to address workers' rights violations. This chapter demonstrates that, at around the same time, the ECtHR became new terrain for contesting labor disputes. While workers have been *pushed* by neoliberal policies at the domestic level, the ECtHR has served as a *pull* factor for workers' mobilization.

This chapter argues that the growth of labor jurisprudence has been the result of a dialogical relationship between the Court and workers' mobilization. The Court's new and integrated approach towards labor rights developed during the height of the ECtHR's increased legitimacy and recognition as an important player in European politics. Throughout the 1990s, the Court gained new members, reformed its institutional structure to increase its effectiveness and oversight, and started to recognize workers' rights as human rights. Hence, the ECtHR emerged as an institution towards which workers could direct their mobilization efforts. Chapter 4 will show that the ECtHR's growing attention to labor issues encouraged labor activists both to

flood the Court with more cases and to bring new rights claims. At the same time, the Court expanded the meaning of the Convention articles in response to the new types of labor cases brought before it by workers across Europe. Thus, there has been a mutually constitutive relationship between workers' mobilization and the expansion of human rights law on labor rights.

The following section discusses the position of labor rights in international human rights law vis-à-vis civil and political rights. I show that the ECtHR occupies a uniquely important position with regard to protecting labor rights due to its growing influence in European politics and its robust institutional structure. The third and fourth sections present the ECtHR labor rights database and provide an overview of the growing labor case law. I situate the ECtHR's changing approach to labor rights within the changing dynamics of judicialization of politics at the international level and governance of socioeconomic rights. Then, I illustrate how the ECtHR has become a site of contention for workers by examining different types of labor rights claims from the Court's developing case law on trade union rights, workplace surveillance, dismissals, discrimination in the workplace, and workers' health and safety.

Evolving Position of Labor Rights in Human Rights

Socioeconomic rights have historically lagged behind in human rights regimes. They have often been viewed as aspirational or "second generation rights" whose implementation depends on the availability of resources, rather than being considered a core set of inalienable rights (Alston, Goodman, and Steiner 2013; Jhabvala 1987). Within this human rights framework, deaths and major injuries that occur in the workplace due to unregulated working conditions or inhumane living conditions due to low wages do not command the same urgency by states as do, say, limitations on freedom of speech. While political theorists and social scientists alike have demonstrated the weaknesses of the moral and practical arguments

supporting an approach to human rights that conceptualizes civil and political rights as dichotomous to socioeconomic rights (Alston 2005; Jhabvala 1987; Shue 1996), major human rights institutions, notably the UN system, have adopted two different treaties with different implementation mechanisms for each set of rights, with a much stronger enforcement mechanism for civil and political rights.[26]

Labor rights occupy a distinct position within the human rights system. Labor rights are generally categorized along with other socioeconomic rights, such as the right to healthcare and the right to housing, and hence occupy a secondary position within human rights frameworks. However, the position of the International Labor Organization (ILO) in this regard is notably exceptional. The ILO was established as early as 1919 to provide decent work and justice for workers particularly in order to counter "the ideologies of Bolshevism and Socialism arising out of the Russian Revolution" in the capitalist liberal democracies of the West. In practice, though, the creation of the ILO simply paid lip service to labor rights under an ineffective international organization (Alston, Goodman, and Steiner 2013:279). Its role in setting standards on labor rights (Gravel et. al. 2001) and giving voice to workers in an increasingly globalized economy (Fenwick 2008; Helfer 2006) notwithstanding, the ILO's weak enforcement mechanism has been widely discussed in the literature (Elliot and Freeman 2003). A recent empirical study by leading labor scholars concludes that "while the labor standards promoted by the ILO and international unions have gained acceptance, they are poorly implemented and enforced" (Anner and Caraway 2010).[27]

[26] This trend started to change in recent years particularly with the resurgence of socioeconomic rights mobilization in comparative perspective (Gauri and Brinks 2008; Langford et al. 2014; Rodriguez Garavito and Rodriguez-Granco 2016; Yamin and Gloppen 2001)

[27] Most recent attack against the right to strike by the employers' group within the ILO suggests problems with the effectiveness of the tripartite system (composed of states, employers and workers' groups) in protecting workers' rights. See Fudge (2015) for a discussion on the recent crisis.

Established in the aftermath of the World War II as part of the Council of Europe System (CoE), the ECtHR followed the dominant human rights framework and established the ECtHR mainly as a civil and political rights court. A recent archival study on the ECtHR shows that the inventors of the Court intended to design a supranational court that upheld values of classical liberalism not only to contain communism and fascism in Europe as is commonly argued (Bates 2010; Moravsick 2000), but also to constrain the ability of national governments to pass left-wing policies in the wake of Roosevelt's New Deal in the US and the rising influence of social democrats in Europe (Duranti 2016). The protection of socioeconomic rights, along with other labor rights, was delegated to the European Committee on Social Rights (ECSR) with a much weaker monitoring system. Unlike the ECtHR, the ECSR accepts collective petitions from certain governmental and non-governmental bodies, and many member states have either not ratified or have reservations on many articles of the European Social Charter (ESC). As a result, core labor rights under the ECSR (and the ILO) are protected under a charter where states can freely pick and choose the parts they preferred not to comply with.

Although from the start the ECtHR rejected a strict separation between civil and political rights versus socio-economic rights (Airey v. Ireland 1979), in its early years, the Court specifically eschewed making decisions on labor disputes and left the settlement of these contentious issues to national courts. Earlier legal studies indicated that the ECtHR's response to the few labor cases that were brought before the Court was "individual and formalistic" (Lord Wedderburn 1991) and that the Court was more interested in "defense of individual autonomy than collective solidarity" (Novitz 2003: 238; see also Ewing 1998). Yet, within the past two decades, the Court's case law increased tremendously, and following the "judicialization" trend around the world (Hirschl 2008; Stone Sweet 2010; Simmons 2009; Tate and Vallinder 1995), it started weighing in on important policy decisions, including labor issues. The ECtHR released

major rulings on issues considered "mega-politics" (Hirschl 2008), including prisoners' right to vote, the treatment of terrorism suspects, women's right to wear a headscarf, and abortion laws as well as labor issues. While a substantial amount of research exists on the role of international law and institutions in protecting workers' rights (Anner and Caraway 2010; Berliner et al. 2015; Hafner-Burton 2013; Mosley and Uno 2007) and increased scholarly attention to the ECtHR in European politics (Anagnostou 2013; Cichowski 2016; Grewal and Voeten 2015; Hawkins and Jacoby 2010; Keller and Stone Sweet 2008) the growing number and importance of labor case law before the ECtHR has garnered little attention from social scientists.[28]

The lack of attention to the protection of labor rights under the ECtHR is surprising, given the institutional strength of the Court compared to other international regimes, such as the ILO. The ECtHR is often considered the most active and effective human rights court in the world (Goldhaber 1997; Helfer and Slaughter 1997). Since its establishment, the Court received over 740,000 applications (ECtHR, Overview 1959-2015). To account for the success of the Court in dealing with contentious issues and protecting human rights, scholars have pointed out the liberal political culture of European states (Helfer and Slaughter 1997; Moravcsik 2000) as well as its robust institutional structure that ensures broad access to the Court and enforces its judgments with a strong executive body (Çalı and Koch 2014; Hafner-Burton and Tsutsui 2005; Helfer and Voeten 2014; Hillebrecht 2014).

The Institutional Authority of the European Court of Human Rights

The ECtHR was established in 1959 by the 13 founding member states of the Council of Europe (CoE) as the judicial body that protects the rights set out in the European Convention on Human Rights (the Convention). Today, the CoE, based in Strasbourg, France, has 47 member

[28] See Ewing and Hendy (2010) and Dorssemont et.al. (2013) for examination of this new case law by legal scholars

states, including many countries not in the European Union, encompassing some 800 million inhabitants. The number of judges serving at the ECtHR (47) is equal to the number of member states. Judges are appointed for a non-renewable 9-year term by the Parliamentary Assembly of the CoE among the three candidates proposed by each state. All rulings are reached by a majority vote in a transparent manner whereby judges may issue separate dissenting or concurring opinions. These opinions provide insights into the evolving interpretation of the Convention.

Access to the Court and Expanding Jurisdiction

The ECtHR grants broad access to individuals, corporations, societal associations (including NGOs and trade unions), and member states. There are no legal fees for bringing a case to the Court, but applicants must first exhaust all domestic remedies before applying to the ECtHR. Since 1959, the ECtHR has ruled on more than half a million applications.[29] Most importantly, individuals, regardless of being a national of a member state, can directly take their cases to the ECtHR, provided that they are complaining of a violation committed by a member state. Trade union access to the Court has undoubtedly played a crucial role in the development of the labor case law. Additionally, societal groups and member states can make third party interventions—a system similar to amicus curiae briefs in the US—to advocate on behalf of the applicant or the member state. Research shows that the participation of civil society organizations is critical for repeat players to engage in strategic litigation and draw courts' attention to pressing social issues (Epp 2008). Cichowski (2016) argues that the participation of civil society organizations through third party interventions has a democratizing effect on the governance of human rights in Europe.

Once a case reaches the ECtHR, the Court first issues a **decision** on admissibility. Every year, the Court receives thousands of applications, a vast majority of which are ineligible. In

[29] These include both judgments and decisions issued by the end of 2015. See Overview 1959-2014 and Statistical Analysis 2015.

2015, the Court decided on more than 45,500 applications, 81 percent of which were inadmissible. After an application is deemed admissible, negotiations may ensue for a **friendly settlement** among the applicant and the government. If a friendly settlement is not reached, the Court then examines the merits of the case and issues a **judgment** on whether there has been a violation of the Convention or not. Judgments are generally issued by a committee of three judges or a chamber of seven judges. In exceptional circumstances, cases may be referred or appealed to the Grand Chamber, composed of seventeen judges, to reach a final judgment.

This broad access to the Court, however, is also the cause of a major challenge the ECtHR faces today: an immense backlog of cases. In January 2016, there were close to 65,000 applications pending before the Court.[30] Particularly after the fall of the Soviet Union, the number of CoE member states also doubled. Within the past three decades, the Court's case law has grown exponentially from 404 in 1981 to 8,400 in 1999 and 40,600 in 2015.[31] Upholding a fundamental right protected by the Convention, the right to a fair trial within a reasonable time, has ironically become challenging for the Court.

The institutional structure of the Court has changed over time in order to expand the powers of the Court and accommodate the increasing workload. The reform of the Court's structure in 1998 under Protocol No. 11 was the most transformative one. Under the old procedure, the ECtHR operated under a two-tier system: applications were first filtered by the Commission, which then referred the admissible cases to the Court or the Committee of Ministers to determine the merits of the cases. With the adoption of Protocol No. 11, the Commission was abolished and the adjudicative powers of the Committee of Ministers were consolidated under the body of a single

[30] Pending applications include all cases that are allocated to a judicial formation, but a final decision or judgment has not been reached yet.

[31] These numbers represent the applications that were received by the Registry and allocated to a judicial formation within each year. The Court does not provide current statistics on new applications lodged every year (ECtHR Statistics 2007; ECtHR Statistics 2016; Goldhaber 2009: 3)

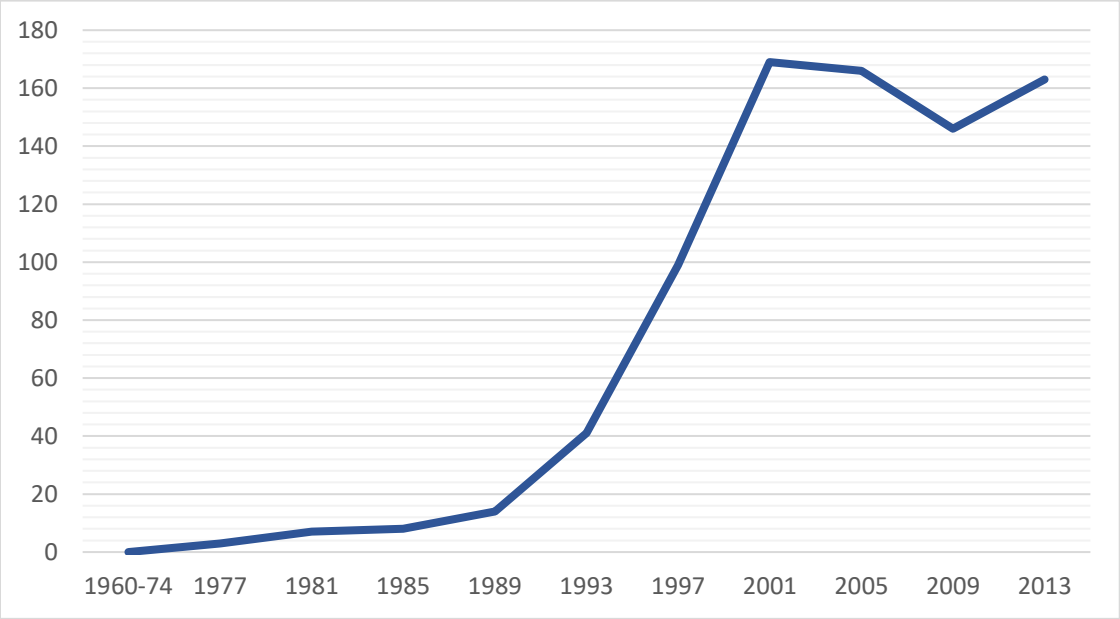
court. Most notably, the right of individual petition and the jurisdiction of the Court have become compulsory in all member states. Prior to 1998, member states could opt out of the ECtHR's jurisdiction, despite having ratified the Convention.

Expansion of Labor Case Law at the ECtHR in Political Context

Starting in the late 1980s, workers started turning to the ECtHR and the number of labor cases rose dramatically throughout the 1990s (see Figure 3.1.). The expansion of the labor case law is an important indication that, increasingly, the ECtHR has become a site of contestation for workers' rights. In response to these cases, the Court has started to fold some new labor rights into the articles and protocols of the Convention. In its early judgments, the Court considered the right to life, the right to association, or the right to privacy as civil liberties. Yet, the cases coming from below urged the ECtHR to consider workers' right to a safe working environment, the right to strike and the right to privacy in the workplace. In some cases, as discussed below, the Court completely overturned its previous jurisprudence to regard certain labor rights as fundamental human rights. The Court's finding of at least one violation in its judgments on labor cases almost doubled from an average of 48 percent in the 1990s to 89 percent in the 2000s. This sudden increase in the number of cases and the Court's responsiveness to labor issues raises questions about why and how the ECtHR has become a resource for labor activists within the past two decades.

That courts are political institutions is hardly a revelation for political scientists (Shapiro 1981; McCann and Lovell 2004; Graber 2006; Hirschl 2008). Scholars have long researched the factors that shape judicialization of politics, particularly in Europe. Stone Sweet (2000) traces the rising role of the judiciary at the European level to the increasing need for governance and third party

Figure 3.1. Annual Number of Labor Cases at the ECtHR 1960-2013



Labor judgements and decisions before the ECtHR, 1960-2013 (n=816)
Source: Data compiled by the author

arbitration in an increasingly complex administrative and regulatory structure of the European Union (see also Shapiro and Stone Sweet 2002). In a similar functionalist vein, Kelemen and Sibbitt (2004) single out the economic liberalization and financial integration of the European markets in explaining the rise of an American style of adversarial legalism in Europe.[32] This demand for judicial intervention in turn triggers a virtuous cycle: as more international courts resolve important disputes, their legitimacy grows in the eyes of the general public, and more disputes are brought before them (Stone Sweet 2000). Cichowski (2007) shows that legal professionals and transnationally connected activists can capitalize on the rising institutionalization and power of international courts and push for their own public policy agendas, while at the same time contributing to judicialization from below. However, differential

[32] Kagan (2009) introduced the American style of "adversarial legalism" first and then argued that a similar trend was emerging in Europe (Kagan 1997). However, it is unclear in his analysis whether adversarial legalism is a relational practice, an institutional form, or a pathology.

access to legal and financial resources can create unequal outcomes in access to justice (Epp 1998; Galanter 1974). Other endogenous factors, including institutional changes within the court structure or expansion of judicial review powers can also provide more access to individuals and lead to increased case load (Alter 2006; Conant 2002; Cichowski 2007; Keohane, Moravcsik, & Slaughter 2000). At the same time, major political changes in the global context and world historical events such as the World War II or the end of Cold War can also affect the salience of international courts (Alter 2011).

Yet, others have pointed out the interactions and preferences of elite level political and judicial actors in explaining the empowerment of international courts (Hillebrecht 2014; Simmons 2009). These may include judges' own quest for more autonomy and political influence (Weiler 1994) or the ideational and normative commitments of judges that may lead them to be more activist on certain issues, such as human rights trials (Woods and Hilbink 2009). Alternatively, political actors may deliberately choose to empower the judiciary in order to lock-in policy preferences for future governments (Moravscik 2000; Pevehouse 2005), to lend legitimacy to planned reforms (Barnett and Duvall 2005), or to avoid making unpopular decisions through legislative deferrals (Graber 1993; Hirschl 2004; Lovell 2003). By contrast, politics can also play a constraining role if politicians respond to judicial expansion by legislative override or simply by non-compliance (Carrubba et al., 2012; Conant 2002; Hirschl 2008; Martinsen 2015). One study on the ECtHR shows that newly democratizing states appoint more activist judges to serve on the ECtHR in order signal their human rights commitments (Voeten 2007).

As is most often the case (Alter 2011), an interplay between endogenous and exogenous factors created an environment conducive to the ECtHR's development of a new approach

towards labor rights and the growth of labor case load. I identify five major political changes that contextualize the trajectory of labor rights litigation. *First*, since the fall of the Soviet Union, many Eastern and Central European countries have become members of the ECtHR. Workers from these countries have started to bring different types of labor cases to the Court.[33] While these countries have added to a rise in aggregate number of labor case law, as the previous chapter shows, most labor cases do not come from these countries. Access to legal advocacy groups and deterioration of labor conditions play important roles in explaining such variation. *Second*, throughout the 1990s, the ECtHR expanded its powers and established itself as a legitimate actor in European politics. The ECtHR's increased confidence in its position indeed mirrors a global trajectory as international courts all around the world have started both to rise in number and to expand their jurisdiction rapidly in the post-Westphalian legal order (Alter 2011; Stone Sweet 2000; Tallberg, Sommerer, Squatrito, and Jönsson 2014). To consolidate its position, in 1998 the Court underwent the above mentioned reform, requiring member states to allow for individual petition and accept the jurisdiction of the court.

Third, during this period, the ECtHR became more involved in issues that had previously been considered exclusively domestic affairs, including socioeconomic rights issues at large (Langford 2008, Langford et.al 2013; Kahraman forthcoming).[34] In some respects, the expansion of the ECtHR's interpretation of human rights is in line with the feedback loop that Stone Sweet (2000) describes: as the triadic dispute mechanism becomes more entrenched, political actors and activists bring more cases before the Court, thereby leading the Court to take up more

[33] The addition of these new countries naturally led to an increase in the overall number of cases brought before the Court. The standardized numbers are not included here, but, the rise in the aggregate raw numbers (Figure 3.1.) illustrates that the labor cases rose from none during the first decade to hundreds in the 2000s.
[34] See also the separate opinion of Judge Pinto De Albuquerque in *Konstantin Markin v. Russia* (2012) for a discussion on the growing importance of social rights at the ECtHR.

contentious issues. Yet, at the same time, the incorporation of socioeconomic rights as part of human rights is a political change catalyzed by the end of the Cold War. The divide between civil and political rights, on the one hand, and socioeconomic rights, on the other—with the capitalist democracies and the Soviets being viewed as guardians of each respective category—no longer made sense.[35] Additionally, researchers and international human rights organizations alike began drawing increased attention to the historic rise in global inequality, world poverty, and grave human rights abuses in the workplace, particularly sweatshop labor (Pogge 2004; Sachs 2005; Sen 2004; Rodriguez-Garavito 2005). Following this normative change triggered by economic and political realities, courts started to adopt a more holistic approach to socioeconomic rights. The ECtHR expanded its interpretation of the Convention by taking up issues regarding healthcare and housing, as well as labor rights.

Fourth, as Chapter 2 showed, due to the spread of neoliberal policies, the domestic judicial and political environment in European states has become hostile towards workers' interests and demands. Notwithstanding the different forms assumed by free market fundamentalism in the various countries, recent research suggests a neoliberal convergence whereby workers' collective rights and organized power have been crippled across Europe (Baccaro and Howell 2016). Unable to seek remedies to their grievances at the domestic level, workers began resorting to the ECtHR. *Finally*, the judicialization of international politics is also intricately related to the rise of human right discourse, or as some scholars called it "the human rights revolution" (Goldsmith 2000; see also Ignatieff 2005; Tate and Vallinder 1995). Increasingly, human rights law and language have become part of workers' "repertoire of

[35] The US is an exception to this holistic approach to human rights as it still has not ratified the ICESCR. Somers and Roberts (2008) regard "how American anticommunists contaminated the concept of human rights by accusing the Soviets of using human rights (socioeconomic) as a fig leaf to obscure their abuse of real human rights (civil and political)" as "one of the greatest tragedies of the Cold War."

contention" (Tarrow 2011). Chapter 4 shows the role of local legal advocacy groups in translating human rights law to workers and driving human rights litigation efforts at the domestic and international level.

The evolving labor rights protection by the ECtHR indicates that human rights are malleable, indeterminate, and shaped by social struggles and responsive judicial interpretation. But, as sociolegal scholars have suggested, legal interpretation is a double edged sword. On one side, judges have the power to amplify the range of actionable claims through inventive interpretation of the existing legal tools, or a process Cover (1983) has termed, *jurisgenesis*. At the same time, while defining the boundaries of human rights, judges can also engage in *jurispathic* behavior and kill novel rights claims through legal reasoning.[36] Even at times when a novel claim becomes part of human rights, juridification can narrow the substance of social justice struggles (Mather and Yngvesson 1980). The expansion of labor rights jurisprudence at the ECtHR within the past two decades is striking. Nonetheless, the emergence of the ECtHR as a new site of contention for labor rights does not mean that the Court has become an unabashed defender of workers' rights. This expansion is bounded by a Convention intended to protect civil and political rights, so the remedies the Court can provide are limited. After all, the Convention does not include some core labor standards, such the right to a living wage or the right to work. As discussed below, while the Court's inclusion of new trade union rights has opened up new avenues to seek justice for workers, the Court has constantly drawn the limits of the types of workers' rights claims that do not count as human rights.

[36] See also Lovell, McCann, and Taylor (2015).

Overview of the Diversity of Labor Cases

The only articles in the Convention that explicitly protect workers' rights are the prohibition of slavery and forced labor (Article 4) and the freedom of assembly and association (Article 11)[37].Yet, until the 2000s, the Court did not find any violation of workers' rights under these articles. What is more surprising, perhaps, is that within the past two decades the Court started to read a wide range of labor cases concerning different articles of the Convention, which traditionally protects civil and political rights. Accompanying the growing number of labor cases, the expanding variety of cases points to a significant transformation taking place at the ECtHR: workers across Europe are turning to international human rights in order to seek remedies for myriad labor rights violations. A diverse set of issues now occupies the ECtHR's agenda, from workers' health and safety to workplace surveillance.

Table 3.1. details the breakdown of the Convention articles that were invoked and the percentage of the violation rate in the ECtHR's labor judgments. The overall finding of at least one violation rate is at 84 percent, yet, as noted above, this rate rose to an average of 89 percent from 2001 onwards. The Court is most likely to find a procedural justice violation (Article 6), and access to a fair trial is also the most invoked article. The Court's high rate of finding of a violation in these types of cases reflects a general trend in all human rights cases. More than 41 percentage of judgments from 1959 until 2015, the Court found at least one Article 6 violation.[38]

The right to property, the second most invoked provision, entered into force in 1954 as an optional protocol due to opposition from some member countries during the drafting process.

[37] Article 11 states that "Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests."
[38] Most of these cases are repetitive cases indicating structural problems in the justice system of a few countries, mainly Italy, Turkey, Russia, and Ukraine (ECtHR, Overview 2016).

(Allen 1998). P1-1 is frequently invoked by workers who have not received a fair remuneration

Table 3.1. Convention Articles and Protocols Invoked and Violated in Labor Judgments

Convention Articles and Protocols	Total # Invoked	% Violation found
A2 Right to life	17	41
A3 Prohibition of torture	18	22
A4 Prohibition of slavery & forced labor	11	18
A6 Right to a fair trial	326	76
A8 Right to privacy & family Life	47	51
A9 Freedom of thought, conscience & religion	16	12
A10 Freedom of expression	102	69
A11 Freedom of association	28	61
A13 Right to an effective remedy	97	44
A14 Prohibition of discrimination	73	25
P1-1 Protection of private property	114	59
Total # of judgments with at least 1 violation	430	84

Labor decisions and judgments before the ECtHR from 1960 to 2013 and all case reports (n=911)
Note: The categories are not mutually exclusive since applicants often claim multiple types of rights violations in one case.
Source: Data compiled by the author

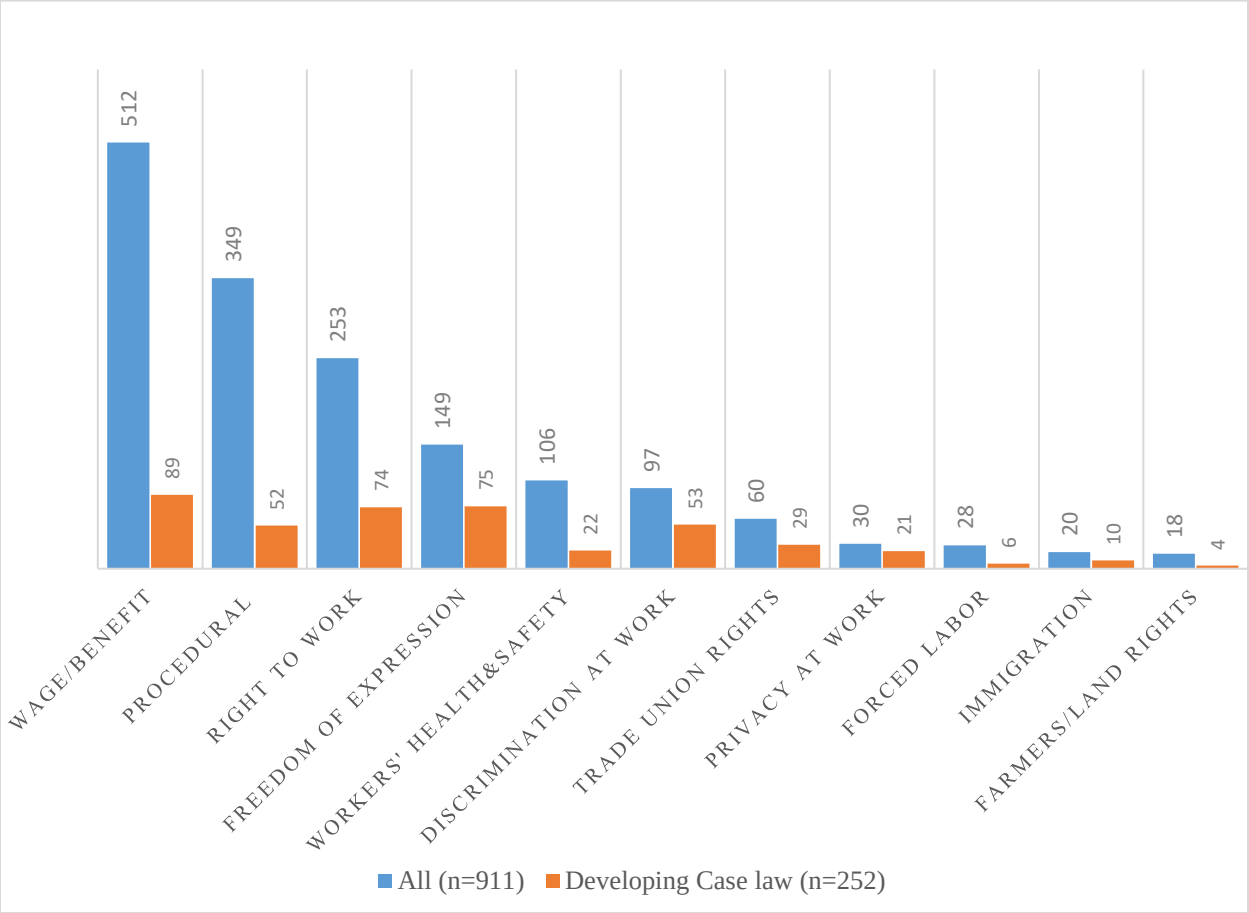
at work or whose access to their pensions were restricted. The Convention does not guarantee the right to work or the right to a living wage. Hence, in these cases, the Court generally examines whether the restrictions put on the applicant's access to his or her wage/remuneration/pension are "prescribed by law" or are justified as proportionate in pursuit of a legitimate aim (see discussion below). P1-1 is closely followed by the freedom of expression rate. A significant portion of freedom of expression cases in the database concern freedom of the press. The early case law at

the ECtHR mostly concerned journalists, but soon the Court started to apply these principles to other types of workers' claims and recognized the inherently vulnerable position of workers relative to their employers in the workplace. Most prominently, in a series of landmarkjudgments on whistleblowing, the Court ruled that dismissing public sector workers, including intelligence service members, after exposing illegal conduct by state representatives (*Guja v. Moldova* 2008; *Bucur and Toma v. Romania* 2013) and sacking private sector workers who blew the whistle on the incriminating behavior of their employers (*Heinisch v. Germany* 2011) amount to violations of freedom of expression.

Figure 3.2. illustrates the different types of labor cases brought before the Court by workers. The categories in the figure are not mutually exclusive since applicants often complain of multiple types of rights violations in one case. The developing case law analysis is based on the importance level coding in the database, which uses the Court's own categorization. [39] The analysis shows that the highest number of disputes concern issues related to workers' wages, benefits, or compensation, although there is no provision in the Convention that directly applies to these cases. About half of the cases in this category are about access to justice, where the applicants are only complaining about not having received a fair trial (Article 6). Since there is no right to a living wage in the Convention, another significant portion of these cases (39 percent) invokes P1-1 where the applicants allege that not having received a fair compensation for their work or not having access to their pension funds amount to a violation of their right to private property.

[39] The Court assigns importance level to its own case law based on the significance of a given judgment or decision in developing the existing case law: case reports (cases that set precedents since the inception of the new Court in 1998), high importance (cases that make a significant contribution to the development of the case law), medium importance (cases that go beyond merely applying existing case law, while not making a significant contribution), low importance (cases that simply apply the existing case law)

Figure 3.2. Aggregate Number of Different Types of Labor Cases and Developing Case Law at the ECtHR



Labor decisions and judgments before the ECtHR from 1960 to 2013 and all case reports
Note: The categories are not mutually exclusive since applicants often claim multiple types of rights violations in one case.
Source: Data compiled by the author

Procedural rights cases follow this category as the second most common. These are cases where the applicant invoked only Article 6, or Article 6 in conjunction with Article 13 (the right to an effective remedy). While access to justice is an important aspect of labor rights, when considering an Article 6 claim, the Court most often does not rule on the substantive aspect of the labor dispute, but on the fairness of proceedings at the domestic level.[40] The issue at stake in

[40] There are exceptions, such as a case where the Court rules on the composition of an employment tribunal *(AB Kurt Kellerman v. Sweden* 2004) or cases where civil servants are effectively banned from seeking remedy for dismissals (*Vilho Eskelinen and Others v. Finland* 2007 and *Pellegrin v. France* 1999)

these types of cases is a labor dispute, *i.e.* the case litigated in the domestic courts regarded workers' rights, but, before the ECtHR, the applicant is complaining about a procedural aspect of the case, rather than the substantive labor rights issue. The high percentage of procedural justice claims in labor cases reflects an overall trend at the ECtHR as noted above. But just as in all other areas, the Court has expanded its interpretation of Article 6 in labor cases. In its earlier case law, the Court contended that "disputes relating to the recruitment, careers and termination of service of civil servants are as a general rule outside the scope of Article 6," (*Massa v. Italy* 1993). Later, the ECtHR overruled this principle to apply Article 6 to public workers except for those cases where public sector workers' access to courts are proscribed by law and this exclusion serves a legitimate purpose (*Vilho Eskelinen v. Finland* 2007, see also *Pellegrin v France* 1999). The Court further expanded its case law on procedural justice in employment relations by ruling in a case where worker's access to justice was obstructed due to financial difficulties amounts to a violation of Article 6 (*Ulger v. Turkey* 2007) and by holding that the impartiality of domestic labor courts is not compromised solely because representatives from workers' and employers' associations serve in a judicial board (*AB Kurt Kellerman v. Sweden* 2004).[41]

The third highest ranked category contains a broad range of cases concerning workers' right to work, including cases regarding workers who have been denied work or promotion due to criminal record, medical conditions, or other discriminatory practices, as well as those who have been required by their employers to join or leave an association. As with wage/benefit cases above, almost half of these cases are brought before the Court for procedural justice claims, since there is no "right to work" provision in the Convention. However, the Court's case law on the

[41] I do not discuss the procedural justice cases in this chapter in detail, but see Drooghenbroeck for an overview of the Court's labor rights jurisprudence on procedural cases.

right to work was developed through its interpretation of civil liberties, particularly in unfair dismissal cases, as discussed below. The Court started to weigh workers' right to take maternity leave, privacy in the workplace, and freedom of expression against "business necessity" and workers' "duty of loyalty" to their employer.

The ECtHR has noted on a number occasions that the Convention is a living instrument. In *Tyrer v. the UK* (1978, para. 31), the Court for the first time contended "that the Convention is a living instrument which, as the Commission rightly stressed, must be interpreted in the light of present-day conditions. In the case now before it the Court cannot but be influenced by the developments and commonly accepted standards in the penal policy of the Member States of the Council of Europe in this field." Hence the Court established that the Convention will continue to evolve beyond the intentions of the original drafters through interpretation and that judges take contemporary social changes and norms into account when interpreting the Convention and the previous case law. [42] The ECtHR utilizes its well-established legal measures and doctrines in examining a case and making a decision. When there is an alleged violation of a person's rights protected under the Convention, the Court first determines whether the infringement on the person's rights was prescribed by law. In other words, the Court examines the domestic law and relevant international law to see if this restriction is legally sanctioned. Then, the Court looks at whether the restriction can be justified as proportionate in pursuit of a legitimate aim (such as public safety or national security) or as necessary in a democratic society. Although this latter principle may seem vague, the Court has developed the key features of "democratic society" including, "pluralism, tolerance, and broadmindedness" as opposed to simple majority opinion

[42] This position can be contrasted with the US where originalism is still a position adopted by some legal scholars and judges, albeit as a minority view. See for instance, Dworkin (1999); Graglia (1994); Scalia (1988) for a discussion.

and an examination of whether the legal restriction fulfills a "pressing social need" through case law (ECtHR 1997).

When confronted with a new issue area, the Court consults the following resources for reference: (1) Relevant international treaties, e.g. the ILO Conventions, which have become important resources to the Court on labor rights cases; (2) Judgments of other international human rights courts, such as the Inter-American Court of Human Rights (ECtHR Research Report 2016); (3) The consensus among European countries on the matter, reached by examining the practices and legal provisions in other European countries (*Tyrer v. UK* 1978); and sometimes, (4) The judgments and interpretations of high courts of other democratic countries, such as the US and Canada (*Eweida and others v. Turkey* 2013) (Rozakis 2005). While taking these different legal sources into account, the Court also grants a *margin of appreciation*—a degree of discretion—to member states in complying with the requirements of the Convention articles. The purpose of this doctrine is to allow the Court to respect the national sovereignty of member states. The Court stresses that implementing the rights and freedoms listed in the Convention is a gradual process and can reasonably take different forms (Greer 2000).

Developing Labor Case Law

While the Court's new approach towards labor cases can be traced back to the 1990s, the judgments with the most dramatic implications were delivered throughout the 2000s. In particular trade union rights, taken under Article 11, constitute an area of labor rights where the Court has issued its most influential and controversial rulings. *Demir Baykara*, a landmark case taken from Turkey that I will discuss below, stands out both for the Court's surprising methodology and the implications of the judgment. In the area of labor rights in general, some of the Court's most remarkable achievements include, but are not limited to, granting state-

sponsored parental leave for men in Russia, allowing public sector workers in Turkey to unionize, banning discrimination in the UK military based on sexual orientation, and ordering the Maltese government to pay reparations for workers who have been exposed to asbestos. Below is an overview of the developing workers' rights cases at the ECtHR in different areas. The list of cases discussed in each category is not exhaustive, but it does document the Court's new and integrated approach towards labor rights as well as the limits of labor rights litigation before the ECtHR.

Trade Union Rights

The analysis here mainly focuses on three types of trade union rights that constitute the core of ECtHR case law: the right to unionize, the right to collective bargaining, and the right to take collective action. In addition to these general categories, there are other miscellaneous cases, including exercising the right to freedom of speech as a trade union representative and the right of trade unions to dismiss a member. As shown below, landmark cases primarily came from Turkey and UK. Chapter 5 discusses the impact of these cases in more detail. Most trade union rights cases fall primarily under the right to association (Article 11), although freedom of speech (Article 10), freedom from discrimination (Article 14), and procedural rights (Articles 6 and 13) are also commonly invoked.

The Court has issued its most influential cases by adopting a new interpretation of Article 11. These cases have caused much debate in Europe since the Court effected a complete reversal from its earlier jurisprudence. In *Swedish Engine Drivers v. Sweden (*1976) and *National Union of Belgian Police v. Belgium* (1975), the Court decided that Article 11 did not impose any specific mechanisms on member states for the protection of trade union rights. Similarly, in *Schmidt and Dahlström v Sweden* (1976) while the Court recognized that "the Convention safeguards freedom to protect the occupational interests of trade union members by trade union

action", it nevertheless granted a wide margin of appreciation by noting that states have "a free choice of the means to be used towards this end" (para. 36). These early judgments reflected the Court's view that labor rights did not constitute a core area of human rights and, hence, could be relegated to the domestic level.

Gustaffason v. Sweden (1996), two decades after the above rulings were rendered, was the first case in which the Court signaled its new approach towards trade union rights. In this case, the Court ruled that the trade union action taken against the employer in order to pressure him to sign a collective agreement did not infringe on his right to freedom of association or his property rights. While this case did not impose any positive duties on the state to protect collective action or the right to collective bargaining, it nevertheless was a rare case where the Court granted a margin of appreciation to states when issuing a favorable judgment on trade union rights.

The real turning point, however, was in 2002, when the Court held that states have a positive obligation to protect the right to unionize in a highly politicized case from the UK. *Wilson v. the UK* (2002) concerned whether employers offering better contracts to non-unionized workers constituted a violation of workers' right to unionize. The case had caused a major controversy in the UK. Trade unions perceived this practice as a full-on attack on their existence. Without the collective power of the trade unions, the workers had no guarantee that they would be able to maintain their advantageous contracts in the long run. Moreover, during the domestic trials, the UK parliament had passed a last-minute amendment that prevented the House of Lords, the highest court at the time, from issuing a favorable decision for workers.[43] Yet, when the case was brought before the ECtHR, in a landmark judgment, the Court found the UK to be

[43] For a detailed discussion on the Ullswater amendment, see Ewing 2003.

in violation of Article 11, stating that the domestic "law permitted employers to treat less favorably employees who were not prepared to renounce a freedom that was an essential feature of union membership", thereby making it "possible for an employer effectively to undermine or frustrate a trade union's ability to strive for the protection of its members' interests" (paras. 47&48). The Court, however, did not hold that the practice amounted to discrimination against unionized workers under Article 14.

Another important judgment came in the 2007 case, *Associated Society of Locomotive Engineers and Fireman v. the United Kingdom* (*ASLEF* case, from here on). The case concerned the applicant union, which expelled a worker from the union due to his membership in a far right party, British National Party (BNP). ASLEF regarded BNP as a "fascist organization" and argued that allowing a person to become a member of the union who held such views was inimical to the union's objectives. The ECtHR found the UK to be in violation of Article 11, reasoning that "historically, trade unions in the United Kingdom, and elsewhere in Europe, were, and though perhaps to a lesser extent today are, commonly affiliated to political parties or movements, particularly those on the left [and they] are often ideological, with strongly held views on social and political issues." Consequently, the Court adopted a *collectivist* conception of rights, by recognizing a *union's right* to pursue a political identity and to choose its members accordingly.

The most remarkable judgment came in 2008 when the Court expanded the scope of trade union rights in a dramatic fashion. The *Demir and Baykara v. Turkey* case emerged in 1993 when a Municipal Council in Turkey failed to fulfill its obligations under its collective agreement with the public workers' union. When the Turkish courts dismissed the case, ruling that public workers were not allowed to enter into a collective agreement or take collective action, the labor leaders decided to take their case to the ECtHR. Issuing yet another landmark

judgment, the Grand Chamber recognized collective bargaining as "an essential element" of the right to association (Article 11). The unanimous judgment explicitly stated that its earlier jurisprudence, starting with *Swedish Engine Drivers* "should be reconsidered, so as to take account of the perceptible evolution in such matters, in both international law and domestic legal systems" (para. 154).

A year after this judgment, the Court went on to recognize the right to take collective action as a human right in another case taken from Turkey. *Enerji Yapi Yol Sen v. Turkey* (2009) concerned a circular issued by the Turkish government prohibiting public service workers from participating in a national strike, organized by the applicant union. Building on *Demir and Baykara,* the Court held that the right to strike constitutes an "indissociable corollary of the right of trade union association" (para 24). Similarly, the Court found criminal and administrative measures taken against individual workers who participated in a collective action to be in violation of Article 11 (*Karaçay v Turkey* 2007, *Danilenkov v Russia* 2009, *Saime Özcan v Turkey* 2009).

One of the most important implications of these judgments was the Court's indirect empowerment of other international instruments that protect labor rights, such as the ESC and the ILO Conventions. This is a significant move for the Court since both of these instruments providing extensive protections for workers often lack effective enforcement mechanisms. By utilizing them in its legally binding judgments, the ECtHR gives effect to these otherwise toothless international laws. In this regard, a distinguishing feature of the *Demir and Baykara* judgment was that in determining the scope of collective bargaining, the Court referenced an ESC article, namely Article 6(2), on which Turkey had reservations, and the EU Charter of Fundamental Rights, to which Turkey was not even party. Most importantly, the Court positioned itself a step ahead of the CJEU in contrast to the CJEU's narrower interpretation of

trade union rights. In a series of cases starting in 2007, the CJEU prioritized the economic freedoms of corporations over trade union rights, intensifying the debates regarding the role of the European economic integration on dismantling the welfare states and undermining organized labor (Davies 2008; Ewing 2009, Ewing and Hendy 2010; Dorssemont 2011). The *Demir Baykara* case of 2008, indeed led some scholars to argue that the ECtHR has the potential to "clean up the mess" created by the CJEU rulings (Hendy and Ewing 2010).

The Court, however, did not always adopt the ILO's approach to trade union rights in its judgments. One such issue is the closed shop agreements, which are agreements between the employer and the union that all workers at a workplace would be represented by one trade union. In *Sørensen and Rasmussen v. Denmark* 2006, despite third party submissions from the Danish Confederation of Trade Unions, the Court refused to view closed shop agreements as a means to promote collective agreements within a global economy where trade union membership and collective bargaining are on a steady decline. Instead, the Court insisted that trade union membership and collective bargaining entry must be kept voluntary at all times. This reasoning is consistent with previous case law where the Court considered the compulsory membership to trade unions (*Young, James, and Webster v. UK* 1981) or other professional associations (*Sigurdur Sigurjónsson v. Iceland* 1993) to be in violation of Article 11. The judgment of the Grand Chamber, however, was not unanimous. Judge Zupančič expressed his dissenting opinion with a warning that a blanket ban on closed shop agreements may lead to a situation where "a substantial collective economic interest of the workers has been sacrificed to an insubstantial, individual preference."

Similarly, in a Grand Chamber judgment, the Court ruled that the dismissal of two workers as a result of an offensive and humiliating publication initiatated by them about their

employer did not constitute a violation of Article 10 read in light of Article 11 (Palomo Sánchez and Others v. Spain 2011). The joint dissenting opinion of Judges Tulkens, Davíd Thór Björgvinsson, Jočienė, Popović, and Vučinić illustrated a major point of contention at the ECtHR regarding the interpretation of trade union rights. The judges argued that the majority opinion ignored the "social dimension of the situation" by not evaluating the freedom of expression of the applicants in view of the ongoing industrial dispute in the company. Trade unions, they maintained, serve "a function similar to the 'watchdog' role of the press" and act "on behalf of the company's workers to protect their occupational and employment-related interests." Against this background, they feared that the dismissal, which was the highest sanction that could possibly be imposed in that situation, would generate a "'chilling effect' on the conduct of trade unionists" and "encroach directly upon the raison d'être of a trade union". While the trade unionists lost this case, the separate opinion demonstrates that trade union rights constitute a contested issue among the ECtHR judges and its scope is likely to continue to evolve.

Slavery, Servitude, and Forced Labor

Along with trade union rights, prohibition of slavery, servitude, and forced labor (Article 4) are the first two articles that directly included labor rights. Article 4 had a special significance for the drafting of the Convention because European states wanted to eliminate the possibility that anything similar to concentration camps could be repeated. It took a long time for the ECtHR to take the precarious working conditions of migrants and human trafficking into consideration and to develop the meaning of forced labor and slavery in contemporary Europe.

In 2005, the Court found for the first time a violation of Article 4 (*Siliadin v. France).* [44]

[44] *Karlheinz Schmidt v. Germany* (1994, 13580/88), where the applicant complained about the obligation for men to serve as a fire brigade, was the only case where the Court came close by finding a violation of Article 14 in conjunction with Article 4.

The applicant, a Togolese national, was brought to France when she was 15 under false pretenses. Her documents were confiscated and she was forced to become an unpaid domestic worker. In establishing this new precedent, the Court referenced, among others, the Recommendation 1523 of the Parliamentary Assembly of the CoE which noted that "a new form of slavery has appeared in Europe" and explained that the victims with confiscated passports find themselves "in a situation of total vulnerability with regard to their employers" and "physical and emotional isolation" (para. 49). In a landmark judgment, the Court found that the applicant's work conditions and deprivation of her liberty did amount to servitude but not slavery. According to the Court, slavery would require legal ownership of the worker (Mantouvalou 2006).

Siliadin led to a rapid development of new case law (*M. v. the UK* 2009; *C. N. v. the UK* 2012; *Kawogo v. the UK* 2013) and the Court expanded the meaning of Article 4 a step further in *Rantsev v. Cyprus and Russia*. This case concerned a woman who was trafficked from Russia to Cyprus for sex work. She tried to escape her exploitative work conditions but was returned to her employer by the police because she was a legal immigrant and had a working permit. The applicant was found dead after she was released. The Court noted that labor exploitation constituted a treatment of "human beings as commodities to be bought and sold" and went on to adopt the term "modern slavery," which by then had been widely used by human rights organizations and other international law to describe human trafficking. Furthermore, the Court listed the positive obligations of states regarding the prevention and investigation of human trafficking.

Other than these human trafficking cases, however, the Court has adopted quite a narrow interpretation of slavery and forced labor. In accordance with the exceptions listed in Article 4(3)

regarding work in military service, detention, and civic obligations, the Court rejected that the following claims constitute violations od Article 4: 28 years of prison labor without access to pensions (*Stummer v Austria* 2011), requirement of pro bono work for barristers (*X v. Germany 1974*, see also *Van Der Mussel v. Belgium* 1993), and voluntary work for nine years for the Navy (*W, X, Y, and Z v. UK* 1968). Similarly, in *Eker v. Turkey* (1998) a seasonal farm worker claimed that he worked without pay for several months, but the Court found no reason to suspect the national court's decision that there was not enough evidence to establish the applicant's claim.

Unfair Dismissals

Dismissals constitute a subset of the right to work category. Over the past two decades workers across Europe have brought a broad range of unfair dismissal cases before the Court, including alleged violations of lack of access to a fair trial or remedy (Articles 6 and 13), freedom of expression (Article 10), the right to private life (Article 8), freedom of religion and conscience (Article 9), freedom of association (Article 11) and various forms of discrimination (Article 14).

In response to these cases brought by workers in public and private sectors, the Court expanded the meaning of the Convention articles and noted that "business necessity" or "national security" are not sufficient reasons to deny work to disadvantaged groups. While the list here is not exhaustive, in the following cases, the Court found violations of Article 8 in conjunction with Article 14: banning former KGB officers from finding employment in the private sector (*Sidabras and Džiautas v. Lithuania*), dismissing a security officer on the grounds that the work which required night shifts and physical force was unfit for women (*Emel Boyraz v. Turkey* 2014), and dismissing a worker simply because he is HIV positive (I. B. v. Greece 2013). Similarly, noting that "the hallmarks of a 'democratic society' include pluralism, tolerance and

broadmindedness," the Court decided that discharging members of the armed forces due to sexual orientation (*Lustig-Prean and Beckett v. the United Kingdom* 1999, *Smith and Grady v. the United Kingdom* 1999 para. 87, *Perkins and R. v. the United Kingdom* 2002; and *Beck, Copp and Bazeley v. the United Kingdom* 2002) and banning a civil servant from all public and private sector work, except teaching and research, due to criminal proceedings (*D.M.T. and D.K.I. v. Bulgaria* 2012) constitute violations of Article 8. Additionally, the Court ruled that the dismissal of a driver transporting disabled people who were mostly Asians violated Article 11 (*Redfearn v. the UK* 2012), due to his membership to a white-supremacist political party (BNP). Conversely, in *Pay v. the UK*, the Court rendered inadmissible a case regarding the dismissal of a probation officer who engaged in BDSM[45] activities. The Court recognized that dismissal is a very severe measure which would affect the applicant's "chances of exercising the profession for which he has been trained and acquired skills and experience." However, noting that "an employee owes to his employer a duty of loyalty**,** reserve and discretion" and, given the sensitive nature of the applicant's work involving sex offenders, the Court found that his dismissal was proportionate and served a legitimate aim.

Religious organizations, such as churches, were granted a special status by the Court. Employers "whose ethos is based on religion or a philosophical belief may impose specific duties of loyalty on its employees," the Court decided (*Schuth v. Germany* 2010, para. 69). In cases where individuals dismissed by the church for expressing pro-abortion views (*Rommelfanger v. Germany* 1989) or for having committed adultery (*Obst v. Germany* 2010), the Court found no violations. On the other hand, in *Schüth v. Germany* (2010), the Court weighed

[45] BDSM refers to a wide range of activities including bondage and discipline, dominance and submission, and sadism and masochism.

the applicant's difficulty of job prospects as a Church musician against the applicant's duty of loyalty to the church and rendered the dismissal a disproportionate punishment. The Court, however, held that public institutions were required to provide impartial service to all people, regardless of the faith of state employees fulfilling such duties. In cases where the applicants, in their capacity as state employees, refused public services to same-sex couples due to the applicants' Christian faith, the Court found the dismissals justified and "necessary in a democratic society" (*Eweida and others v. UK* 2013)

Discrimination in the Workplace

Prohibition of discrimination in the workplace includes a broad array of issues. The ECtHR's case law is well-developed in a wide range of matters, including discrimination in an employment context based on age, ethnicity, race, nationality (including stateless people), immigration status, gender, sexual orientation, disability, and criminal background, among others. In this section, I will discuss some of the leading cases on religious and gender discrimination, which have been the subject of much controversy. Article 14 has a special status since the Convention does not aim at the elimination of all kinds of discrimination, but it aims to secure the enjoyment of the rights and freedoms set forth in the Convention without discrimination. Hence it does not have an independent effect.

Konstantin Markin v. Russia 2012 is a landmark gender discrimination judgment where the Court, once again, overturned its previous jurisprudence. The applicant, a serviceman in the military, complained of the denial of parental leave to men in the military. The Court refused the government's plea for margin of appreciation on issues regarding restricting civil liberties due to national security. That the choice of a military career was voluntary and that the applicant knew men did not have a right to parental leave in the army are not sufficient reasons to justify

discrimination. Given the specialized position of the applicant as a radio intelligence operator, the Court noted that his skills were not readily transferable to a different profession and that the prohibition of gender discrimination is not a right that a worker can sign away through contract. The Grand Chamber judgment delivered in 2012 found that the Russian government's legal provision regarding parental leave constituted discrimination on the grounds of gender (Article 14 taken together with Article 8). Emphasizing once again that the Convention is a living document that evolves with the changing consensus in Europe, the Court concluded that it was time to realize that "society had moved towards a more equal sharing between men and women of responsibility for the upbringing of their children and that men's caring role had gained recognition." Thus, the Court decided to overrule the outdated *Petrovic v. Austria* (1998) judgment, where the Court did not find discrimination in parental leave allowances between men and women to amount to a violation of Article 14. While the judgment did not explicitly state a general right to parental leave under Article 8, in his separate opinion, Judge Pinto noted that such an inference could be derived legitimately, and it applies to all workers including "[t]he armed forces, the police and domestic servants" as well as "part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency."

There is a large body of case law regarding the right to religion and conscience (Article 9) in dismissal cases. A series of cases delivered by the Court on wearing religious symbols in the workplace, however, has been particularly controversial. The Court contends that a flight attendant's right to wear a cross should be protected under the right to manifest religious affiliation (*Eweida and others v, the UK* 2013). On the other hand, dismissing a school teacher for wearing a headscarf does not constitute a breach of Article 9, because the Court reasoned that

the applicant in this case represents the state and that "the wearing of a headscarf might have some kind of proselytizing effect" on young pupils. However, the Court insisted on the potentially proselytizing effect of the headscarf in a case where a university student, not a state employee, was banned from wearing a headscarf on campus (*Leyla Sahin v. Turkey*) as well as in the case of a hospital social worker whose contract was not renewed because she refused to take off her headscarf. More surprisingly, in a highly politicized case where 10 member states and a number of NGOs made third party interventions in support of the respondent state, the Grand Chamber reversed the decision of the lower chamber and did not consider that the hanging of a cross on public schools could have a proselytizing effect on children. Hence the Court found no violation. The cross, as opposed to the headscarf, was a "passive" symbol, the Court reasoned (*Lautsi v. Italy* 2012), leading scholars to raise the question of whether the ECtHR applied double standards when the rights of Muslim minorities in Europe were at stake (Mahmood and Danchin 2014; Elver 2011; Manchini 2010).

Workers' Health and Safety

Workers' health and safety is probably the least developed but potentially the most important area of labor rights in ECtHR's case law. It concerns an undoubtedly fundamental right: bodily integrity. The ECtHR clearly identifies the right to life (Article 2) and the prohibition of torture and inhuman or degrading treatment (Article 3) as non-derogable rights.[46] Yet the workplace for many workers is a violent environment. The slow and routinized death of workers often gets much less attention than people who die in wars, even though more people die at work than at wars. Every year over 2 million people die due to work, according to the ILO

[46] Article 2 is a non-derogable right as except in the context of lawful acts of war. http://www.echr.coe.int/Documents/FS_Derogation_ENG.pdf

statistics, and millions of others live with life-long impairments due to work-related diseases and injuries.

The ECtHR has paid little attention to workers' health and safety until very recently. This is in part due to the few number of cases brought before the Court and in part due to the absence of robust legal provisions that address this issue. For instance, in *Dikici v. Turkey* (2009) where the applicants' son, Ercan Dikici, died in an occupational accident at the state-owned power plant, the Court refrained from assessing the fairness of the domestic proceedings regarding the applicants' pecuniary damage claim, which would require the Court to investigate and problematize the safety of working conditions. The Court noted that "it is not its task to act as a court of appeal or, as is sometimes said, as a court of fourth instance for the decisions of domestic courts. According to the case-law, the latter are best placed to assess the credibility of witnesses and the relevance of the evidence to the issues in the case" (para. 16). Yet, as very well established, in cases regarding the Turkish state violence against the Kurdish minority, the Court did carry out fact-finding duties and even waived the requirement of exhaustion of domestic remedies, noting that the remedies provided by the Turkish courts would be illusory (*Akdıvar v. Turkey* 1996; see Çalı 2010).

Finally, the 2013 case of *Vilnes and others v. Norway* set a significant precedent on workers' health and safety litigation at the ECtHR. This case concerned Norwegian divers who had been disabled due to their work in the North Sea for oil companies during the pioneer period of oil exploration from 1965 to 1990. The Court, for the first time in a case on workers' health and safety, ruled that the Norwegian government in its role as the employer failed to provide essential information on the occupational risks of the job on workers' health and safety. Much to the disappointment of the applicants and pro-worker organizations, however, the Court reasoned that the government's failure to fulfill its responsibility amounted only to a breach of Article 8,

on account of the workers' right to knowledge about their health and safety, but not a breach of workers' right to life or a prohibition of inhuman and degrading treatment.

A year after this judgment, the Court did take the extra step. In recent years, the Court has started developing positive obligations for states under Article 2, particularly in socioeconomic rights cases (see for instance *Öneryıldız v. Turkey 2004; Pentiacova and others v. Moldova* 2005). *Brincat and others v. Malta* (2014) is the first time the Court applied this new approach to a case on workers' health and safety. The application concerned shipyard repair workers in Malta who had been exposed to asbestos, which resulted in the death of one worker. The Court contended that the government failed to fulfill its obligations under Article 2 in the case of the one worker who died. Given the availability of scientific knowledge on the seriousness of the threats posed by asbestos nationally and internationally, the Court concluded that "the Maltese Government knew or ought to have known of the dangers arising from exposure to asbestos at least as from the early 1970s" (para 106). And, referencing the *Vilnes* case, the ECtHR also found that the failure to take preventive measures for all other workers amounted to a violation of Article 8, the protection of privacy and family life.

Brincat and *Vilnes* are landmark cases in employment law that have the potential to lead to a rapid development of new case law, particularly from Turkey, where more than 1500 workers die on the job every year. The accessibility of this knowledge on the developing case law, first to Turkish lawyers and then to workers, will undoubtedly play a significant role going forward.

Workplace Surveillance

Privacy in the workplace has become more complex as new information technologies increase the scope of surveillance at work. A developing case law is urging the Court to consider

challenging issues regarding privacy in the workplace. The Court strived to define what constitutes a legitimate aim to restrict workers' reasonable expectations on privacy.

Harlford v. the UK (1998) is an early example where the Court established that the interception of the applicant's phone calls without her knowledge constituted a violation of Article 8. The applicant, who was the highest-ranking female police officer in the UK at the time, had an ongoing discrimination case against the police department regarding her being denied promotion, and she claimed that her calls had been intercepted to use the information against her during the proceedings. The Court applied the same reasoning in *Copland v. the UK* (2007) where the applicant's telephone, e-mail, and internet usage had been monitored by her employer, a public university, without prior warning. On the other hand, the Court ruled that an employer, upon suspecting theft by the workers, can institute cameras to surveil the workplace (*Kopke v. Germany* 2010). Moreover, in a recent case, the Court concluded that when personal use of company facilities is explicitly prohibited, then monitoring a workers' private communications at work or ending the worker's contract can be justified (*Bărbulescu v. Romania* 2016).

Looking Ahead: Challenges and Opportunities

The analysis of the labor rights case law shows that the Court has adopted a holistic approach to human rights and refuted the idea of a clear division between socioeconomic rights and civil and political rights. In some of these cases, the Court overturned its earlier narrow approach to labor rights to include a host of new rights claims. Some of the Court's most remarkable achievements include granting state-sponsored parental leave for men in Russia, allowing public sector workers in Turkey to unionize, recognizing human trafficking as a form of

modern slavery, banning discrimination in the UK military based on sexual orientation, and ordering the Maltese government to pay reparations for workers who have been exposed to asbestos. The most dramatic changes in this regard have taken place within the area of trade union rights, where the Court has come to recognize some of the core trade union rights as human rights. While expanding human rights law to include the right to unionize, the right to collective bargaining, and the right to strike, the Court referenced other existing international law on labor rights. An important consequence of this move is that the ECtHR gave effect to these weaker international law instruments on labor rights through its legally binding judgments.

At the same time, the chapter also demonstrated the boundaries the Court draws on claiming labor rights as human rights. The Court found no violations in cases concerning unpaid internships and unfair dismissals for wearing a headscarf, and it held that closed shop agreements violate freedom of association. Nonetheless, within a context of shrinking welfare states and declining trade union rights protection in Europe, the ECtHR, emerged as one of the few institutional sites left at which organized labor could direct mobilization efforts.

The Court's attentiveness to trade union rights is particularly significant, because labor activists and scholars consider trade union rights to serve in an enabling role for all other labor rights (Flanagan 2006; Rodŕıguez-Garavito 2005). Strong trade unions are viewed as guarantors of fair wages, social security, health and safety at work, and other labor rights. Unions demand these rights collectively and add strength to the efforts of otherwise isolated workers (Rosenfeld 2014). For this reason, discrediting and disempowering unions has been an integral part of neoliberal policies, which dismantled the labor protections of welfare states around the world (Swank 2002; Harvey 2005; Daniels and McIlroy 2009).

This chapter also showed that the Court's new approach to labor rights emerged and developed in a political environment where international courts have become important players in politics and socioeconomic rights have resurged in human rights frameworks. Recent developments, however, indicate that the tide may be turning. The Court has been under pressure from national governments within the past couple of years. Most prominently, the Brighton Declaration of 2012, embedded the "margin of appreciation" to the Convention's preamble, in an attempt to curb the ECtHR's powers.[47] The doctrine already existed in the jurisprudence of the Court. Therefore, the decision to include it in the preamble was seen by many as a way to signal to the ECtHR judges that they needed to use it more broadly and provide more leeway for states in their rulings (Bogg and Ewing 2014: 224; Hendy and Ford 2014). Another important development occurred in the ILO. In 2012, the International Organization of Employers (IOE) challenged the right to strike. The IOE composes one leg of the tripartite supervisory body of the ILO, along with the states and the workers' association. The challenge questioned the Committee of Expert's legal authority to read a right to strike into the ILO Convention 87, when the Convention 87 does not expressly protect the right to strike. Some scholars viewed this move as a backlash against the ECtHR's recent judgments where the Court referenced the ILO in acknowledging basic trade union rights (Fudge 2015, Bogg and Ewing 2014).

This controversy indeed came up in a recent case on the right to strike before the ECtHR (*RMT v. the UK* 2014). The Court was asked to rule on the legitimacy of sympathy strikes (secondary action) and the onerous pre-industrial action requirements for British unions. The UK government asked the Court to reconsider its right to strike reference to the ILO Convention 87, given the ongoing disagreement. The Court, in a significant move, refuted the UK's argument

[47] Protocol 15, produced at the Brighton Declaration, amends the preamble to include "margin of appreciation", but it is not yet in force.

and acknowledged the right to strike under Article 11. Nonetheless, the Court dismissed the case as inadmissible, without rejecting the right to secondary action altogether. It remains to be seen whether the Court will continue to uphold its commitment to an integrated human rights approach in the following years despite political pressures.

The push by repressive regimes at the domestic level and the pull by the ECtHR's new approach to labor rights drove workers to seek remedies at the international level. But, how would the workers know about the remedies a distant human rights court provides? The next section shows that legal advocacy groups in Turkey and the UK played a very important role by making this legal knowledge available to workers and identifying the ECtHR as a target institution for claiming labor rights as human rights.

CHAPTER 4. IDENTIFYING LABOR RIGHTS AS HUMAN RIGHTS: LEGAL ADVOCACY GROUPS

"We've got nowhere to go. You know, the Labour Party does nothing for the trade union rights, there's no effective opposition to the government. So where can we go? Naturally, we've looked at the international institutions."
John Hendy, Q.C., London, UK.

Chapter 3 showed that the ECtHR built its trade union rights case law primarily in response to the cases coming from Turkey and the UK. In cases brought by labor lawyers and activists against these two countries, the Court issued landmark judgments on a broad suite of labor rights, including the right to form a trade union, the right not to be deterred from joining a trade union, the right to collective bargaining, and the right to strike. The neoliberal transformation that took place in both countries, albeit in different forms, created a political environment in which trade unionists were no longer able to find remedies for their grievances (Chapter 2). But, seeking remedies at the international level is not always a natural outcome of deterioration in material conditions. Litigating at the ECtHR requires a vast knowledge of the Court's case law and a commitment to claiming labor rights as human rights. Contrary to the claims that litigation at an international court has an individualizing effect on labor movements, I argue that legal advocacy groups form the first step of legal mobilization by identifying the ECtHR as a target institution and driving litigation efforts. Their role in coordinating and strategizing in taking cases to the ECtHR together with trade unions shows that turning to the court is a collective mobilization effort. Furthermore, existing research on civil and political rights advocacy shows that NGOs and transnational networks play a leading role in claiming human rights. My findings show that rather than institutionalized advocacy groups, a small group of committed lawyers lead litigation efforts on trade union rights in both countries.

Litigation strategy took different forms in Turkey and the UK. In Britain, a few committed labor lawyers and scholars picked appropriate cases selectively to be taken to the ECtHR in the context of increased restrictions imposed on unions. In Turkey, a similar strategy was adopted by public sector unions organized under the Confederation of Public Sector Workers' Union (Kamu Emekçileri Sendikası Konfederasyonu, KESK) during its foundational years in the 1990s. In later years, however, as KESK lost its ability to mobilize its rank and file members to influence the state's behavior, lawyers started flooding the Court with cases. Hence, litigation became a strategy of desperation, rather than a catalyst for further mobilization. As noted in Chapter 2, the trade union rights cases from Turkey at the ECtHR are by far the highest in number, comprising one-third of all cases. However, the number of developing cases from Turkey and the UK is almost the same, indicating that a significant number of repeat cases come from Turkey.

Another important factor that contributed to increase in cases from KESK is that, KESK's ties with the Kurdish movement and its experienced lawyers on ECtHR litigation solidified during the same period. I demonstrate that the knowledge and insights brought to KESK by the Kurdish movement led to diversifying trade union rights cases before the ECtHR, drawing the Court's attention to the intersection of class and ethnic identity. Therefore, I show that inter-movement ties at the domestic level, rather than transnational ties with Western allies, have been critical in shaping the litigation strategy of Turkish unionists in the 2000s.

Role of Legal Advocacy Groups in Legal Mobilization

Studies show that the international human rights commitments of states can alter national agendas, support domestic litigation efforts, and empower social movements (Keck and Sikkink 1998; Risse-Kappen, Ropp, and Sikkink 1999; Brysk 2002; Simmons 2009; Tsutsui, Whitlinger, and Lim 2012). But, under what conditions does international law become a resource for

activists? Chapter 2 showed that the closing political opportunity structures for claiming trade union rights at the domestic level motivate labor activists to seek alternative options at the international level. Once workers had grievances at hand, the second step in human rights litigation is having the means to achieve the desired outcome.

International relations (IR) scholars have pointed out that civil society groups' participation—particularly in the form of institutionalized groups, such as the intergovernmental and non-governmental organizations (INGOs and NGOs)—are vital in holding states accountable to international laws that states ratify. There is even a surprising consensus among qualitative and quantitative research on this issue. Many quantitative studies show that a state's ratification of an international treaty does not increase the likelihood of improved human rights protection, but a high number and activity of INGOs and NGOs does (Hathaway 2002, 2007; Hafner-Burton and Tsutsui 2005, 2007; Neumeyer 2005; Vreeland 2008). After a state delegates authority to an international organization or treaty, these NGOs work on ensuring compliance by collecting abuse records and disseminating this information. Hafner-Burton and Tsutsui (2005: 1380-1), for instance, argue that the NGOs presence is the key explanatory variable "the positive institutional effects of the international human rights regime on local practices (...) operate not through the treaty system, but through nongovernmental actors." Case studies all around the world have simliarly showed that INGOs and NGOs were central in holding Argentina responsible for forced disappearances (Keck and Sikkink 1998), changing employment practices in sweatshops in Mexico (Rodriguez-Garavito 2005), and improving women's status in employment policies of Japan (Simmons 2009). Notably, Keck and Sikkink's (1998) famous boomerang model demonstrated that local activists in Latin America have been able to leverage their transnational ties with INGOs to put pressure on their governments and change state behavior

Since the ECtHR oversees member states' compliance with the Convention, litigation is the first step in seeking remedies and forcing states into compliance. As noted in the previous chapter, the ECtHR grants broad access to individuals and civil society groups. Similar to the IR scholars' findings, sociolegal scholars have pointed out the importance of institutionalized civil society organizations and cause lawyering in leading litigation efforts in comparative courts as well as before international courts. Cause lawyering is defined as work "directed at altering some aspect of the social, economic, and political status quo" undertaken by a group of legal professionals, often ideologically committed to advancing a particular social justice cause. Legal mobilization scholars have shown that litigation efforts led by committed lawyers provide disadvantaged groups an opportunity to "capitalize on the perceptions of entitlement associated with (legal) rights to initiate and to nurture political mobilization" (Scheingold 1974:131). The concept was born out of studies on the American legal profession, paying special attention to the role of lawyers in the civil rights movement. Sarat and Scheingold (2006: 6) note that in its "idealized version… litigation mobilized movements, informed the public about particular injustices, and reframed political struggles." However, as with any movement strategy, litigation is not "inherently disempower[ing] or empower[ing]… Legal relations, institutions, and norms tend to be double-edged, at once upholding the larger infrastructure of the status quo while providing many opportunities for episodic changes and transformations in that ruling order" (McCann 2004:519).[48]

Social movement scholars have long argued that relative deprivation by itself does not guarantee that individuals will engage in collective action. Research on social movements shows that resource mobilization and broadly defined opportunity structures in large part determine

[48] See Chapter 6 for more discussion on the possible limitations of litigation for the purposes of advancing labor causes.

when and how social movements succeed (McAdam, McCarthy, and Zald 1996; McAdam, Tarrow, and Tilly 2003). Combining insights from social movement theory and sociolegal work, research on legal mobilization shows that legal support structures, such as legal and financial sources, are central to facilitating litigation efforts, which in turn lead to changes in legislative or institutional frameworks (Epp 1998; see also Cowan 1976; Galanter 1974; McCann 1994). Epp (1998:2) shows that judicial attention to pressing social issues can be attained through "deliberate, strategic organizing by rights advocates." The ability to prevail in the long term as repeat players brings many advantages for strategic litigation. Legal expertise, sustained legal research into building case law, and coordinated litigation, however, often require financial and organization resources. The discrepancy in access to these resources has led scholars to conclude that "the 'Haves' come out ahead" in efforts to achieve social justice through litigation (Galanter 1974). On the other hand, Wilson (2009:61) challenges this view by demonstrating that in countries where utilizing judicial strategies is not as costly as in the United States and Canada, "deep-pocketed support structures" do not play a decisive role.

Role of Legal Advocacy Groups in Mobilizing Labor's Rights before the ECtHR

My study corroborates the strong explanatory power of legal support structures in facilitating legal mobilization. At a time when political opportunity structures were closing at the domestic level, a dense network of legal advocacy—both in the UK and in Turkey—seized on an opportunity that opened up at the international level. Labor lawyers, legal scholars, and pro-labor institutions' roles in driving litigation efforts at both the domestic and the international levels were critical. I find that access to financial resources is not an important factor in leading litigation efforts. There are no legal fees associated with taking cases to the ECtHR. And, since trade union rights litigation at the domestic level in both countries do not involve exorbitant

fees[49] and because litigation efforts are predominantly undertaken by unions, not individuals, the cost of litigation did not play a major role in ECtHR litigation.

However, the organizational support provided by unions is central in determining litigation strategies and in influencing favorable outcomes for workers in the long run. Some scholars have argued that human rights law enervates the collective nature of labor conflicts by promoting individualism (Ewing 1998; Gearty 2011) and depoliticizes the class-based strategies traditionally pursued by labor activists (McCartin 2005; Savage 2009). The legalization of employment relations, these scholars maintain, aims at further undermining the collective power of unions by replacing collective bargaining procedures with individual rights claiming. As Savage (2009:9) put it, relying on human rights "foster[s] a sense of individualism in workers rather than the sense of collective worker power required to transform society." While other labor rights claims before the ECtHR, such as unfair dismissals and workplace surveillance, may be brought by individual workers who do not pursue a collective goal, my findings show that trade union rights litigation from Turkey and the UK is the product of a collective and concerted effort among lawyers and workers. The collaboration among trade unions and legal advocacy groups in ECtHR litigation indicates that litigation is not a strategy pursued by individual workers for personal gains, but that it is a political strategy on which unions and lawyers worked together to advance the labor cause. Chapter 6 will show that labor lawyers view litigation as one of many strategies in labor's struggle.

Despite the emphasis on transnational advocacy networks in the human rights literature, I did not find transnational links to play a major role in legal mobilization around trade union rights. The litigation efforts are organized primarily at the domestic level. Research shows that

[49] See discussion below on the UK regarding changing legal fees at employment tribunals.

on other issue areas, a growing transnational network of lawyers and human rights organizations are collaborating on taking cases to the ECtHR (Maiman 2004; Cichowski 2016; Hodson 2011). The most salient example of this has been the transnational links formed between the Kurdish minority in Turkey and UK-based human rights lawyers on bringing landmark cases before the ECtHR (see discussion below). These transnational links have sparked the legal mobilization of Kurdish activists, leading to thousands of cases brought before the ECtHR. Studies indicate that there is a similar transnational litigation link at work in taking grave human rights violation cases from Russia (Van der Vet 2012). Bowring (2016), a prominent human rights lawyer and scholar, notes that transnational links between Russia and the UK-based human rights organizations are beginning to be formed on labor issues.[50] These links may be instrumental in collaborating on ECtHR litigation in the years to come.

The general decline of organized labor around the world and the secondary place labor rights have held not only within human rights frameworks but also in advocacy make it difficult for workers to organize transnationally. Until recently, major international human rights organizations, such as Amnesty International or Human Rights Watch, had not incorporated labor rights in their campaigns.[51] Nevertheless, there have been some successful transnational campaigns, such as the protests led by students on college campuses in the US against sweatshop labor (Rodriguez-Garavito 2005) or the impressive steps taken in the aftermath of the 2013 Rana Plaza collapse in Bangladesh as a result of strong protests around the world. Often, transnational activism is most useful when grave labor rights violations occur, such as sweatshop labor, child

[50] During his presentation at the 2016 Annual Meeting of the Law and Society Association, Bowring (2016:20) noted that European Lawyers for Democracy and Human Rights, of which he is the president, has just established links with "the Centre for Social and Labor Rights in Moscow (and its affiliated Lawyers for Labor Rights), working with the 3 million strong KTR, Confederation of Labor of Russia."

[51] See Walling and Waltz (2011) on how this change has slowly begun in recent years.

labor, or a major disaster like the Rana Plaza collapse. Research shows that the success of transnational activism in advancing trade union rights has been limited (Barientos and Smith 2007; Seidman 2007; Anner 2011).[52]

Rather than transnational ties, I demonstrate that inter-movement alliances at the domestic level in Turkey have shaped ECtHR litigation strategy. The solidarity ties formed between public sector workers and the Kurdish movement led these groups to draw the Court's attention to how ethnic identity and trade union rights are intertwined. Therefore, this alliance was instrumental in bringing new rights claims before the Court and in shaping human rights law.

Furthermore, while I find that NGOs and advocacy organizations can be supportive of litigation efforts, the critical work of strategic litigation is undertaken by a small group of labor lawyers and legal scholars both in Turkey and the UK. The institutional support provided by pro-labor institutions and legal advocacy groups is important, particularly through third party submissions in ECtHR cases. But, lawyers and scholars remain? the key players who retain knowledge of domestic and international law and plan in collaboration with unions which cases to take to the ECtHR. Unlike in the UK, submissions from Turkey have not been supported by third party interventions. One reason is that its local human rights organizations are not very knowledgeable about international law as it applies to labor rights. The human rights organizations in Turkey, as is often the case in other parts of the world, are more knowledgeable about civil and political rights issues than they are about issues related to labor rights violations. The lack of third party interventions in trade union rights cases, however, was not a significant

[52] Aside from transnational activism, research on private regulation through corporate social responsibility and other voluntary schemes shows that there are pervasive problems with effective monitoring and accountability in global supply chains (Locke et al. 2009; Locke 2013; Auld 2014)

impediment, since the Turkish trade unionists nevertheless have gained many important victories in their ECtHR litigation efforts.

Localizing Human Rights

Legal advocacy groups also play a key role in transmitting and shaping human rights norms and law by bridging the local and the global levels. Scholars have long studied the way norms emerge, travel, and change internationally. Prominent among these studies is the global norm diffusion theory. IR scholars generally view norm diffusion as an integral part of policy change at the international level. Studies have shown that norms spread through different mechanisms, including coercion, persuasion, mimicry, and learning.[53] More specifically, constructivist IR scholars have emphasized that a process of socialization occurs as states act according to a "logic of appropriateness," that is, standards of acceptable behavior. In explaining the efficacy of the ECtHR, Helfer (2008:135) argues that "it requires the skillful use of persuasion to realign the interests and incentives of decision-makers in favor of compliance with the tribunals' judgments." This approach is helpful in explaining the different mechanisms through which norms change state behavior. However, diffusion theory offers a static and statist approach to norms. It is much more preoccupied with understanding whether and how states adopt or reject norms, rather than investigating the mechanisms through which norms are contested, molded, and amplified. While there is a general recognition among diffusion scholars that norms can originate within the transnational links of non-government groups (Finnemore and Sikkink 1998, Keck and Sikkink 1998; Risse, Ropp, and Sikkink 1999), this model fails to account for the different forms these human rights norms assume in domestic contexts by being challenged, altered, or even rejected.

[53] See Towns (2012) for a discussion of these different mechanisms.

In order to account for the manifold forms in which human rights norms are localized, I analyze the role of legal advocacy groups in *vernacularizing human rights* (Cowan et al. 2001; Merry 2006a; Merry et. al. 2010). Vernacularization rests on the understanding that human rights are fluid, contested, and ambivalent. This approach challenges the diffusion theory, first, by complicating the homogenizing impact of global human rights norms in local contexts, and, second, by underscoring the agency of local actors in contesting and shaping these norms. Merry (2006a) contends that the expansion of human rights norms and laws is mediated through human rights activists or legal experts who both "speak the language of international human rights law" and present that language in "cultural terms that will be acceptable to at least some of the local community." Legal experts and human rights activists, therefore, serve as *intermediaries* between the local and the global. Actors involved in the process of vernacularization do not form a homogenous group; they are differentiated into multiple layers based on their ideological orientations, positions within existing power hierarchies, social class, knowledge of the language, transnational connections, and so forth (Merry 2006b; Merry and Stern 2005). At times, they may even come into conflict with one another based on their attitudes toward vernacularization (i.e., dismissal, resistance, adoption), or because their loyalties may be closer to local communities or international NGOs or networks (Merry and Stern 2005; Merry 2006a).

Who Are the Legal Advocacy Groups?

Legal advocacy groups are critical for their dual role in vernacularizing new sets of meaning making mechanisms to "rights holders" and in expanding human rights norms to reflect the real experiences and grievances of people on the ground. Therefore, they have been central in initiating the mobilization of human rights. This group of experienced lawyers is ideologically

very committed to claiming labor rights as human rights and undertakes strategic human rights litigation both at domestic and national courts.

I identify six different groups involved in legal mobilization of trade union rights in Turkey and the UK: (1) *legal professionals,* composed of lawyers of trade unions or lawyers working at pro-union legal firms; (2) *legal advocacy organizations,* which support litigation processes (e.g. Liberty in the UK); (3) *pro-labor institutions*, such as advocacy networks or think-tanks (e.g. the Institute of Employment Rights) that provide information on labor rights to workers and issue policy reports but may not mobilize wide grassroots support; (4) *academics,* specifically those who work on labor law and/or the ECtHR; (5) *trade unions,* including local unions such as KESK, or international unions, such as the European Trade Union Confederation (ETUC); (6) *grassroots organizations* that mobilize workers with or without the help of trade unions. These groups play an important role both in litigation processes at the ECtHR and in the vernacularization of human rights law.

Legal advocacy groups fulfill four core functions in legal mobilization. *First,* they initiate legal mobilization by identifying the ECtHR as the target institution towards which all litigation efforts should be directed. During a period when domestic regimes crippled organized labor and were unresponsive to trade union rights claims, legal advocacy groups drew labor activists' attention to a new resource that emerged at the international level: the ECtHR. Chapter 6 will show that litigation efforts helped build and strengthen grassroots mobilization at the domestic level. *Second*, working together with labor activists, legal advocacy groups play a critical role in shaping, contesting, and expanding human rights law. Legal advocacy groups possess expert legal knowledge on international human rights and ECtHR case law to engage in strategic litigation. Their knowledge of other relevant international law is critical to draw the Court's attention to how trade union rights are protected under other international treaties, such as the

ILO or the ESC. As Chapter 3 showed, the Court recognized some of the most important trade union rights in response to cases brought by Turkish and British lawyers. Building on this knowledge, legal advocacy groups coordinate with trade unions to decide the cases that are appropriate to bring before the ECtHR. Often, they decide to litigate cases they know they will lose at the domestic level, so that they can exhaust domestic remedies and bring important issues before the ECtHR.

Third, some legal advocacy groups do not directly represent the workers before the ECtHR, but they make third party interventions. As noted in Chapter 3, ECtHR provides broad access to individuals and societal groups. Additionally, NGOs, human rights organizations, trade unions, business associations, and member states can serve as third party interveners to cases in order to provide information to the Court on important cases. In trade union rights cases, legal advocacy groups provided critical information on the relevant dispute and its broader impact in the country as well as comparative analysis of labor rights protection in other countries and other international law. Research shows that participation of third parties democratizes the litigation process and is highly influential in drawing the court's attention to the broader impact of a particular case before it (Cichowski 2016; Van den Eynde 2013).

Finally, legal advocacy groups are critical for making legal knowledge on international human rights law available to workers. Therefore, in addition to undertaking legal action, they inform the workers about their new set of rights under human rights law. Elsewhere, I argued that the vernacularization of human rights is a two-tier process, whereby legal advocacy groups first translate human rights norms to local activists, and then local labor activists reach a broader audience by invoking human rights language in their campaign efforts (Kahraman 2017). Chapter 6 will show that labor lawyers and activists have an ambivalent approach to human

rights. Rather than embracing human rights as their savior, they remain critical of it, keeping the limitations of human rights law in mind. They mobilize it strategically to advance their cause, but human rights do not form the basis of their identity constructions and solidarity ties within the movement.

United Kingdom

The Legal Culture and the Trade Union's Changing Attitudes towards Law

The British courts have often been characterized by judicial restraint and an unwillingness to diverge from precedents (Flanders 1974; Hyman 1989).[54] Lord Wedderburn (1965:9) famously described the attitudes of the British workers towards courts as follows: "Most workers want nothing more of the law than that it should leave them alone." For much of the twentieth century, trade unions solved employment disputes through a decentralized and largely unregulated system of collective bargaining. Kahn-Freund (1959) termed this decoupling of law from industrial relations as "collective laissez-faire." Statutory provisions governing individual workers' rights were "few," and individual employment relationships were "marginal," hence courts were mostly "excluded" from the industrial relations system (Brown et al. 2000). Starting in the early 1960s, major changes undertaken by successive governments aimed at formalizing employment relations initiated a process of judicializing employment relations[55] (Clark and Wedderburn 1987; McCarthy 1992). This process was jump-started with the Contracts of Employment Act of 1963, which granted a broad range of rights to workers

[54] The conservatism of judges has not been limited to labor issues, but extends to civil liberties at large. Epp (1998), for instance, identifies three reasons for the "modest" rights revolution that took place in the UK: the absence of a bill of rights, conservative legal culture and judiciary, and weak rights consciousness. Harlow and Rawlings (1992) similarly argue that public interest litigation is much less common in the UK than in the US. Yet, both studies point out that integration with Europe accelerated the judicialization of politics.

[55] British labor scholars often refer to the process by which courts become more involved in employment relations as "juridification" (Clark and Wedderburn 1987; Colling 2006; Guillaume 2015), but I will continue to use the term "judicialization" for consistency throughout the dissertation. The meaning of both terms is essentially the same.

regarding wages and employment conditions. A host of issues previously negotiated in collective bargaining agreements has come to be governed by employment law. As labor contracts have become more formalized, Employment Tribunals[56] have expanded their jurisdiction and started to take a more prominent role in adjudicating workplace disputes.[57]

Earlier research documented that unions viewed law as a last resort and "preferred to be seen by employers as well as members as successful negotiators rather than simply relying on the legal provisions and third party decisions, for that would reduce the scope for resolving issues through 'traditional' bargaining or procedural methods" (Evans, Goodman, and Hargreaves 1985: 98). Unable to negotiate workers' rights collectively, trade unions started to gain expertise and knowledge in employment law, albeit unwillingly (Colling 2006). Critics have been skeptical of this shift in resolving labor disputes away from collective bargaining towards judicial mechanisms. The rise of individual litigation, they maintained, divided the collective voice of workers and undermined the power of trade unions (Deery and Mitchell 1999). Even though the growth of case law before employment tribunals preceded the neoliberal transformation of the UK, critics argued that judicialization contributed to the decline of organized labor and shrinking collective bargaining coverage (Burgress, Propper, and Wilson 2001). The introduction of new employment regulations as part of European integration accelerated the judicialization of labor relations. A host of new regulations on anti-discrimination law, working time, minimum wage, and subcontracted work was introduced in the 1990s mostly by the Labour government. By that time, trade unions' lobbying powers and ability to influence

[56] Employment Tribunals were established in 1964 as "Industrial Tribunals" as the lowest level legal body, in order to adjudicate labor disputes.

[57] Colling (2006: 142) notes that the range of Employment Tribunals' jurisdictions grew from 6 in the 1970s to about 80 in by mid-2000s and that the number of claims to Employment Tribunals tripled from early 1980s to early 2000s.

New Labour's policies had already been diminished (Chapter 2). New regulations put in place responded much more to the flexibility demands of employers, rather than to workers' demands for security (Clark and Hall 1992; Davies and Freedland 2007; Smith and Morton 2009; Dickens and Hall 2010).

At the same time, the judicialization of employment relations presented new opportunities for individual workers to advocate for issues that trade unions had been reluctant to take up, in particular, racial and gender discrimination in the workplace. The pay equity movement is instructive in making sense of trade unions' changing attitudes towards the law. The evolution of the campaign bears remarkable similarities to the Blacklist Support Group's activism discussed in Chapter 6. Both movements began as grassroots mobilization efforts led by ordinary workers, as unions failed to take up their issues. In each case, litigation at the national and international levels helped to build the movements and sustain mobilization efforts over time.

The pay equity movement started as a grassroots mobilization campaign led by women in the 1970s.[58] While established trade unions were initially hostile towards the claimants, the movement first won the support of left-wing and radical unions. In addition to the male-dominant position of trade unions, their aversion to litigation also played a role in their inability to meet women's demands for equal pay. The lack of union support to ensure equal pay through collective bargaining in the early years and the growing legislation on gender discrimination made litigation the most viable option for women. The employment tribunals, however, initially were not responsive to women's demands for equal pay. Throughout the 1980s, the Equal

[58] See Alter and Vargas (2000), Colling (2006), Conley (2014), Deakin et al. (2015), and Guillaume (2015) for an overview of the litigation strategy in the pay equity movement.

Opportunities Commission (EOC), set up as an independent public body,[59] was instrumental in driving litigation efforts to the Court of Justice of the European Union (CJEU, formerly European Court of Justice) (Alter and Vargas 2000). The pay equity movement quickly became a highly influential litigation campaign at the national and international level, and the CJEU set numerous precedents on this issue. Gradually, trade unions have come to play a central role in leading litigation efforts, with the increase in litigation being principally concentrated in the public sector (Colling 2006; Deakin et al. 2015). Indeed, researchers repeatedly underscored "the crucial role played by a small number of local trade unionists in the development of equal pay litigation" (Guillaume 2015; see also Colling 2006; Deakin et al. 2015).

Trade unions, therefore, have come to be more responsive to the demographic changes in their membership base and have also used successes in leading litigation as leverage to recruit members in an economy with growing female labor participation (Howell 1996). Moreover, the threat of litigation against unions for failure to represent the interests of their members also played a role in persuading the reluctant unions to take this issue more seriously.[60] On the whole, the judicialization of employment relations and the decades-long gender discrimination litigation led unions to acquire expertise in using legal resources and become "repeat players," both in employment tribunals and before the CJEU. Research shows that individuals not supported by unions have had less success in employment tribunals (Pollert 2007). The leadership of trade unions was critical to ensure organization of collective litigation efforts. In one case, for instance, UNISON secured a £300 million settlement for over a thousand women (*Wilson v. North Cumbria NHS Trust* 2005).

[59] Similar to the Equal Employment Opportunity Commission in the US, the EOC was established in 1975 to oversee the implementation of gender discrimination law.

[60] These has been one such litigation brought against a union, *GMB* v. *Mrs Allen and others*, (2007) IRLR 752 ETA.

Identifying the European Court of Human Rights as a Legal Opportunity

Judgments of the CJEU have been very influential on discrimination cases and in other areas of labor rights. However, the Luxemburg Court proved to be much less interested in the protection of trade union rights. As noted in the previous chapter, the CJEU prioritized the business interests of employers and member states over workers' collective rights. The ECtHR, on the other hand, as a court not bound by the duty to uphold business interests, is in a much better position to protect trade union rights, and the enactment of the 1998 Human Rights Act gave effect to the Convention at the domestic level. At the domestic level, employment tribunals eventually became more attentive to discrimination claims after decades-long litigation campaigns, but not to trade union rights claims. The fulfillment of complex ballot requirements by trade unions before taking industrial action, restrictions on collective bargaining, and a judicial system unresponsive to employers' attack against unionization in the workplace had left labor activists without remedies. When I asked about why they turned to international human rights law at the time, John Hendy QC, a leading labor lawyer who advised in or represented all ECtHR cases since the 1990s, explained to me that "we've got nowhere to go. You know, the Labour Party does nothing for the trade union rights, there's no effective opposition to the government. So where can we go? Naturally, we've looked at the international institutions." As a result, *legal advocacy groups identified the ECtHR as the target institution.*

Labor activists were looking for an alternative legal standing to justify their basic right to unionize. The most appropriate institution for claiming labor rights was certainly the ILO. Trade unions filed numerous petitions with the ILO. Adrian Weir, Unite's Assistant Chief of Staff, explained how they first turned to international law: "One of the issued we picked up on was all of these ILO Conventions that nobody particularly thought was that important. All of a sudden, [they] assumed a much greater importance." Hendy similarly noted that the first institution they

turned to was the ILO, followed by the ESC: "Really the first real go was the case I drew up for the National [Union of] Mine Workers in 1989 to the ILO when we attacked every aspect of the anti-union legislation. We've been hammered away in the ILO ever since. And, we managed to get stuff to the European Committee of Social Rights." At the time the 1988 Employment Act had introduced the infamous ballot requirements that considerably limited strike action. As a result of the complaint filed by Hendy and other labor activists, the ILO's Committee on Freedom of Association condemned these restrictions to no avail. Under the leadership of the Conservative government, the UK de-ratified 13 ILO Conventions, violated several of its obligations under the ESC, and refused to sign the new protocols of the ESC regarding workers' rights.

The development of the famous *Wilson* case, the first pro-union judgment of the ECtHR, also followed a similar trajectory before being taken to the ECtHR. As noted in Chapter 2, the case drew national attention to the declining trade union power in the newspaper industry. At the same time, employers' efforts to dispose of unions by offering better contracts to non-unionized workers—and the Government's evident support for employers by way of a hastily passed legislation—caused controversy. The unions, NUJ and RMT, first sought remedy at the ILO. In a series of reports, the ILO's Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations criticized the Ullswater Amendment (which had been passed in Parliament right before the House of Lords, the highest appeal court at the time, delivered its final ruling), the relevant legislation from the Trade Union Reform and Employment Rights Act, and the series of domestic rulings on the *Wilson and Palmer*[61] cases. Next, the UN Committee on Economic, Social and Cultural Rights raised concerns about the UK

[61] As noted in Chapter 2, initially the two unions had filed two separate lawsuits, but they were merged during domestic proceedings.

Government's noncompliance with ILO's recommendations. In its Concluding Observations, the Committee found that dissuading workers from joining a union by way of financial incentives violates Article 8 of the Covenant on Economic, Social and Cultural Rights. The Council of Europe's (CoE) Committee of Independent Experts similarly found that the current legislation and practice violated Article 5 (the right to organize) and Article 6 (the right to collective bargaining). Following this report, the Committee of Ministers of the CoE, the executive arm of the CoE overseeing the implementation of ECtHR judgments, urged the government to change the relevant legislation. The UK stood its ground, disregarding all international pressure.

When Hendy advised NUJ and RMT to apply to the ECtHR for the *Wilson* case in 1995, the unionists did not have many reasons to be hopeful. At the time, the ECtHR had not been attentive to trade union rights cases. In fact, in cases from the UK, the ECtHR had denounced closed shop as a violation of individual workers' rights (*Young, James, and Webster v. UK* 1981). Additionally, in three consecutive cases, the Court had dismissed the claims of public sector workers at Government Communications Headquarters (GCHQ) who were denied the basic right to unionize.[62] As noted in the previous chapter, the Court signaled an interest in expanding the scope of Article 11 (the freedom of association) to trade union rights for the first time the in the *Gustaffason v. Sweden* case of 1996. Thus, in many ways, and as noted by Hendy, the *Wilson* case was a test case: "The idea was to find a case that we could fight and if necessary take all the way." But Hendy also admitted that, initially, he was more hopeful about winning the case in domestic courts than at the ECtHR. After the House of Lords decision, there was no other option left at the domestic level. Hendy explained that the ECtHR was their only option:

[62] These cases were brought by the Council of Civil Service Unions in three consecutive cases, all of which were declared inadmissible: *R.A. and W.M. v. UK* 1987; *CCSU and others v. UK* 1987; and *M. A. and 39 others* v. UK 1988 (see Table 4.1).

> The possibility of what the European Court offered appeared to be a real opportunity for progress, given there was no prospect of a Labour government ever reversing the changes that Thatcher had brought about in legislation. So, we saw an opportunity to find another way around it. And it had to be worth having a go. Even if the odds were low, it still was worth having a go.

Given the ECtHR's careful attention to other international instruments in expanding its trade union rights jurisprudence throughout the 2000s, it is not surprising that the ECtHR handed down its first pro-union judgment in the *Wilson* case, which had already attracted so much international attention. The Court relied on both the ILO and the ESC in its judgment (paras 34, 48) in developing the right to unionize under Article 11. Contemplating the success of trade union rights cases coming from the UK, Hendy noted that the repressive domestic environment against trade unions has demystified the UK's position as a leader of democracy and human rights:

> Restrictions on the right to strike, the absence of any promotion of collective bargaining and so on.... When those matters came before the court, I think the judges from other jurisdictions have been shocked that the UK performs, you know, no better than Turkey does. Whereas previously, there's been this myth that Britain was, you know, [a] long-standing democratic country, [with] liberal traditions, progressive laws, etc. etc….

Today, labor lawyers still view the ECtHR as the key international organization on trade union rights. "The tradition has been that the members of the Council of Europe, including the UK, abide by the ECtHR, whereas the decisions of the ILO, they just ignore them," Hendy explained. When the HRA came into effect in 1998s, the ECtHR litigation gained even more importance. Comparing the ECtHR judgments to other international law, Michael Ford, another barrister involved in taking many ECtHR cases said:

> [When] the HRA came into effect…[the Convention] had been incorporated into domestic law. In a sense, that is precisely the same as the ILO Conventions, to which the UK is a signatory. But yet, those are not… they've never been picked up that way... All the potential conventions, like the UN Covenant on socioeconomic rights [the Covenant on Economic, Social and Cultural Rights], all of those never fed into domestic law. Other than in a very, very superficial way.

The ECtHR, therefore, provided a unique opportunity for litigating trade union rights.

British Legal Advocacy Groups and the ECtHR Litigation Strategy

A defining feature of trade union rights litigation before the ECtHR is that it is led by a very small group of lawyers. It would not be an exaggeration to say that the ECtHR litigation within the past two decades is organized and coordinated primarily by two people, John Hendy and Keith Ewing. John Hendy is a barrister at the Old Square Chambers, based in London. He has represented unions and worked on workers' rights cases his entire career as a lawyer. Table 4.1. shows that Hendy has either directly represented or provided legal advice on every single ECtHR case delivered case since 2002. Keith Ewing is a labor law scholar at King's College London. He also advised and supported almost all trade union rights cases at the ECtHR since *Wilson*, if not always in a formal capacity. Since the early 1990s, they have been working on selecting cases and encouraging unions to take cases to the ECtHR. Together, Hendy and Ewing established the pro-labor organization, Institute of Employment Rights (IER) in order "to inform the debate around trade union rights and labor law by providing information, critical analysis, and policy ideas through our network of academics, researchers, and lawyers" (IER website).

Hendy and Ewing also famously authored *A Manifesto for Collective Bargaining*[63] in which they suggest ways to restore collective bargaining in the UK and provide more security for workers in precarious conditions. The *Manifesto* was adopted by the Labour Party going into the 2017 elections and by major trade unions.

The litigation strategy was devised by labor lawyers who consulted with trade unions to *engage in strategic litigation* at the ECtHR. Hendy and Ewing note that they file suits for only those cases that they believe have a chance at setting precedents or for those that they can use to leverage legislative changes at the domestic level. In that sense, their strategy is not to flood the Court with individual cases. Instead, they aim to have the Court recognize the collective dimension of labor rights, a goal in which they have been successful. The fact that there is only a small group of lawyers has been an advantage in allowing them to engage in strategic litigation and not to worry about inexperienced lawyers muddying the waters. Commenting on the small number of barristers who take these cases to the ECtHR, Hendy says, "We have been very lucky [to be able to] preserve a monopoly [on taking cases to the ECtHR], which means that we have been able to devise the strategy" and engineer cases.

Table 4.1. shows very few lawyers working on trade union rights cases have become repeat players before the Court. Michael Ford, QC, a barrister at the Old Square Chambers based in Bristol, has also worked on many of the ECtHR cases. He also has one foot in academia (at the University of Bristol Law School) and has worked with trade unions most of his career. Prior to his current position, he gained expertise in human rights law while working at Doughty Street Chambers. In addition to working on the ECtHR litigation, he has taken numerous cases

[63] The *Manifesto* was first launched in 2013, later in 2016 it was extended into an edited volume called *A Manifesto for Labour Law: Towards a Comprehensive Revision of Workers' Rights* (Ewing and Hendy 2016).

regarding discrimination and working time to the CJEU. In the early years, he explains that "it was often John would bring me in, because I think he would often get the cases and I'd be the one doing a lot of the drafting." But now, through his connections, trade unions directly contact him as well. Ford similarly notes that "most domestic employment lawyers are pretty ignorant on the human rights stuff." He describes his involvement in litigation efforts as "reactive" and confirms that Hendy undertakes the strategic aspect of picking and taking test cases.

There are also solicitor firms that collaborate with these barristers in taking cases to the ECtHR. Most notable is Thompsons Solicitors, a legal firm that historically represented trade unions. Ford notes disappointedly that the legal profession is changing and that now

> there are only a few firm of solicitors in this country who really do trade union work, Thompsons being the main one.… In the past, anyway, it used to be more the case that barristers would act only for trade unions or employers, probably reflecting more of a polarized industrial relations. That model is breaking down, and most people act for both sides.

In addition to the small group of lawyers, academics who work on labor law, such as Sandra Fredman, Tonia Novitz, and Alan Bogg, also provide substantial pro bono support to ECtHR applications on labor rights cases.

Convincing trade unions to take cases to the ECtHR has not been very easy. The more conservative unions are especially reluctant to take cases to the ECtHR, and lawyers sometimes feel that it is like "herding cats" to organize and convince unions that it is a worthwhile process. Hendy says that "we've been constantly saying to our pals in the movement, look there's a crack of gold here …; just give us the bowl, and we'll have it filled." The first question unions ask is the cost of litigation. Hendy explains that they are pleased to find out that there are no legal fees

to taking cases to the ECtHR[64] and they say, "Okay if you want to go with it, go with it. Tell us when it's over!" Hendy serves as standing counsel to several trade unions, including ASLEF, NUJ, RMT, POA, UNITE, and UCU. Unions adopt varying attitudes with regard to litigation at the ECtHR; the more radical, left-wing unions are much more eager to use international law.[65]

One of the advantages of this type of strategic litigation is that unions undertake litigation efforts with an eye towards securing the interests of all members, rather than winning individual cases. They *follow up litigation victories with pressure for legislative change*, in contrast to "one-shotters" who take cases to the ECtHR for the compensation award or seeking a remedy to their particular grievances. In most cases, lawyers and trade unions work together to devise a strategy on taking cases to the ECtHR. Hendy explains that *RMT v. UK* (2014) was one such case. Hendy, alongside RMT's charismatic and radical leader, Bob Crow, who passed away one month before the decision was announced, had long been searching for an appropriate case to challenge the UK's onerous ballot requirements and restrictions on secondary action. Much to their disappointment, the Court declared the application inadmissible. Hendy believes that the decision—declared in the aftermath of the Brighton Declaration[66]— "was not made on jurisprudential basis but purely an appeasement of the UK government's threat to leave the European convention. So, one can have no faith now that a good case is going to win at the

[64] While taking a case to the ECtHR is basically free, labor rights litigation is becoming more costly at the domestic level as the Conservative government announced in 2013 new fees for taking cases to employment tribunals. There is currently a legal battle at the Supreme Court led by UNISON. According to UNISON's report, the applications to employment tribunals fell by 70 percent in the three and a half years after the new legislation went into effect. The new fees may not have a big impact on the strategic litigation of trade union rights cases at the ECtHR, since the ECtHR cases are very few in number and are supported by trade unions. But the overall decline in access to employment tribunals has been much criticized by trade unions and labor lawyers. For restrictions on access to justice in general see Renton (2012).

[65] Similarly, based on his study of trade unions in Latin America, Anner (2011) finds that left-wing unions are more likely to develop transnational ties.

[66] Brighton Declaration was announced in 2012 after a meeting by member states and asked the Court to give more leeway to states in implementing the Convention rights. See Chapter 2.

European Court. It will be dictated by politics."[67] Victoria Phillips and Richard Arthur, solicitors working for Thompsons, also confirm that the primary motivation for them and for the unions in the cases they represented, with counsel from Hendy, was changing legislation.

The UK is home to a dense network of legal advocacy groups leading litigation efforts at the ECtHR. One of the most important contributions of NGOs and legal advocacy organizations to ECtHR litigation is undoubtedly *third party interventions*. Labor rights' secondary place within human rights can be observed in NGOs' attitudes towards labor. Some of these NGOs, such as AIRE Center and Interights,[68] have strong transnational ties and have been instrumental in taking numerous cases, ranging from minority rights to LGBT rights, to the ECtHR from all over Europe.[69] Most of these legal advocacy organizations, however, work on civil and political rights cases. AIRE Centre, which took hundreds of cases to the ECtHR, for instance, has been involved in some labor rights cases regarding migrant workers but not in any of the trade union rights cases. During interviews with these legal advocacy groups, they noted that they do not have any personal networks with labor lawyers/trade unions. Hence, they did not consider taking on trade union rights cases.

Personal networks are indeed crucial. All three organizations that have made third party interventions so far—Liberty, TUC, and ETUC—have direct ties to trade unions and make third-party submissions in support of the applicants, where necessary. Third-party interventions, which are similar to amicus curiae briefs in the United States, specifically contribute to making a case that the issue at stake has implications beyond the present case. ETUC, in particular, is credibly

[67] For a detailed opinion on this case, see Bogg and Hendy (2014).
[68] Interights had been involved in taking some socioeconomic rights claims to the ECtHR, particularly on the right to health, but the organization was dissolved in 2014.
[69] A growing body of literature documents the role of these organizations, equipped with financial and legal resources, in leading human litigation campaigns (Bowring 2012; Van der Vet 2012; Van den Eynde 2013; Hodson 2013; Cichowski 2016; Kurban 2017).

able to tie the particulars of a case beyond the UK and to point out the consequences for Europe at large by, for instance, drawing attention to declining collective bargaining coverage around Europe. TUC and Liberty, on the other hand, provide crucial background information on the case, including the legal context, the conditions of trade unions in the UK, and transformation of domestic labor relations over time. Additionally, all three organizations provide information about relevant Europe-wide trends that help the ECtHR judges determine the "European consensus" on the issue and other relevant international standards, such as the ILO Conventions and ECSR reports.

Liberty, the UK's oldest organization advocating for civil liberties, is the only human rights organization that supports trade union rights litigation at the ECtHR. Liberty has indeed been involved in ECtHR cases since back in the 1980s, under the predecessor of Liberty, the National Council for Civil Liberties (see Table 4.1.). At the time, Harriet Harman, who later became a prominent member of the parliament and assumed leadership in the Labour Party, had led these litigation efforts. None of the trade union rights cases had been successful. However, together with the General Secretary of the NCCL, Patricia Hewitt, Harman successfully proved before the ECtHR that their activities at the NCCL were being intercepted by the intelligence services.[70] Currently, Corrina Ferguson's ties with the unions as well as with Ford and Hendy are instrumental in maintaining Liberty's support in trade union rights cases.

The pro-labor organizations and legal professionals also serve as "translators" by *communicating human rights law to workers* through various mediums. The IER is an influential pro-labor organization that brings academics, legal professionals, and union leaders together to

[70] Harman and Hewitt argued that the Military Intelligence, Section 5 (MI5) had illegally collected secret information about their work *(Harman and Hewitt v. the United Kingdom* 1992).

collaborate on furthering labor rights in the UK. It organizes conferences and seminars, publishes journals, and conducts research related to human rights law specifically for the use of trade unions and labor activists. These events, and the written material they produce, inform workers on the growing body of labor rights protected under the Convention and the latest ECtHR judgments on a range of issues, from privacy in the workplace to the right to strike. The International Centre for Trade Union Rights (ICTUR) is another pro-labor organization that advocates trade union rights. ICTUR publishes the journal International Union Rights and defends trade union rights in the UK and worldwide by observing trials and publishing reports based on international standards on trade union rights. Similarly, Thompsons Solicitors also publish informative reports for unions to keep them up to date on labor law changes. As Chapter 6 will show, the legal advocacy groups have been key in drawing blacklisted workers' attention to the ECtHR and in leading them to adopt human rights language in their campaign efforts. Hence, the dense network of legal advocacy networks has not only supported litigation efforts but also actively contributed to knowledge production on claiming labor rights as human rights by working closely with the unions.

Turkey

The Legal Culture and the Trade Union's Changing Attitudes towards Law

The 1961 Constitution, often regarded as the most liberal constitution in Turkey's history, provided broad freedoms for trade unions (Sakallıoğlu 1992; Özbudun 1991). As noted in Chapter 2, this was a period of intense mobilization led by unions as well as a period of ideological polarization in society at large. In contrast to the "collective laissez-faire" that characterized the pre-1980 industrial relations in the UK, where trade union rights were not regulated in the absence of a written constitution, the 1961 Constitution in Turkey set out a liberal legal framework for collective bargaining and strike activity. However, in both countries,

since strong unions were able to solve industrial disputes through collective action, a litigation strategy was neither endorsed, nor needed by unions.

The concept of *hukuk mücadelesi* (legal struggle) entered the Turkish trade unionists' lexicon in large part due to the unionization efforts of public sector workers in late 1980s. Public workers' unions were formed through simultaneous grassroots mobilization and legal struggles during this period, bearing all the qualifications of a strong legal mobilization. Chapter 6 discusses the struggle of public sector workers from a legal mobilization perspective. Most importantly, the legal struggle primarily rested on international human rights law, since the domestic conditions were restrictive. İrfan Kaygısız, who is currently working at a private sector union, Birleşik Metal İş, but was a trade union official at Tüm Bel Sen involved in preparing the *Demir and Baykara* case, explained why public sector unions, as opposed to private sector unions utilized the ECtHR litigation strategy: "Since public sector unions have shaped their struggle on the basis of…Article 90 [of the Constitution and] international law… [public sector unions] have been operating through this channel since the 1990s up until today." Erhan Karaçay, a trade unionist active in public sector unionism since its inception in the 1980s, who later litigated his own case regarding the right to take collective action (*Karaçay v. Turkey* 2007), similarly explained to me that the public sector workers "made our debut relying on Article 90 of the Constitution."

The 1982 Constitution was much more regressive in terms of the rights and freedoms set out, and its impact on trade union activism at large was catastrophic with one notable exception. Unlike its predecessor, the 1982 Constitution did not preclude public sector workers from forming a union. Moreover, Article 90 of the Turkish Constitution gave effect to international law, stating that ratified international treaties had a direct impact on domestic law. Whether the lack of regulation implied a right to unionize, or a prohibition thereof, had been a subject of

much scholarly debate (Chapter 2). Public sector workers relied on international law to establish their right to unionize in the absence of an explicit prohibition in domestic legal provisions. At the same time, unionists were subjected to systematic repression by different state authorities: their publications were closed, public workers who tried to join trade unions received disciplinary punishments, their unions were folded, and their attempts to participate in national holidays with union banners were prevented. In February 1991, Vecdi Gönül, the Minister of Interior at the time, attempted to resolve the issue once and for all by issuing a circular that prohibited the establishment of trade unions in the public sector.[71]

In response, workers mounted an influential unionization campaign, of which litigation comprised a significant part. The controversy resulted in conflicted interpretations of the Constitution in a series of decisions issued by both administrative courts and civil and criminal justice courts. In a 1990 decision, the Court of Cassation (Yargıtay, the highest court of appeals for civil and criminal justice) ruled that public sector workers are not authorized to form a union, and therefore Eğitim-İş—the first public sector trade union established, in 1990—could not be considered a union. The administrative courts held a different view, however. After the October 1991 elections, the new coalition government[72] had appointed a more labor-friendly Minister of Labor, Mehmet Moğoltay. Gülmez, a renowned labor scholar and a legal advisor to Eğitim-İş, explained to me that Moğoltay was planning to push for the ratification of two new ILO Conventions, nos. 87 on the right to organize and 151 on the right of public sector workers to organize. He consulted with Gülmez and other legal scholars on the public sector workers' right to organize according to domestic laws, before proceeding with the ratification of these new

[71] Circular No. 630, February 28, 1991. See Gülmez 1993 and 2002 for a discussion.
[72] The new government was formed by the center-right Doğru Yol Partisi (the True Parth Party) and a center-left Sosyal-demokrat Halkçı *Parti (Social Democratic People's Party).*

conventions. Even though Gülmez reassured Moğoltay that there were no prohibitions in domestic laws, the government referred the issue to the Council of State (Danıştay), the highest administrative court. In the meantime, Gülmez had filed a lawsuit with a legal team against the circular issued by the Ministry of Interior in 1991. In two consecutive judgments in 1992, the First and Tenth circuits of the Council of State contended that public sector workers could establish trade unions. The First Circuit Court issued that the ILO Conventions 87 and 151 did not conflict with the Constitution, since the Constitution did not expressly prohibit public sector workers' right to unionize. A month later, the Tenth Circuit Court overruled the Ministry of Interior's circular, maintaining that prohibiting public sector workers' right to unionize is a breach of the Constitution. In 1993, Turkey finally ratified the ILO Conventions nos. 87 and 151.

The pro-worker judgments of the Council of State, as well as the newly elected government in coalition with a center-left partner, emboldened public sector workers (Gülmez 1992 and 2002). The year 1992 marked the height of public sector unionization. The number of new unions formed under different sectors of the civil service reached 41, and 25 of these later formed a confederation under KESK (Gülmez 2002). But, the attacks on trade unions had not ceased. The same year, the Istanbul Governor's office applied to the public prosecutor's office in order to suspend the communication service workers' union, Tüm Haber Sen, four days after it was established. After the legal battle in lower courts, the case was finally appealed to the Court of Cassation in 1995. Much to the disappointment of the unionists, and despite the newly ratified ILO Conventions, the Court of Cassation once again decided that public sector workers could not legally establish trade unions in the absence of statutory provisions governing the legal status of public sector unions in domestic law.

Identifying the European Court of Human Rights as a Legal Opportunity

Mesut Gülmez explained to me that once public sector workers began to organize in the second half of the 1980s, he, along with Alpasalan Işıklı,[73] assumed active roles in the movement as legal scholars and advisors. He described the political climate at the time: "You are in the aftermath of September 12 [1980 coup], there was a burgeoning desire among the people to become free again and to organize." As such, they started exploring options for public sector workers to stand on a firm legal ground to establish their unions. They were particularly interested in the potential of international law, given the emphasis Article 90 of the Turkish Constitution placed on the effect of international treaties duly put into effect. But, the options looked dim, as Turkey had not yet ratified the ILO Conventions that would allow public sector workers to organize and had placed reservations on the relevant articles of the ESC. He knew about the adverse judgments of the ECtHR on trade union rights in the early years, but thought the blanket ban on public sector's right to unionize could prompt the Court to reconsider the issue. Gülmez decided to travel Strasbourg in order to examine the decisions of the ECtHR.

Naturally, the rulings of the Court were not available online at the time. "I stayed in Strasbourg for months. At the premises of the Court, I compiled all the [relevant] rulings [on Article 11]," he explained. Since the Court had not yet signaled any interest in expanding trade union rights, Gülmez found out that the Court's judgments "were not very inspiring." Nonetheless, he noticed that while the Court had found certain restrictions on the right to organize and the right to take collective action, it never considered a case where a country imposed a blanket rule against the unionization of all public sector workers.[74] Hence, he thought,

[73] Işıklı died in 2013.

[74] During our interview, Gülmez noted that at the time he found one case where the Court maintained that only certain restrictions on public sector workers' right to unionize may be justified, even though it did not find a violation in the case. He could not remember which case it was, but he may have been referring to *the Council of Civil Service Unions v. the United Kingdom* (1987), where the Court contends that trade union rights of "employees

it was worth a shot. When in 1995, the Court of Cassation dismissed the applicability of ratified ILO Conventions in domestic law, it was all the more important to take the case to an international judicial body. *Tüm Haber Sen* case provided a perfect opportunity to file a petition at the ECtHR. Later in 2006, *Tüm Haber Sen* became one of the landmark judgments of the Court in recognizing the right to unionize.

From the beginning, KESK unions held the view that the right to form a union is devoid of its contents without the right to collective bargaining and the right to strike. But claiming the latter two rights proved to be much more difficult than establishing trade unions. Workers first sought signing collective bargaining agreements with left-wing local municipalities where the mayors, as employers, were more willing to support workers' rights. One of the first collective agreements was undertaken by the initiative of the municipal workers' union, Tüm Bel Sen, and signed with the Gaziantep Municipality under the leadership of the Mayor Celal Doğan, who later became a member of the parliament from the pro-Kurdish party, Halkların Demokratik Partisi (HDP, People's Democratic Party).

The validation of the ECtHR was particularly important, as explained to me by Ayhan Erdoğan, a lawyer and a founding member of KESK. Right after signing a collective bargaining agreement with the Gaziantep Municipality, Tüm Bel Sen's other branches started signing agreements with other municipalities in different parts of the country. Some district courts were willing to recognize the legality of the agreements. That is indeed what happened in the *Demir and Baykara* case. In 1994, the Gaziantep District Court found that even though there was an omission in Turkish law regarding public sector workers' right to organize and to sign a

whose duties are of a particularly confidential nature or who are in highly sensitive areas of Government" can be restricted. From this statement, it is likely that Gülmez inferred that other public sector workers should be free to unionize.

collective bargaining agreement, the ILO conventions, which protected these rights, ratified by Turkey had to be applied in this case. The specific national laws had not yet been enacted by the legislature. Nonetheless, the court considered that the applicant trade union did have the right to enter into collective agreements. However, when the case was appealed to the Court of Cassation, it quashed the decision of the district court. In deciding that Tüm Bel Sen had not acquired a legal personality, the Court of Cassation once again reasoned that in the absence of an explicit domestic legislation governing public sector workers' right to organize, public sector workers could not exercise the right to join a trade union or enter into collective bargaining agreements. Therefore, the court decided that the collective bargaining agreement had to be considered void. Upon receiving this final judgment, Kemal Demir, a member of Tüm Bel Sen's Gaziantep branch and Vicdan Baykara, the president of the union based in Istanbul, agreed to take the case to the ECtHR following the advice of their legal team [what made them think this would be promising?]. As discussed in Chapter 3, *Demir and Baykara* had become the most significant ruling of the ECtHR on trade union rights. The Court referenced not only the ILO Conventions that Turkey had ratified but failed to fulfill, but also the relevant ESC articles on which Turkey had reservations.

Turkish Legal Advocacy Groups and the ECtHR Litigation Strategy: The Formative Years of KESK

The Turkish legal advocacy groups' ECtHR litigation strategy has changed over time. In the early 1990s, very few cases were taken to the ECtHR on trade union rights. Just as in the UK, these efforts were mostly led by a small group of legal advisors seeking to find a legal ground for establishing public sector workers' basic trade union rights. Table 4.2. documents the list of trade

union rights judgments brought before the ECtHR against Turkey.[75] In all but one of 52 cases, the Court found at least one violation.[76] All but five cases were litigated by KESK unions, evidencing the mobilization of public sector unions before the ECtHR. The table also showcases the dramatic increase in the number of cases brought before the ECtHR from Turkey. Of the 52 judgments, 16 were submitted during the first decade in the 1990s, when KESK unions engaged in strategic litigation, and thirty-six were submitted during the 2000s. During this second phase of litigation, KESK unions started to take nearly every case lost in domestic proceedings to the ECtHR. The primary reason behind this shift in strategy is the changing nature of public sector unionism in Turkey and the alliance KESK formed with the Kurdish movement.

The principal contribution of legal scholars in the early years was *communicating human rights law to workers.* This period was marked by the rift among legal scholars and public sector workers regarding the legality of public sector unions under Turkish laws. An overwhelming majority of legal scholars believed that public sector workers could not establish trade unions, let alone engage in collective bargaining agreements or collective action. Gülmez noted that jurists were generally ignorant about human rights law and international law:

> Our concern in those years was first to establish the right to unionize [for public sector workers], so that we could establish trade unions…. Because, when you said there is also a right to strike [and] a right to engage in collective bargaining agreements, it raised goosebumps on people's skin.

The reassurance that scholars like Gülmez provided to unionists gave them legitimacy and confidence to move on with their struggle. Erdoğan confirmed that "Alpaslan Işıklı and Mesut

[75] Unlike Table 4.1., which documents all decisions and judgments against the UK, Table 4.2. only documents judgments. Since the primary purpose of the tables is to document legal advocacy group involvement in ECtHR litigation, 52 judgments suffice to illustrate the argument advanced in this chapter.
[76] The only exception is *Balıkçı v. Turkey*, where the Court struck out the case, as the case had been settled out of court.

Gülmez made important contributions to us…. They supported us by providing us very clear explanations with legal reasoning on the right to form trade unions."

The human rights knowledge produced by pro-union labor scholars was of utmost significance. As Gülmez noted, at the time, knowledge on human rights law was very limited among both jurists and the public at large. In addition to making legal doctrines and information on international treaties accessible to the legal community and unionists, scholars had the added responsibility of translating this new human rights knowledge from English or French into Turkish. The trade unionists who found out about their right to organize then started to spread this knowledge to their base by preparing and distributing pamphlets and brochures as part of their campaign efforts. The pro-union legal scholars published their work through various media, both scholarly and non-scholarly. Gülmez noted that some of his students at TODEİ, where he taught, were bureaucrats and legal professionals who worked at administrative courts as rapporteurs, investigators, and even judges. He told me that some of the judges who issued favorable decisions on public sector unions in those years had been his students.[77] It is not surprising that human rights knowledge traveled to judges through such personal networks, as there was no structured way for such information to spread. In later years, however, especially after Turkey's accession process officially started with the EU, human rights training programs became institutionalized for legal professionals. These programs have become highly influential in providing information on the growing European legal framework to jurists whom sometimes traveled to Europe to participate in training programs (Babül 2012).

During the early 1990s, a small group of legal scholars and public sector unionists *engaged in strategic litigation*. The trade unionists who worked on those early cases confirm that

[77] I was not able to verify this anecdote, as Gülmez did not remember the exact reference to such cases.

it was a small number of legal scholars who provided support for the litigation efforts. As Kaygısız told me

> Now, a large amount of [legal] basis has accumulated—five [or] 10 years ago, it wasn't like this. But, this all happened little by little thanks to 25 years of effort .... Mesut *Hoca*[78] [Gülmez] must have told you about the first years…. Frankly, nobody believed us at the time.... There were two or three legal scholars who said that we had such a right. Alparslan *Hoca* [Işıklı] was the first to find out [that we have such a right].

The public sector unions that took their cases to the ECtHR were uniformly leftist unions, all of which later formed KESK in 1995. There were also a few cases brought by DİSK unions, which were organized in the private sector. In that sense, all other public sector unions followed the path paved by KESK. The founders of the other major public sector confederations, KAMU-SEN and MEMUR-SEN, which had initially protested against the idea that public sector workers could unionize, later went on to establish their own unions.[79] In that sense, similar to the British case, left-wing unions were more willing than mainstream or conservative unions to utilize international law in Turkey. Unlike the British unions, legal professionals did not have to do much convincing. The grievances of the Turkish public sector unions were pressing and foundational. They were ready to try all options.

While the legal team that worked on the early ECtHR cases noted that they did not necessarily pick and choose cases to take to the ECtHR, they did not have to wait long before the opportunity presented itself. Ayhan Erdoğan told me that he was hoping they would have a reason to litigate a collective bargaining case so that they could establish a precedent:

[78] Turks refer to most teachers, including academics, as *Hoca*.
[79] Even today, the leaders of MEMUR-SEN, known for its close ties with the AKP government, protest against public sector workers' right to unionize. See Chapter 6 for a discussion.

> It was such a process that…we did not sit and arrange a deal [with the mayor so that he would violate the contract] like that. But it just happened to be that way…. I mean, we wouldn't go up and tell him [the Mayor], "Why did you implement it [the contract]?" [*Laughs*] But we seized on the opportunity.

Hence, Tüm Bel Sen brought civil proceedings at the Gaziantep District Court against the Gaziantep Municipality for failing to fulfill the requirements of the collective bargaining agreement. Gökhan Candoğan, the lawyer who represented and advised Yapı-Yol-Sen 's trio cases on collective action (*Karaçay v. Turkey* 2007; *Dilek and Others v. Turkey* 2007; *Enerji Yapı-Yol-Sen v. Turkey* 2009), told me that at the time, as public sector workers were subjected to disciplinary measures for participating in collective action, workers generally did not retaliate because the domestic courts did not recognize the right of public sector workers to take collective action, let alone their right to strike. But in this trio of cases, the union and the lawyers decided to litigate so that they would exhaust all domestic remedies and take the case to the ECtHR. *Enerji Yapı-Yol Sen* became the first case where the ECtHR recognized the right to strike.

Resort to the ECtHR constituted a central part of the public sector workers' mobilization efforts in the formative years of KESK during early to mid-1990s. In later years, however, KESK unions changed their litigation strategy from taking select cases to the ECtHR to flooding the Court with many cases. I argue that the change in litigation strategy is related to KESK's declining capacity in rank and file mobilization and its inter-movement alliance with the Kurdish movement. These two factors are unrelated to one another, yet together they have contributed to the rise in the number of KESK cases before the ECtHR. I examine the rise and fall of KESK's grassroots mobilization in Chapter 6. The following section discusses the influence of the Kurdish movement on KESK's ECtHR litigation.

The Changing ECtHR Litigation Strategy: KESK and the Kurdish Movement

The Kurdish issue featured prominently in ECtHR cases from Turkey since the early 1990s. A growing body of research is devoted to understanding the transnational and national mobilization structures behind these litigation as well as their impact (Cichowski 2006; Çalı 2010; Kurban 2010; Bowring 2012; Hodson 2013). A series of landmark judgments issued by the ECtHR have been highly influential in documenting and drawing international attention to the systematic crimes committed by the Turkish state—including the destruction of villages, extra-judicial killings, torture, and the restriction of civil liberties pertaining to the expression of Kurdish identity—under the pretext of the war on terror. However, much less is known about the diffusion of litigation strategy from the Kurdish movement to the labor movement. I show that as the Kurdish movement and KESK have become more intertwined, the knowledge and experience of pro-Kurdish lawyers has become pivotal in KESK's expansion of its ECtHR litigation strategy and diversifying the case law throughout the 2000s.

The human rights abuses faced by public sector unionists in Turkey were not limited to legal sanctions and prohibitions. As noted in Chapter 2, the Turkish state's assault on the left in the post-1980 period included both disempowering unions through neoliberal policies and direct violence. In the face of this violent crack-down on the left, while the trade union movement slowly dissipated, the Kurdish movement flourished. The Kurdish guerrilla organization Kurdistan Workers' Party (Partiya Karkerên Kurdistan, PKK) organized its first attack on the Turkish state in 1984, marking the beginning of a low-intensity conflict that continues in the country. At the same time, the Kurdish movement started to engage in mobilization efforts on multiple fronts, including engaging in party politics, mass protests, and human rights advocacy at the national and international levels (Romano 2006; Watts 2010). During this time, the nascent public sector workers' movement coalesced around KESK allied itself with the Kurdish

movement.[80] Intellectuals—in particular, lawyers and teachers committed to socialistic ideals—played important roles in forming and leading the grassroots mobilization efforts of both movements. For instance, one activist-lawyer I spoke with, when asked about why he decided to become a lawyer, explained:

> Those were the post-September 12 [military coup] years…I cannot exactly remember if my being Kurdish or my affinity to leftist thought had been more decisive…. Perhaps it was both of them [that led me to become a lawyer]…. I had my own thoughts about what could be done. Frankly, lawyering seemed to be an ideal profession to realize those [thoughts]. Later, I also assumed a leadership position in the Kurdish movement's legal political party and worked at the Human Rights Association.[81]

Another Kurdish lawyer, Öztürk Türkdoğan, who has been a member of SES since its establishment and served in its leadership, noted, "I always had a problem with the system. Therefore my only aim [at law school] was to become a lawyer." He went on to explain to me that he purposefully failed the oral exam required to become a prosecutor or judge, because he did not want to be part of "the system."

In addition to the ideological affinity, the violent repression both movement leaders and members faced in every encounter with the state, particularly in prisons, provided a ground for the two movements to form solidarity ties. In 1992, the Kurdish public sector workers established Yurtsever Emekçiler (Patriotic Laborers), which later formed a core constituency of KESK. Activists from this organization have later become leading figures in establishing KESK

[80] Unfortunately there is not much research that investigates the solidarity between these two movements, other than an ideologically driven critique by Koç and Koç (2010) that accuses the Kurdish movement for co-opting the public sector workers' unionization efforts. But see Özdoğan (2015) and Çelik (2014) for exceptions. Providing a detailed account of the history and development of this rapprochement is beyond the purview of this dissertation. In this section, I provide an analysis of the collaborative litigation efforts of the two movements on trade union rights issues before the ECtHR.

[81] İnsan Hakları Derneği, İHD.

unions such as BES, Eğitim-Sen[82], SES, and Tüm Bel Sen, among others. Advocating for the Kurdish political identity has become the epicenter of KESK's mass mobilization efforts (Çelik 2014; Özdoğan 2015) as well as its litigation strategy. The Kurdish unionists faced the worst forms of abuse and oppression, primarily for being active in the Kurdish movement, which the Turkish state perceived as a threat to its existence. According to a report by the Diyarbakır branch of Eğitim-Sen, 36 trade unionists, including some of the founders of Yurtsever Emekçiler, Necati Aydın, Zübeyyir Akkoç, and Hamit Pamuk, had been killed between 1992 and 1999.[83]

The first cases from Southeast Turkey regarding the rights of the Kurdish minority were brought before the ECtHR thanks to the collaboration among Kurdish lawyers and the transnational legal advocacy network they formed with human rights lawyers in the UK in the early 1990s (Çalı 2010; Hodson 2013; Kurban 2017). The London-based advocacy group, the Kurdish Human Rights Project (KHRP), served as a liaison between the local Kurdish lawyers—most of whom were based in the Diyarbakır Human Rights Association or the Diyarbakır Bar Association—and the British lawyers and legal scholars, notably, Kevin Boyle and *Françoise* Hampson of Essex University. An overwhelming majority of these cases had focused on the grave human rights violations Kurdish people faced in Southeast Turkey, primarily the right to life and the prohibition of torture. In a few cases, the lawyers tried claiming trade union rights, albeit unsuccessfully. On the whole, however, these early cases showcase that the priorities and the expertise of the transnational legal advocacy groups lay in seeking remedies for the civil and political rights of the Kurdish minority.

[82] In particular, Kurdish unionists were active in founding Eğit-Sen, which later merged with Eğitim-İş to form Eğitim-Sen.
[83] In the early years, the Kurdish trade unionists, particularly those in the Southeast, had been resentful towards their allies in Western Turkey for not demonstrating enough support for them (Özdoğan 2015).

One such case, *Akkoç v. Turkey* (2000), involved two leading figures of the Kurdish and trade union movements. The case was brought by the former head of the Diyarbakır branch of Eğit-Sen, Nebahat Akkoç, who suffered abuses by state officials and whose husband was a victim of an extra-judicial killing. Her husband, Zübeyyir Akkoç, was a Yurtsever Emekçiler founder involved in Eğit-Sen. The Court found that the Turkish state failed to protect the life of the applicant's husband and to conduct an effective investigation of his death. Furthermore, the abuse and torture Akkoç herself suffered during police custody and the threat and intimidation she was subjected to due to her ECtHR litigation amounted to violations of Article 3 (prohibition of torture) and Article 25 (the right of individual petition to the ECtHR). The Court refuted the claim that Akkoç's freedom of expression (Article 10) had been violated due to the disciplinary sanctions imposed on her in response to a statement she made to a newspaper claiming that Eğit-Sen teachers had been verbally abused, harassed, and assaulted by the police.[84] The case became a landmark judgment on extra-judicial killings and the practice of torture in Turkey. The ECtHR application prepared by the transnational team of lawyers in 1993, however, did not allege a violation of her trade union rights under Article 11, even though Nebahat Akkoç made her press statement as a trade union leader. Neither did the application problematize the state's denial of legal status to Eğit-Sen as a public sector union, even though this was the primary goal of labor activists, including Nebahat and Zübeyyir Akkoç as leading figures at Eğit-Sen at the time.[85]

[84] The Court reasoned that the Court of Cassation quashed the penalty she received, therefore, there was no violation. Akkoç, however, had argued that the penaly "had encouraged her to retire early and increased her difficulties, for example, in obtaining a passport" (para. 63). Given that the Court refuted the claim under Article 10, it is likely that it would refute a claim under Article 11, however, it would have been worth the test.

[85] A similar case, *Süheyla Aydın v. Turkey* (2005), submitted after one year after *Akkoç*, also regarded the extrajudicial killing of the applicant's husband Necati Aydın. Aydın and Akkoç's bodies were found at the same time in the same place. The same legal team this time alleged violation of Article 11, but the Court dismissed the claim, reasoning that Aydın's trade union activities "were of no interest to the authorities and that they were only investigated in relation to their alleged links with the PKK" (para. 202). The trade union rights violation in the *Akkoç* case, however, would have been arguably stronger, as it concerned a declaration the applicant herself made as a trade union leader.

Yet, given the special circumstances of this case, in particular the severity of the abuses the applicant suffered—torture under police custody and the extrajudicial killing of her husband—and the systematic nature of these violations committed by the state in the Kurdish region, it is perhaps not surprising that the human rights lawyers prioritized these issues over trade union rights.

Zengin v. Turkey (1997) indicates that this transnational team of lawyers did not have much expertise on trade union rights. In this case, the applicant was a teacher and the secretary of Eğit-Sen's Diyarbakır branch. She had been denied promotion for one year due to her release of a press statement. This time, in their submission to the ECtHR in 1993, the transnational legal team time litigated the case solely as a trade union case. They argued that the Turkish state's denial of legal status to the applicant's trade union, Eğit-Sen, and the disciplinary sanctions she was subjected to, violated her right to freedom of association (Article 11) and her freedom of speech (Article 10). The Court, however, dismissed the case due to non-exhaustion of domestic remedies. In particular, the Court noted that the applicant never litigated Eğit-Sen's legality before a domestic court. Moreover, she did not refer to her violation of her Convention rights before national courts, nor did she appeal her case to the highest administrative court in Turkey. From this perspective, this case poses a stark contrast to *Tüm Haber-Sen and Çınar*, where the legal team had consistently brought Turkey's obligations to respect trade union rights under international law and exhausted all domestic remedies, knowing that they were likely to lose the case in domestic courts.

Kurban (forthcoming) notes that the transnational alliance was based on an understanding of the division of law; the local Kurdish lawyers would provide evidence on cases and expertise on domestic law, while the British lawyers would contribute with their knowledge of the ECtHR law. The local legal team that worked on these early Kurdish cases was made up of lawyers who

documented the systematic abuses by the Turkish state both in collaboration with the KHRP and, in later years, independent of the KHRP. However, they were not labor lawyers by training. Similarly, Kevin Boyle and Françoise Hampson were internationally renowned legal scholars and experts on the ECtHR law but not on labor law.

In subsequent years, however, as the Kurdish movement and KESK became more intertwined, many Kurdish lawyers with expertise in labor law have become leading lawyers at KESK unions and have started litigating trade union rights. This alliance allowed trade union rights cases before the ECtHR to become more diversified, bringing issues at the intersection of class and ethnic identity to the fore. For instance, a prominent case involves the government's attempt to dissolve Eğitim-Sen in 2004, due to the union's decision to include in its constitution a clause stating that it defends the right of individuals to receive education in their mother tongue (*Eğitim-Sen v. Turkey* 2012). The Court of Cassation had maintained that the clause "the right to receive education in their mother tongue" posed a threat to the unitary state and the legal system in Turkey. Of the 52 judgments included in Table 4.1., 12 concern cases where members of various KESK unions, primarily teachers, have been reappointed from their service locations in Southeast Turkey to other parts of the country due to their trade union involvement. Lawyers refer to these cases as *sürgün davaları* (exile cases), as trade union members are being forced to work outside of the Kurdish region, leaving their homes and families behind. Others regard cases where workers have been subjected to disciplinary or criminal proceedings due to trade union activities involving the distribution of leaflets, participation in rallies, or giving press releases on the oppression of Kurds. Overall, twenty-four of the 52 judgments involve Kurdish minority rights and trade union rights together.

Hence, part of the reason for the increase in the number of judgments is due to the increase in actionable claims under trade union rights, arising from the intersection of class and

ethnic identity. At the same time, as Chapter 6 will show, during the 2000s, KESK started to lose its capacity to mobilize its base and its ability to influence state policy. As using case law to leverage structural changes has become less likely, individual gains started to become more important in driving KESK's ECtHR litigation strategy. Knowing that ECtHR litigation will not prevent the state from sending its members on *sürgün*, or from taking legal action against their collective action initiatives, KESK tried to at least provide some monetary compensation to its members through ECtHR litigation. Many other lawyers representing Kurdish cases since the 1990s, but not directly involved with KESK, also started to provide legal counsel and representation in these cases.

When asked about the possibility of the diffusion of litigation strategy from the Kurdish movement to KESK, both Turkish and Kurdish lawyers were careful to recognize the work undertaken by committed lawyers and legal scholars in the early 1990s to provide a legal ground in international law for KESK unions. When talking about the ECtHR litigation in the formative years, Kaygısız explained that "the use of the ECtHR and other international law did not occur as a result of the Kurdish movement's knowledge or experience, good or bad…. KESK has sufficiently used international law, anyway. There has never been any problem with that." As Oya Aydın, a prominent Kurdish lawyer who litigated ECtHR cases for both movements, noted,

> I do not think that KESK's affinity with the Kurdish movement has been decisive in ECtHR cases during the first years, as someone who has been in the midst of both [movements] since the beginning…, Sokak mücadelesi (grassroots/street mobilization) has always been at the forefront of the socialist movement. It is also dominant in KESK. They already have such a history.

My respondents did, however, recognize that, in later years, the influence of the Kurdish movement was significant. Mehmet Tiryaki, a Kurdish legal counsel to Eğitim-Sen, stated that

the contributions of the Kurdish movement could not be underestimated, noting that "our members from that [Kurdish] region are very active and they have assumed leadership positions in our union." Türkdoğan, a Kurdish lawyer and a senior officer at SES in Ankara, similarly noted the high-ranking positions Kurdish members have assumed in KESK and explained that there is "surely an interaction" between the two movements.

It is important to note here that KESK's changing litigation strategy was not the result of co-optation by the priorities of the Kurdish movement, as some scholars have argued (Koç and Koç 2009) or the result of KESK leaders being beguiled by the promise of law, as other scholars have cautioned (McCartin 2005; Savage 2009). On the contrary, it was a survival strategy developed in response to an increasingly oppressive regime and a political context where trade unions were becoming obsolete. Chapter 6 will elaborate on this point further.

Conclusion

This chapter has examined the critical role played by legal advocacy groups in driving litigation efforts at the ECtHR. I showed that legal advocacy groups fulfill five vital functions: (1) Identifying the ECtHR as the target organization at a time when domestic governments were not responsive to the demands of unions; (2) Making human rights knowledge accessible by communicating human rights law to workers; (3) Engaging in strategic litigation by carefully selecting cases for ECtHR litigation; (4) Making, in some cases, third party submissions in support of unions in order to draw attention to the larger context of the issue at stake; and (5) Following up litigation victories with pressure for legislative and social change. The litigation efforts were led by a small group of legal scholars and jurists in both countries in coordination with trade unions at every step of the litigation. At the same time, legal advocacy groups act as

agents of change both at the international level by expanding human rights law and at the local level by vernacularizing human rights to local labor activists.

Despite these similarities, however, there were also important differences between Turkey and the UK. In the UK, a small group of committed lawyers and scholars carefully devised an ECtHR litigation strategy with an eye towards changing domestic legislation put in place during the Thatcher era. A similar strategy was also adopted by the Turkish unionists in the 1990s. During these formative years of KESK, public sector workers had no other option but to resort to international law to find a legal basis to establish the first public sector unions in Turkey. In the 2000s, however, KESK started to take to the Court almost every case they lost at the domestic level. Chapter 6 will show that the primary reason for this change in litigation strategy was KESK's weakening capacity for solving employment disputes through mobilizing grassroots support base. This chapter also demonstrated that the trade union rights litigation strategy was driven not by transnational links, as has been shown by other scholars,

At the same time, during this period KESK solidified its ties with the Kurdish movement, which led the two movements to collaborate in bringing an intersectional dimension to human rights law, drawing the Court's attention to the oppression Kurdish trade unionists face in Turkey. Nevertheless, at this time, litigation became a strategy of desperation, as KESK lost its ability to use litigation to mobilize masses and leverage structural changes. Thus, inter-movement alliances, rather than transnational ties, were key in driving litigation efforts in Turkey.

The first part of this dissertation explained the reasons driving the litigation efforts before the ECtHR and how human rights law has expanded in large part due to these demands from below. What matters most, however, is the impact of these judgments on the ground. How do we conceptualize the impact of international law? Do states take the rulings of the ECtHR seriously

and change their behavior accordingly? What role do grassroots activists play in changing state behavior? Does the availability of a new resource at the international level change the dynamics of mobilization on the ground? How do labor activists view human rights law? Do they adopt a new human rights identity? And what role do labor activists play in vernacularizing these human rights norms? The next two chapters will tackle these important questions regarding impact.

Table 4.1. ECtHR Judgments and Decisions on Trade Union Rights and Legal Advocacy Groups in the United Kingdom

Case title	Date	Imp*	Type†	Legal Representation	Lawyers advising case	Third Party Intervention	Trade Union
Smith v. UK	2017	3	D	D. Owens; D. Renton	J. Hendy QC	n/a	Unite
Brough v. UK	2016	3	D	O.H. Parsons & Partners (S. Cottingham)	J. Hendy QC	Liberty (M. Ford, QC; C. Ferguson)	UCATT
Unite the Union v. UK	2016	2	D	Thompsons Solicitors (R. Arthur)	J. Hendy QC; M. Ford QC	n/a	Unite
RMT v. UK	2014	CR	J	Thompsons Solicitors (N. Todd)	J. Hendy QC; M. Ford QC	ETUC, TUC, Liberty	RMT
POA and Others v. the UK	2013	2	D	Thompsons Solicitors (V. Phillips)	J. Hendy QC; Prof. S. Fredman QC	ETUC, TUC	POA
Roffey and Others v. UK	2013	2	D	O.H. Parsons, Solicitors firm (S. Cottingham)	J. Hendy QC; P. Edwards; M. Ford QC	n/a	Unite
ASLEF v. UK	2007	1	J	Thompsons Solicitors (V. Phillips)	J. Hendy QC; M. Ford QC	n/a	ASLEF
UNISON v. UK	2002	CR	D	J. Clinch, legal officer of UNISON	J. Hendy QC	n/a	UNISON
Wilson, NUJ and Others v. UK	2002	CR	J	Thompsons Solicitors & Pattinson and Brewer Solicitors	J. Hendy QC	TUC, Liberty	NUJ, RMT
NAFTHE v. UK	1998	3	D	M. Scott & Co.	n/a	n/a	NATFHE
Isaacs v. UK	1993	3	D	n/a	n/a	n/a	NUCPS
NALGO v. UK	1993	3	D	B. Piper & Co.	n/a	n/a	NALGO
M. A. and 39 others v. UK	1988	3	D	Lawford & Co. Law office (A. Lester, QC; R. Drabble; D. Pannick)	n/a	n/a	CCSU

Table 4.1.. Continued

CCSU and others v. UK	1987	3	D	Lawford and Co. Law office (A. Lester, QC; R. Drabble; D. Pannick)	n/a	n/a	CCSU
R.A. and W.M. v. UK	1987	3	D	Lawford and Co. Law office (A. Lester QC; R. Drabble; D. Pannick)	n/a	n/a	CCSU
K., F. and P. v. UK	1984	3	D	NCCL‡ (M. Staunton)	n/a	n/a	
X. v. the UK	1981	3	D	NCCL‡ (A. Lester QC)	H. Harman	n/a	
Sibson v. UK§	1993	2	J	J. Bowers, Barrister-at-Law; M. Beattie, Solicitor		n/a	TGWU
Halfon v. UK§	1991	3	D	Self representation	n/a	n/a	NUS
Conroy v. UK§	1987	3	D	Memery Crystal & Co., solicitors	n/a	n/a	SOGAT
Cheall v. the UK§	1985	3	D	Boyle and Ormerod Solicitors	n/a	n/a	
Temple v. UK§	1985	3	D	n/a	n/a	n/a	
Young, James and Webster v. UK§	1981	1	J	Trower, Still & Keeling (solicitors); Bodington & Yturbe (law firm)	TUC (Lord Wedderburn of Charlton)	n/a	NUR, TSSA, ASLEF

Table 4.1.. Continued

ASLEF, Associated Society of Locomotive Engineers and Firemen; CCSU, Council of Civil Service Unions; ETUC, European Trade Union Confederation; NAFTHE, The National Association of Teachers in Further and Higher Education (Later merged to form University and College Union, UCU); NALGO, National and Local Government Officers Association (Later merged to form UNISON); NUJ, National Union of Journalists; NUR, National Union of Railwaymen (Later merged to form RMT); NUS, National Union of Students; POA, The Professional Trades Union for Prison, Correctional and Secure Psychiatric Workers; RMT, The National Union of Rail, Maritime And Transport Workers; SOGAT, Society of Graphical & Allied Trades; TGWU, Transport and General Workers Union; TSSA, Transport Salaried Staffs' Association; TUC, Trades Union Congress; UCATT, Union of Construction, Allied Trades and Technicians.
*Importance by measure of ECtHR: Case reports are cases that set precedents since the inception of the new Court in 1998, Level 1 cases make a significant contribution to the development of the case law, Level 2 cases go beyond merely applying existing case law, while not making a significant contribution, Level 3 cases simply apply the existing case law
† "D" denotes decisions on admissibility, "J" denotes judgments on merits.
‡ NCCL (National Council for Civil Liberties) is the predecessor of Liberty
§ These cases were brought against unions regarding closed shop agreements.

Table 4.2. ECtHR Judgments on Trade Union Rights and Legal Advocacy Groups in Turkey

Case Title	Application date	Judgment date	Imp*	Union branch	Union Confed.	Lawyer†
Akarsubaşı v. Turkey	2011	2015	3	Eğitim-Sen	KESK	S. Aracı
Sülyeman Çelebi and Others v. Turkey	2010	2016	2	DİSK	DİSK	N. Okcan, O.M. Eyüboğlu
Tüm Bel-Sen v. Turkey	2010	2014	3	Tüm Bel Sen	KESK	S. Karaduman, S. Kılınç
Küçükbalaban and Kutlu v. Turkey	2009	2015	3	Eğitim-Sen	KESK	M.R. Tiryaki
Dedecan and Ok v. Turkey	2009	2015	3	Eğitim-Sen	KESK	M.R. Tiryaki
Doğan Altun v. Turkey	2008	2015	2	Tüm Bel Sen	KESK	S. Karaduman
Özbent and Others v. Turkey	2008	2015	2	Eğitim-Sen	KESK	N. Eldem
Bülent Kaya v. Turkey	2008	2013	3	KESK	KESK	D. Demirel

Table 4.2. Continued

Disk and Kesk v. Turkey	2008	2012	2	DİSK & KESK	DİSK & KESK	N. Okcan, M. İriz, A. Becerik, O. Ataman, Ö. Eryılmaz, O. Aydın
Eğitim-Sen and Others v. Turkey	2007	2016	2	Eğitim-Sen	KESK	N. Eldem
İsmail Sezer v. Turkey	2007	2015	3	Eğitim-Sen	KESK	U. E. Ses
Ali Güneş v. Turkey	2007	2012	2	Eğitim-Sen	KESK	K. T. Sürek
İşeri and Others v. Turkey	2007	2012	3	Eğitim-Sen	KESK	O. Aydın
Çerikçi v. Turkey	2007	2010	3	Tüm Bel Sen	KESK	S. Karaduman, S. Şahin
Yılmaz Yıldız and Others v. Turkey	2006	2014	2	SES	KESK	Ö. Türkdoğan
Fatma Akaltun Fırat v. Turkey	2006	2013	3	KESK	KESK	K. T. Sürek
Eğitim-Sen v. Turkey	2005	2012	CR	Eğitim-Sen	KESK	A. Sayılır
Şişman and Others v. Turkey	2005	2011	2	BES	KESK	S.C. Erkat
Liman-İş Sendikası v. Turkey	2005	2010	3	Liman-İş	TÜRK-İŞ	M. Bayyar, S. Kiran
Kaya and Seyhan v. Turkey	2004	2009	3	Eğitim-Sen	KESK	M. Erdoğdu
Saime Özcan v. Turkey	2004	2009	3	Eğitim-Sen	KESK	Y. Özcan
Urcan and Others v. Turkey	2004	2008	3	Eğitim-Sen	KESK	Y. Özcan
Müslüm Çiftçi v. Turkey	2003	2010	3	Tarım-Gıda Sen	KESK	S. Ülek
Karaçay v. Turkey	2003	2007	3	Yapı-Yol Sen	KESK	G. Candoğan
Çağlayan v. Turkey	2002	2008	3	Haber Sen	KESK	H. Demir
Fahrettin Aydın v. Turkey	2002	2008	3	Eğitim-Sen	KESK	E. Talay
Beyaz v. Turkey	2002	2008	3	Enerji Yapı-Yol Sen	KESK	N. Basel
Nurettin Aldemir and Others v. Turkey	2002	2007	2	Eğitim-Sen	KESK	F. Gümüş, M. Ayhan, A. Sayılır
Kazım Ünlü v. Turkey	2002	2007	3	Eğitim-Sen	KESK	H. Aygün, Ö.U. Kaplan
Metin Turan v. Turkey	2002	2006	1	Enerji Yapı-Yol Sen	KESK	H. Aygün and Ö.U. Kaplan
Gül and Others v. Turkey	2001	2010	2	Tüm Maliye-Sen	KESK	F. Kalaycı
Enerji Yapı-Yol Sen v. Turkey	2001	2009	3	Enerji Yapı-Yol Sen	KESK	S. Başel
Saya and Others v. Turkey	2001	2008	2	SES	KESK	Ş. Saya

Table 4.2. Continued

Dilek and Others v. Turkey	2001	2007	3	Enerji Yapı-Yol Sen	KESK	G. Candoğan, S. Dutar
Çetin Ağdaş v. Turkey	2001	2006	3	DİSK	DİSK	Ö. Kılıç
Soysal and Others v. Turkey	2000	2007	3	Eğitim-Sen	KESK	C. Aydın
Ürküt v. Turkey	1999	2007	3	SES	KESK	M. Kılavuz
Kızılkaya v. Turkey	1999	2007	3	Eğitim-Sen	KESK	M. Kılavuz
Ademyılmaz and Others v. Turkey	1998	2006	2	Eğitim-Sen	KESK	M. Vefa
Akat v. Turkey	1998	2005	3	Eğitim-Sen	KESK	M. Vefa
Birol v. Turkey	1998	2005	3	Eğitim-Sen	KESK	S. Kaya
Bulga and Others v. Turkey	1998	2005	2	Eğitim-Sen	KESK	M. Vefa
Ertaş Aydın and Others v. Turkey	1998	2005	2	SES	KESK	M. Kılavuz
Karkın v. Turkey	1998	2003	2	Nakliyat-İş	DİSK	S. Tanrıkulu
Demir and Baykara v. Turkey	1997	2008	CR	Tüm Bel Sen	KESK	S. Karaduman
Karademirci and Others v. Turkey	1997	2005	CR	SES	KESK	M. Ufacık and A. A. Alkan
H.M. v. Turkey	1996	2006	1	Eğitim-Sen	KESK	B. Kaplan
Tüm Haber Sen and Çınar v. Turkey	1995	2006	CR	Tüm Haber-Sen	KESK	D. Selimoğlu
Balıkçı v. Turkey	1995	2004	3	Enerji Yapı-Yol Sen	KESK	G. Dinç
Karakoç and Others v. Turkey	1995	2002	2	Türk Harb-İş, DİSK	TÜRK-İŞ & DİSK	S. Tanrıkulu
Ceylan v. Turkey	1994	1999	CR	Petrol-İş	TÜRK-İŞ	Mr. H. Kaplan
Akkoç v. Turkey	1993	2000	CR	Eğitim-Sen	KESK	A. Reidy, S. Tanrıkulu, S. Aslantaş, M. Muller

Basın Yayın İletişim ve Posta Emekçileri Sendikası (Haber-Sen) first adopted the acronym Tüm Haber Sen when it was founded in 1995, then in 1996 adopted the acronym Haber-Sen; Büro Emekçileri Sendikası (BES); Devrimci İşçi Sendikaları Konfederasyonu (DİSK); Eğitim ve Bilim Emekçileri Sendikası (EĞİT-SEN) and Eğitim İşkolu Kamu Görevlileri Sendikası (EĞİTİM-İŞ)merged in 1995 to form Eğitim ve Bilim Emekçileri Sendikası (EĞİTİM-SEN); Kamu Emekçileri Sendikası Konfederasyonu (KESK); Sağlık ve Sosyal Hizmet Emekçileri Sendikası (SES); Tarım Gıda-Sen merged wıth Orkam-Sen in 2001 to form Tarım, Orman Çevre ve Hayvancılık Hizmet Kolu Kamu Emekçileri Sendikası (Tarım Orkam-Sen); Tüm Maliye Çalışanları Sendikası (Tüm Maliye-Sen); Tüm Belediye ve Yerel Yönetim Hizmetleri Emekçileri Sendikası (Tüm Bel Sen); Türkiye Devrimci Kara, Hava ve Demiryolu Taşımacılığı İşçileri Sendikası (Nakliyat-İş); Türkiye Harb Sanayi ve Yardımcı İşkolları İşçileri Sendikası (Türk Harb-İş)**;** Türkiye İşçi Sendikaları Konfederasyonu (TÜRK-İŞ); Türkiye Liman, Deniz, Tersane ve Depo İşçileri Sendikası (Liman-İş) used to be under TÜRK-İŞ but in 2013 the union decided to join Hak İşçi Sendikaları Konfederasyonu (HAK-İŞ); Türkiye Petrol Kimya Lastik İşçileri Sendikası (Petrol-İş); Yapı, Yol, Altyapı, Tapu ve Kadastro Emekçileri Sendikası (Yapı-Yol-Sen) later emerged from Enerji, Yol, Yapı, Altyapı, Tapu ve Kadastro Emekçileri Sendikası (Enerji Yapı-Yol-Sen)

*Importance by measure of ECtHR: Case reports are cases that set precedents since the inception of the new Court in 1998, Level 1 cases make a significant contribution to the development of the case law, Level 2 cases go beyond merely applying existing case law, while not making a significant contribution, Level 3 cases simply apply the existing case law

†Data on lawyers is based on the legal representatives listed in HUDOC, but often a team of lawyers and scholars advise on litigation. More detailed information on the legal team in some of the landmark judgments is discussed in the relevant section of the Chapter.

CHAPTER 5. IMPACT AS COMPLIANCE: LIMITS OF CHANGING STATE BEHAVIOR THROUGH INTERNATIONAL LAW

The first part of the dissertation documented why and how the ECtHR has become a resource for labor activists at a time when domestic governments adopted anti-union policies. The ECtHR issued some landmark rulings in cases brought by Turkish and British labor activists and recognized the right to unionize, the right to collective bargaining, and the right to strike as human rights. The new approach of the Court, abandoning its previous narrow interpretation of trade union rights, augured new hope for labor activists, who have begun taking cases to the ECtHR in order to change domestic repressive policies. To what extent have labor activists been successful in changing state behavior through litigation? Have the judgments of the Court ensured that workers are able to engage in collective bargaining and go on strike without interference?

This chapter examines the impact of these judgments in changing state policy and judicial behavior at the domestic level. I focus on the ECtHR's implementation of judgments in cases where the Court finds a violation of freedom of assembly (Article 11). As noted in Chapter 2, the ECtHR's landmark judgments on trade union rights have been in Article 11 cases, and these cases come primarily from Turkey and the UK. There are two important differences in cases taken from these countries. First, the number of judgments against Turkey is markedly higher. The high number of cases from Turkey is directly related to the highly restrictive trade union policies and the violent form of state repression targeting trade unionists in this country. Moreover, there are also many repetitive cases from Turkey, resulting both from the strategy

adopted by legal advocacy groups in Turkey (Chapter 4) and from the state's failure to prevent further violations, as I will show in this chapter.

Despite the differences between Turkey and the UK, the findings show that both states do the absolute minimum in order to comply with the rulings of the Court and to finalize the negotiations with the Committee of Ministers (the executive body of the Council of Europe) on the execution of judgments. While the ECtHR is singled out in the literature as a court with a high compliance rate, my analysis of the actual implementation of these rulings shows that, oftentimes, domestic legislative reforms fail to reflect the spirit of ECtHR judgments. As a result, structural changes undertaken by governments frequently fail to ensure prevention of similar violations in the future, or worse, serve merely as window dressing when no actual changes have been undertaken.

The limited impact of these judgments, however, does not mean that ECtHR judgments do not deliver justice at all. First, even individual remedies—which states almost always comply with—are significant, especially in cases where individuals, rather than trade unions, are the victims and they suffer grave violations. Yet, structural changes require persistent pressure from below in order to create the political will to instigate actual reforms. Therefore, the analysis here shows that international human rights law, by itself, is far from sufficient to restore the power of organized labor.

I argue that the primary reason behind the continued violations in Turkey and the half-hearted reforms in the UK is not state capacity, as suggested by some scholars (Englehart 2009), but the lack of political will. Rectifying persistent trade union rights violations does not require many resources from the state to build infrastructure or to provide expensive services, but it does

require political will to *allow* workers to organize, engage in collective bargaining, and take collective action.

Execution of ECtHR Judgments

The enforcement of ECtHR decisions is overseen by the Committee of Ministers (the Committee), an intergovernmental body composed of foreign affairs ministers of each member state or their permanent representatives in Strasbourg. In addition to this peer review process, the Department for the Execution of Judgments of the European Court of Human Rights (the Secretariat) places institutional constraints on the Committee and promotes uniform applications of standards in order to ensure that the enforcement of human rights does not become a topic of political bargaining among members (Çalı and Koch 2014).

A finding of violation may lead the Court to award just satisfaction—monetary compensation for pecuniary or non-pecuniary damage—to the applicant or to impose an obligation on the violating state to take individual or general measures. Individual measures take the form of remedying the direct human rights violation(s) suffered by applicant, e.g., reopening the case at the domestic level or punishing perpetrators. General measures aim at preventing future violations through structural changes. For instance, the respondent state may be asked to revise its employment laws to protect trade union members from discriminatory treatment. At the same time, the compliance of domestic courts with the ECtHR ruling and the Convention in other similar cases is also an important aspect of general measures. Hence, the ECtHR monitors compliance by executive, legislative, and judicial branches.

The Court itself does not specify how judgments should be implemented, aside from determining the amount of damages the violating state should pay to the applicant. In order to prevent further violations, the Committee works with states to decide the necessary steps to be

taken both in the specific case concerning the applicant and in the general measures (Article 46(2)).[86] The Committee supervises compliance by reviewing action reports submitted by states, describing the individual and general measures they undertook. The Committee issues interim resolutions or final resolutions based on the progress states make in compliance with violation judgments. The ECtHR judgments are categorized as "lead" and "repetitive" cases. Repetitive cases are grouped under certain lead cases, where all cases within the same group require the same general measures. Once the requirements for individual measures in each case, as well as all general measures, are fulfilled, the Committee decides to close the case.

An important aspect of the execution of judgments is the participation of civil society organizations in the monitoring process by providing reports to the Committee in order to ensure effective execution of the rulings. Their participation is pivotal for providing on-the-ground information regarding whether the respondent state is actually taking necessary steps to prevent violations on multiple levels, e.g., by monitoring the compliance with ECtHR judgments by domestic courts at different levels and the extent to which legislative changes proposed by the government reflect the spirit of the ECtHR judgment. Reports from these NGOs or human rights organizations are intended to provide a check on the self-reporting of states.

Impact of International Courts

The scholarship is divided on whether human rights law delivers "empty promises" (Hafner-Burton 2005) or constitutes a force of good for better rights protection. Drawing on large-n studies of treaty ratification and protection of human rights, many scholars have argued that international human rights regimes do not improve human rights practices (Hafner-Burton and Tsutsui 2005, 2007; Keith 2002; Hathaway 2002). In fact, in autocracies, treaty ratification is

[86] In general, the Court leaves it up to the respondent state to work with the Committee of Ministers in formulating a solution, though, in exceptional cases, the Court may indicate specific measures to be adopted.

associated with worse outcomes, leading scholars to contend that these countries' human rights commitments merely serve as "window dressing" (Keith 2002; Hafner-Burton and Tsutsui 2005) or amount to "cheap talk" (Hathaway 2003; see also Neumeyer 2005; Vreeland 2008). The primary problem identified by this realist position is the lack of enforcement: international human rights regimes neither provide adequate incentives for compliance nor possess a strong coercive mechanism to prevent further abuses (Goldsmith and Posner 2005). Hence, these scholars point out a gap in states' commitments and their actual practices. Instead, these scholars argue, preferential trade agreements and economic aid can provide the hard power necessary to persuade states to comply, including implementing better labor standards (Hafner-Burton 2009; Lebovic and Voeten 2009; Postnikov & Bastiaens 2014).

Others draw a more optimistic picture of the impact of human rights regimes, emphasizing the power of norms and cooperative mechanisms in changing state behavior. Morals, shared values, and socialization processes can incentivize states into compliance (Chayes and Chayes 1995; Meyer et al. 1997; Risse, Ropp, Sikkink 1999; Goodman and Jinks 2004; Bearce and Bondanella 2007; Finnemore and Sikkink 1998; Wotipka and Tsutsui 2008). International regimes provide states with complex opportunities for learning, as well as gaining or consolidating, their legitimacy at the international level. The ratification of treaties—rather than their material interests (Checkel 2005)—can change the perceptions of political actors' range of possible actions (Meyer et al. 1997) and considerations of appropriate behavior. In particular, the diffusion of human rights norms, usually mediated by transnational advocacy groups or INGOs, can shape states' interests and, hence, their behavior. Additionally, political and cultural propensities towards human rights at the domestic or regional level can affect compliance practices (Checkel 1999; Moravsick 2000; Cardenas 2007). Although most studies in

this line of work adopt a constructivist approach and draw on case studies, some recent work provides quantitative analyses to substantiate the positive impact of human rights commitments. Simmons (2009) shows that international human rights law has a demonstrably positive effect on state behavior and that domestic politics principally determines variation in countries' compliance records. Refuting the argument that international regimes are "weak" and "ineffective," Cole (2012) concludes that ratification yields better human rights protection for treaties with superior surveillance mechanisms.[87]

The ECtHR is often singled out as the best case example from both standpoints. Unlike other human rights regimes, it enjoys the judicial authority to deliver legally binding decisions, and individuals can bring their grievances directly before the Court. It is a well-documented fact that states are much more willing to pay the compensation award than take general measures to prevent further violations (Hawkins and Jacoby 2010; Hillebrecht 2014; Helfer and Voeten 2014). Given that undertaking structural changes frequently carries heavy political and financial costs for states, this finding is not surprising. Nonetheless, one recent study determined the overall compliance with the ECtHR rulings at 45 percent, an outstanding rate for an international court (Hillebrecht 2014). Scholars have pointed out that this relatively high compliance rate owes much to the Court's strong executive body overseeing the implementation of judgments (Hafner-Burton 2005; Çalı and Koch 2014; Helfer and Voeten 2014; Hillebrecht 2014). Çalı and Koch (2014: 304) show that the peer pressure model proves to be an effective mechanism to monitor compliance because it "creates collective political ownership of compliance processes, provides a range of opportunities for constructive exchange regarding technical challenges to implementation, and exerts pressure on unwilling compliers."

[87] See also Sikkink and Walling (2007) on the positive impact of human rights trials in Latin America.

At the same time, scholars have cited liberal political traditions and a culture of respect for human rights among member states to explain the high level of influence the ECtHR retains (Helfer and Slaughter 1997; Moravsick 2000; Flyvbjerg 2001). Referencing the socializing function of international courts, Helfer (2008: 135), explains that the effectiveness of the ECtHR does not come from its coercive power; "rather, it requires the skillful use of persuasion to realign the interests and incentives of decision-makers in favor of compliance with the tribunals' judgments." Viewed from this perspective, the ECtHR does not really have hard power over its member states. Expelling states from the Council of Europe system or suspending their membership does not constitute substantive coercive measures if states do not wish to comply in the first place. Resorting to such measures could ultimately hurt the Court's legitimacy. Instead, states' concern for their reputation and place in the international community (Guzman 2008) as well as "habitualization" of norm-abiding behavior (Ropp, Risse, Sikkink 1999) are the driving factors in favor of compliance.

The overwhelming majority of studies on compliance with the ECtHR, however, utilizes data provided by the Court. The ECtHR facilitates such research by providing an online database where measures taken by each state in compliance with judgments can be accessed. The Court's data allow researchers to conduct quantitative analyses of cases complied with by each state, as well as their schedule of compliance. Relying on an international court's assessment of compliance, however, may provide a misleading understanding of the actual impact of such judgments on the ground. While the Committee makes an effort to conduct a holistic analysis of implementation by taking reports from NGOs into consideration and by analyzing the judicial practices on similar cases at the domestic level, the Committee itself is not always the best arbiter regarding compliance. The Court may be able to analyze in full the individual case before

it, but assessing on-the-ground impact requires a detailed analysis of domestic practices and taking seriously voices from below. While NGO reports are important, for this purpose, they are based on the voluntary initiatives of domestic NGOs, rather than a required or routine part of the Court's examination of compliance. As I show below, no NGO reports have been submitted to support the implementation of trade union rights cases from Turkey or the UK. The lack of NGO support in the execution process of labor rights, and the presence of such support in civil and political rights cases, is another indication of the civil and political rights bias of NGOs in general.[88]

My analysis shows that, despite the importance of access to an attentive international court when states are unresponsive to citizen demands and grievances, ECtHR rulings have very limited impact on protecting rights. States undertake half-hearted legislative reforms in order to fulfill the requirements of the Committee and close a case. In every single case I analyze below on labor cases from both Turkey and the UK, the state's response failed to fulfill the expectations of trade unionists. Often times, the reluctant reforms undertaken to comply with ECtHR judgments fall far short of securing the core human right identified by the ECtHR or preventing future violations. At best, states take legislative reforms prior to the ECtHR judgment due to pressure from below and not as a result of the Committee or the Court.

The findings also show that neither state capacity nor regime type is a determining factor in compliance with ECtHR rulings. Turkish labor activists bring more rights violations from a more repressive domestic environment. The findings demonstrate, however, that the Turkish state has either closed the violation judgments against it or has made much progress in remedying the issue according to the Committee's reports in all 11 lead cases except one:

[88] See Chapter 4 for a discussion of the role of NGOs in legal advocacy in Turkey and the UK.

disproportionate police violence against peaceful protestors. This latter issue is a recurring theme in general applications from Turkey and not just limited to a trade union rights issue. Yet, a closer examination of the general measures Turkey undertakes to comply with the judgments shows that these measures are far from securing basic trade union rights. The legislative reforms undertaken by the UK against the fewer number of violation judgments are equally unsatisfactory for trade unionists. It is also important to note that the types of violations in these cases, such as the right to unionize, the right to strike, and the right to collective bargaining, are not issues that linger due to state capacity. On the contrary, violations persist due to a deliberate refusal by the states to give concessions to trade unions. Hence, the problem of limited impact here is not one of state capacity, but one of a lack of political will—and the problem of political will cannot be resolved merely by pressure from the ECtHR.

Recent studies show that domestic negotiations among political elites are important determinants of when and how states comply with international law (Simmons 2009; Kang 2012; Hillebrecht 2014). In her analysis of the UK's compliance with ECtHR judgments, Hillebrecht (2014) describes the UK's behavior as "begrudging compliance," meaning that, due to strong political institutions and tradition of rule of law, the UK takes ECtHR judgments seriously and complies with them, albeit unwillingly. My findings, however, show that this resentful or begrudging compliance is a qualitatively different form of compliance from simply implementing the requirements of international law. States do not ultimately solve the problems creating further violations when their only incentive in doing so is closing a case at the ECtHR judgments. States' reluctance to comply with the ECtHR judgments materializes itself as lack of safeguards for trade union rights on the ground. Based on a mixed-method analysis of six Western democracies' compliance with the ECtHR (including the UK), and similar to the

findings here, Von Staden (2009) shows that states do the absolute minimum in order to comply with ECtHR judgments. He argues, therefore, that both the realist and the constructivist approaches contain some truth—the international system may socialize states into compliance (constructivism)—but reforms undertaken by states in compliance with an international court's ruling are destined to be short of creating meaningful change on the ground (realism).

Other qualitative studies point to mixed results on ECtHR compliance. Drawing on findings from eight different case studies, Anagnostou (2013:214) shows that issues regarding minority rights or the security concerns of states are met with "non-implementation, or with minimal or extraneous remedial measures." However, other forms of pressure, such as EU candidacy, can serve as an incentive for states (Holzhacker 2013). Additionally, a large number of studies show that NGOs play a key role in forcing states into compliance both with ECtHR rulings and other international law (Keck and Sikkink 1999; Risse, Ropp, Sikkink 1999; Hafner-Burton 2005; Simmons 2009; Anagnostou 2013; Holzhacker 2013). Yet, as discussed in Chapter 4, NGOs or INGOs pay little attention to trade union rights issues.[89]

On the whole, the analysis in this chapter shows that the direct remedies of ECtHR judgments are limited and do not provide an effective protection of trade union rights at the domestic level.

Methodological Approach to Analyzing Compliance with ECtHR's Trade Union Rights Judgments

By compliance, I refer to the specific measures states have undertaken in order to conform to the judgment. Following the ECtHR's measure of compliance, I look at both the

[89] See Chapter 6 for a discussion on grassroots mobilization.

individual remedies and the general measures undertaken by states (Table 5.1.). I compare the ECtHR's standards for satisfactory compliance to close a case with the actual effect of these judgments on the ground by analyzing reports by domestic human rights organizations, international organizations (such as the ILO and the EU) and responses and comments by local labor scholars and trade unions.

In Chapter 3, I presented the ECtHR's expansion of its labor rights jurisprudence, and showed that the ECtHR delivered its most dramatic and influential judgments in cases related to trade union rights. In my analysis, I included a broad array of trade union rights cases, including those cases where the ECtHR refuted the claim that the applicant's trade union rights were violated under Article 11. In such cases, the Court may have dismissed the claim or found a different rights violation—for instance, the applicant's freedom of speech (Article 10) or the freedom from torture and ill-treatment (Article 3). However, in cases where the Court does not find the violation suffered by the applicant to be related to trade union freedoms, it does not require the state to undertake structural changes regarding trade union rights in the country. The purpose of this chapter is to show how states implement the ECtHR's judgments when the Court finds a violation regarding trade union rights. Therefore, the cases included in this section are judgments on merits (not decisions on admissibility) where the Court finds a violation of Article 11.

Once the ECtHR judgments are transferred to the Secretariat, the cases are categorized as lead or repetitive cases. Lead cases are those requiring general measures to be undertaken by the violating state, and this categorization often mirrors the ECtHR's assignment of importance level. In other words, cases with high importance level often end up being categorized as lead cases by

the Secretariat.[90] The progress on the execution of judgments, the action plans on compliance submitted by states, the Committee's reviews, and the NGO reports on compliance are available online in HUDOC.EXE. However, this is a relatively new website, and not all information is available online for every case. In my analysis, I have not had any trouble accessing information on lead cases, but some of the repetitive cases (from Turkey) did not have up-to-date information available regarding individual measures. Nonetheless, since lead cases contain all the information on general measures, I have been able to observe the structural changes undertaken by states in response to ECtHR judgments.

The United Kingdom

There were fewer cases brought before the ECtHR from the UK than from Turkey. In two cases,[91] both of which were lead cases, the Court found Article 11 violations, and there were not any repetitive cases (Table 5.1.). Despite being few in number, both of these cases were case reports categorized as "case reports" (most important cases) developing the ECtHR case law, and have been referenced repeatedly in the ECtHR's subsequent case law on trade union rights.

As noted in Chapter 2, the Human Rights Act (HRA) of 1998 embedded the ECtHR law into the domestic legal system. Under the HRA, the Convention and the ECtHR case law became a direct resource for UK judges to apply in domestic courts. The act requires that judges interpret domestic laws "in a way which is compatible with the Convention rights" (Section 3(1)). In case of a conflict with domestic laws, judges are to apply domestic laws, but they may issue a "declaration of incompatibility" and ask the parliament to resolve the conflict through new

[90] The ECtHR assigns importance to cases based on their contribution to developing case law. See Chapter 3 for details.
[91] *Wilson* is composed of three different applications (30668/96, 30671/96, and 30678/96) that the Court joined together.

legislation (Section 4). Moreover, the Joint Committee on Human Rights (JCHR), a parliamentary committee with members from both sections of the House, was established in January, 2001. The purpose of the committee is to examine human rights issues in the UK and to advise the parliament. When the UK receives a violation judgment from the ECtHR, the JCHR first prepares a report to Parliament on the general measures that need to be undertaken in order to comply with the judgment.

The Rights to Unionize and Collective Bargaining

i. **Reforms and Glimpses of Hope.** The first case from the UK is *Wilson* (2002), concerning the issue of whether a company can offer favorable contracts to workers choosing to opt out of collective bargaining. The applicants refused to sign individual contracts with their employers, and hence, received less pay. The case was highly politicized at the domestic level, both in parliament and in the media, as the parliament under Conservative majority had passed last-minute legislation in order the prevent the House of Lords, the highest court of appeal at the time, from issuing a decision favorable to the unions (Chapter 2). As a result, in its final decision, the House of Lords upheld the importance of workers' individual choice and flexible employment relations over trade union rights. The ECtHR, however, in a landmark judgment decisively precluded such acts as attacks on trade unions since the practice aimed at inducing workers with short-term financial benefits to forgo their trade union rights.

Two years after the ruling, the government, led by Tony Blair's Labour Party, passed the Employment Relations Act (ERA) of 2004 in order to comply with the ECtHR judgment. The Act amended the Trade Union and Labour Relations (Consolidation) Act (TULRCA) of 1992 to protect workers against pressure from employers to give up their trade union rights. In particular, section 145A includes a right not to have an offer made to the worker with "the sole or main

purpose of inducing the worker" from joining an independent union, participating in trade union activities, or using "trade union services." Furthermore, the Act protects workers against detriment or dismissal due to using trade union services (sections 146 and 152). In the event that such an offer is made to a worker, or a worker is subjected to detriment due to using trade union services, the worker (or the former worker) may bring a complaint before an employment tribunal. Upon finding these new protections satisfactory, in 2011 the Committee decided to close the case.[92]

ii. **Limitations and persistent violations**. A closer inspection of the legislative changes, however, reveals a different picture. The ensuing legal changes to TURLCA 1992 provided meager protections for workers' trade union rights against employers. The government largely disregarded the calls by pro-labor institutions and trade unions to radically change the employment laws to reflect the ECtHR's progressive judgment. The Institute of Employment Rights, for instance, called for comprehensive revisions, including prohibition of any attempt by employers to deter or prevent workers from joining a trade union or participating in its activities, as well as clarifications to broad definitions contained in TULRCA in order to prevent similar issues from arising (Hendy and Jones 2003). The government, however, ignored these requests. Numerous problems were pointed out by labor scholars and lawyers about the implications of the new amendments (Bogg 2005; Collins et al. 2012; Smith 2009). First, the term "union services" is ambiguous and does not include collective bargaining (145B). Despite the clearly stated obligations of the state regarding collective bargaining agreements in the ECtHR judgment, the new legislation explicitly states that collective bargaining is not regarded as part of union

[92] Closing a case can exceed normal length, either because the Committee waits to see further examples of domestic case law or because the Committee's processing execution of judgments is protracted to no fault of the state. In this case, it seems that the UK had already fulfilled all requirements (individual and general measures) in compliance with *Wilson* in 2004. The Committee's final resolution does not reference other domestic case law.

services. This means that the new amendment failed to address the main issue at the heart of the *Wilson* case. Bogg (2005:75) notes that it was still possible for British judges to interpret the act to read collective bargaining as an essential part of trade union membership or activities, yet, "reliance on the interpretative obligation does not ensure sufficiently certain protection for it to be considered effective, and it is shocking that this is even necessary" given the unambiguous ECtHR judgment on the need to prevent employers from deterring workers from engaging in collective bargaining.

A second important issue is that in the case of a violation, only the individual worker, and not the union, has the right to sue the employer. The exclusion of unions means that workers will still be in a vulnerable position in the case of financial inducements offered by employers. While the worker might accept the employer's offer out of self-interest or need, the unions would act in service of workers' collective interests in the long term. Furthermore, under the new law, deterring a worker from joining a union or participating in trade union services must be the "sole or main purpose" of the employer's offer for it to constitute a violation, which allows the employers to argue that their primary purpose was something else—e.g., business reorganization. Consequently, the law does not eliminate the possibility that an employer could dismiss a worker (or engage in action short of dismissal) due to his or her trade union activities.

Finally, the relatively small compensation award has also been criticized as insufficient deterrence, as employers may well prefer to pay the price of ousting unions in the long run. In addition to criticisms from unions and labor organizations, the JCHR (2004) also pointed out the ways in which the act fell short of providing adequate protections for workers' trade union rights. Overall, the act fails to unequivocally prohibit employers from deterring workers from joining unions or entering into collective bargaining agreements.

The Right of Unions

i. Reforms and Glimpses of Hope. The second landmark case from the UK was *ASLEF* (2007). This case concerned the right of unions to exclude members from membership due to their political affiliation. In this case, ASLEF terminated a worker's membership due to his membership to an extreme right-wing party, the British National Party (BNP). During the domestic procedures, the Employment Appeal Tribunal relied on section 174 of the TULRCA 1992 which stated that an individual could not be expelled from union membership due to his/her membership to a political party. The case, however, was of particular importance to unions since, at the time, BNP had called on its members to infiltrate left-wing trade unions in order to have themselves be expelled and receive a five-figure compensation (Ewing and Hendy 2005:198-199). In the *ASLEF* case, the union reported that the expelled individual had "handed out anti-Islamic leaflets dressed as a priest..., had seriously harassed Anti-Nazi League pamphleteers, including taking pictures of them, taking their car numbers, making throat-cutting gestures, and following one woman in his car and visibly noting her home address" (para. 9). Referring specifically to the European Committee of Social Rights' previous criticisms of Sections 174-177 of the TULRCA 1992 regarding the violations of "the right of trade unions to fix their own rules and choose their own members," the ECtHR found the UK to be in violation of Article 11 (para. 23). In a highly significant judgment, the Court recognized the autonomous political identity of unions and their right to grant membership to those workers whose values and views are in line with the collective objectives of unions.

Before the case was taken to the ECtHR, the government changed section 174 of the TULRCA 1992 in response to trade unions' pressure. The new amendment introduced under ERA 2004, permitted trade unions to exclude and expel individuals not based on political party

membership, but due to *participation in party activities*. The reform, however, did not allay the concerns and complaints of unions. A year after the ECtHR's final judgment, the UK government undertook more stringent measures to remedy the issue. The Employment Relations Act (ERA) of 2008 amended section 174 of TULRCA 1992 to give effect to the ECtHR ruling. The Act permits trade unions to expel or exclude individuals due to their political party membership if:

- membership of that political party is contrary to a rule or objective of the union (so long as the objective is practicable to ascertain)
- certain procedural obligations are met in accordance with union rules, and representations made by the individual are fairly considered
- the individual does not lose his livelihood or suffer other "exceptional hardship" due to exclusion or expulsion

In the event that a trade union excludes or expels a member unlawfully, it will be liable to pay a minimum award of £7,300 compensation to the individual concerned. Upon examining the general and individual measures taken by the government, the Committee decided to close the case in 2011.

ii. Limitations and persistent violations. Once again, however, the legislative response was quite limited in scope. The legal changes were designed to make it lawful for unions to expel their members based on political party membership, yet, under pressure from House of Lords, the complex conditional rules brought under ERA of 2008 make it practically difficult, if not impossible for unions to expel such members.

In the wake of the *ASLEF* decision, the government, led by Blair's Labour Party, this time offered a simple, pro-union remedy to the problem raised by the ECtHR. The draft

legislation included "no explicit reference to a special category of conduct relating to political party membership or activities" and permitted unions to expel or exclude members whose "political party membership or activities were 'unacceptable' to the trade union." (Department for Business, Enterprise and Regulatory Reform 2007). The government defended the draft legislation for its clarity and ease in application. In response to the concerns about possible abuse by unions and the rights of individuals who are excluded, the government noted that the Certification Officer has the power to arbitrate on complaints about the breach and is able to offer quicker and more informal decisions than courts (para. 3.9).

These assurances, however, did not put the concerns raised by the House of Lords to rest. This time, the JCHR was more concerned about individual rights than the associational rights of trade unions, despite the ECtHR ruling underlining the autonomy unions to choose their members. The House of Lords pushed for more protections for individuals like the BNP member in *ASLEF* to have more protections.[93] The resulting legislation, therefore, now requires political party membership of prospective members to be "contrary to a rule or objective of the union" in order for the union to be able to expel them. Furthermore, the expulsion should not cause "exceptional hardship" to the individual and the union needs to comply with certain procedural obligations. Critics have pointedthat these concerns raised by the House of Lords are remnants of times in the 1970s when expulsion or exclusion could mean the dismissal of a worker under closed shop agreements (Ewing 2009). Today, however, not only are closed shop agreements abolished, but legal protections prohibit making hiring and firing decisions based on trade union membership. Indeed, both of these issues are established in ECtHR case law, as demonstrated by

[93] See Ewing 2009 for a discussion on the different legislative options that were considered and the pressure from the House of Lords to implement the legislation with the most constraints on trade unions' freedom to choose their members.

the above-mentioned *Wilson* case and the *Young, James, and Webster* case on closed shop agreements discussed in Chapter 3. Therefore, these extra hurdles have created additional complications and hardship for unions seeking to claim a basic right.

Keith Ewing, who provided counsel to the union taking the case to the ECtHR, wrote that "it is far from clear whether... it would now be lawful for ASLEF to expel Mr. Lee [the person expelled from ASLEF due to his BNP membership] under the over-prescriptive new regime, despite the fact that the new regime was passed purportedly to give effect to the *ASLEF* decision" (Ewing 2009: 54). Hence, the legislative changes undertaken by the state once again fulfilled the requirements of the Committee while failing to provide an effective remedy on the ground.

The Right to Strike

i. Reforms and Glimpses of Hope. The UK labor activists have not been able to bring to the ECtHR a successful claim under the right to strike. Two recent cases in which they had placed high hopes, *RMT v. the UK* (2014) and *POA v. the UK* (2011), were dismissed by the Court. Nonetheless, both the reasoning of the Court on the substantive aspect of the case in *RMT*, and the ECtHR's other case law on the right to strike from other countries—particularly from Turkey (see below)—have influenced the legislative and judicial practices in the UK.

The right to strike has traditionally been construed narrowly in British law. In a 2009 case, Lord Justice Maurice Kay even famously noted that "[i]n this country, the right to strike has never been much more than a slogan or a legal metaphor. Such a right has not been bestowed by statute" (*Metrobus Ltd v Unite the Union*).[94] As noted in previous chapters, restrictions on the right to strike include complex ballot requirements on trade unions regarding how to hold and

[94] Cited in Ewing and Hendy (2010).

calculate ballot results as well as when and how to notify the employer about the decision to hold a ballot and to take strike action. Worse, unions may be held liable for damages for encouraging workers to break their contract if their strike activity does not pass these complicated requirements (Dukes 2011). Furthermore, as the ECtHR recognized in the *RMT* decision, the UK is one of the very few European countries that have a total ban on all solidarity action. As a result, the UK case law is full of decisions where the judges upheld injunctions against strike activity (Dukes 2011; Ewing and Hendy 2010; Ewing and Bogg 2014).

Recently, however, the pro-union judgments of the ECtHR on the right to strike slowly started to enter the British judges' radar. In *Serco Ltd. V. RMT* (2011), the Court of Appeal recognized the growing body of case law on the right to strike and the UK's obligations regarding this issue, noting that "the ECHR has in a number of cases confirmed that the right to strike is conferred as an element of the right to freedom of association conferred by Article 11(1) of the European Convention on Human Rights which in turn is given effect by the Human Rights Act." Furthermore, in another case the same year, the court acknowledged the limitations of the UK laws that do not grant a clear right to strike, given that "the right to strike is conferred as an element of the right to freedom of association conferred by Article 11(1) of the European Convention on Human Rights" (*ASLEF v London and Birmingham Railway Ltd).* Commenting on the importance of these cases, Ewing (2011: 250) noted that "*RMT v Serco Ltd and ASLEF v London* and *Birmingham Railway Ltd* represent a seismic shift in English law and mean that trade union action will not be quite so easily restrained in the future."

Limitations and persistent violations. The tide did not turn around so quickly on the right to strike, however. The limitations are two-fold, by the state and by the ECtHR. First, despite the slow incorporation of some ECtHR principles into domestic law, the ballot

requirements still pose a serious practical and judicial deterrent against unions' right to take industrial action. Ewing (2011: 244) notes that in the two-year period ensuing the *Metrobus* case mentioned above, there have been at least eight cases where the right to take collective action has been restricted, although four of these have been overturned by the Court of Appeal. Even in cases where the unions win, the countless litigation and injunction attempts by the employers pose great practical difficulties for unions. In at least one case eventually won by workers, the union decided to hold the ballot again rather than wait for the final judgment of the trial.[95]

The second issue is the ECtHR's recent case law from the UK. The Court's rejection of British unions' claims one after another led Ewing and Hendy (2016:416) to conclude that there must be "a subliminal Article 11(3), visible only to Strasbourg (and British) judges, the subliminal paragraph providing explicitly that the '*The foregoing provisions of this article shall not apply to the United Kingdom.*'" The two leading legal counsels to trade union rights cases from the UK are convinced that the "fuss" created by the UK government with "threats of a 'Brexit', not only from the EU but from the EC[t]HR" has led the Court to adopt a double standard in cases from the UK (Ewing and Hendy 2016: 415). In particular, they point out the high number of violations found in trade union rights cases from Turkey and practically none from UK cases in the past eight years.

In *POA,* the Court declared the case regarding a ban on prison workers' right to take industrial action on procedural grounds, as the ILO had already considered the case.[96] The Court's inadmissibility decision in *RMT* is a case in point, given that another Council of Europe body, the ECSR, had already found these ballot requirements on trade unions onerous. Aside

[95] *Milford Haven Port Authority v Unite* (2010). See Ewing (2011).
[96] According to Article 35, the ECtHR does not try a case considered by another international institution, although the ILO committee did not issue a favorable judgment.

from the intricacy of the rules governing strikes that constantly lead trade unions and employers to end up in court, in its 2010 report, the ECSR noted that the requirement to notify the employer when trade unions are holding a ballot, in addition to the obligation to give a strike notice, is excessive. The Court, however, dismissed this part of the claim on procedural grounds since the union was able to take collective action eventually, although it had been delayed by the conduct of the employer. The ECtHR could have regarded the ballot requirements as an interference to exercise the right to strike, as it considered financial inducements as an interference with the right to collective bargaining and the right to unionize in *Wilson*, but it refrained from engaging in such an interpretation in this case (Bogg and Ewing 2014).

The Court's justification of the UK's ban on secondary action (sympathy strikes or solidarity action) in the second part of this case, however, is even more curious. The ECtHR recognized that secondary action should be regarded as part of trade union activity and should be protected, albeit as an accessory rather than a core right. Furthermore, the Court also acknowledged that the UK is one of the exceptional European countries that imposes a blanket ban on secondary action. Yet, it still did not find a violation. The Court, however, noted that a ban on secondary action may, in theory, have "far-reaching, negative effects" (para. 98), but that these issues did not arise in the present case, leaving the door open for further consideration of this issue in future cases (Bogg and Ewing 2014).

These series of cases against unions, however, had already started to produce adverse effects on trade union rights in the UK. Emboldened by the ECtHR judgments against the UK, the Conservative government passed new legislation (the Trade Union Act of 2016) imposing further restrictions on trade union rights, including additional ballot requirements and restrictions

on the right to strike, among other measures.[97] The government even produced a special memorandum justifying the new amendments under ECtHR law, relying heavily on the Court's wide margin of appreciation to the UK in *RMT* and not once engaging with the ECtHR's now-established case law recognizing the right to strike as a core element of trade union freedom.

Turkey

There are three main issues related to trade union rights violations in Turkey: establishing trade unions, entering collective bargaining agreements, and engaging in trade union activities, including taking collective action.

As noted in Chapter 2, the 1982 Constitution gave direct effect to international laws by stating that "international treaties that are duly in force are directly applicable in domestic law. Their constitutionality cannot be challenged in the Constitutional Court" (Article 90). There was, however, a disagreement among jurists about the hierarchy of international laws in case of a conflict with domestic laws. A constitutional amendment in 2004 ended this confusion by stating that "[i]n the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail." The new legislation, therefore, established the direct effect of ECtHR judgments and the position of the Convention at the top of the hierarchy of norms in Turkey.

The Right to Unionize

i. Reforms and Glimpses of Hope. As noted in the previous chapter, international law played a fundamental role in the public sector workers' unionization process in Turkey in the 1990s. Due to the absence of domestic regulation on public sector workers' right to unionize,

[97] See Ewing and Hendy (2016) for a detailed discussion on the new act.

unions that later formed the trade union confederation KESK all relied on international law to provide a legal basis for their right to establish trade unions. The first such case they took to the ECtHR was the communication workers' union case, *Tüm Haber Sen and Çınar v. Turkey* (2006).[98] In its judgment, issued 11 years after the union filed its petition, the Court ruled that "the mere fact that 'the legislation did not provide for such a possibility' is not sufficient to warrant a measure as radical as the dissolution of a trade union" and that the blanket rule Turkey applied on all public sector workers' right to unionize did not meet a "'pressing social need" (para. 36).

The government passed a series of laws, all of which had already been implemented before the Court's judgment was issued. Indeed, in response to the mobilization from below, a few months after Tüm Haber Sen petitioned the ECtHR, the parliament amended the Constitution to expressly allow public sector workers to establish and join trade unions (Article 53 of the Constitution as amended in July 1995).[99] Then, in 2001, after another constitutional amendment guaranteed all employees' right to establish and engage in trade unions in order to advance "their economic and social rights and the interests of their members in their labor relations" (Article 51 as amended in October 2001), the government finally drafted and put in place new legislation, Law No. 4688 on Public Servants' Trade Unions (from here on, Law No. 4688), in order to regulate in detail trade union relations in the public sector. An important aspect of this legislation is that it prohibited any discriminatory act against public sector workers due to their trade union membership (Article 18). The Committee decided to close the case in 2010.

[98] As noted in the previous chapter, the Turkish state's failure to recognize public sector workers' unions was mentioned in *Akkoç* (2000) and *Aydın* (2004), but the status of trade unions was mentioned as a side issue in each case and had been refuted by the Court (See Chapter 4). *Tüm Haber Sen* was the first concerted and strategic effort to challenge this issue before the ECtHR.

[99] See Chapter 6.

Nineteen-ninety-five was a banner year for public sector workers, as the Constitutional amendment for the first time explicitly recognized the right to establish trade unions, ending the legal dispute caused by lack of regulation on this matter. However, the state's attack on the right to form and join trade unions did not cease.

During the 2000s, as the Kurdish movement's ties with public sector unions solidified, the government identified KESK as one of its targets in the "war on terror" and imposed a sustained attack on KESK members and unions. The first major example of this was the government's attempt to close Eğitim-Sen, KESK's major union in the education sector, due to the clause added by the union to its constitution stating that Eğitim-Sen defends the right of all persons "to receive education in their mother tongue and to benefit from the development of their culture" (Article 2(b)). The implication that Eğitim-Sen defended the right to education in Kurdish was perceived as a threat against the territorial integrity of the Turkish state. The first attempt was initiated by the request of the Governor of Ankara in 2002. The public prosecutor discontinued the dissolution proceedings, noting that the issue is better resolved in the Parliament than in the courts. A year later, this time, the Office of the Chief of Staff of the armed forces[100] requested the Ministry of Labor and Social Security to take measures against Eğitim-Sen regarding this clause. The public prosecutor this time complied with the request of the Ankara Governor and brought proceedings against Eğitim-Sen in 2004.

The proceedings before the national courts demonstrate the divided position of the judiciary on the Kurdish issue and trade union rights. The Ankara Employment Tribunal

[100] It must be noted here that the military in Turkey has historically assumed the role of the guardian of republican values of laicism, the unitary state, and nationalism; hence, Turkey's civil-military relations have been marked by military tutelage (Sakallıoğlu 1997). At the time, the military was the primary institution leading "the war on terror." Yet the power of the military was significantly curbed under the AKP government without its internal democratization, leading some scholars to argue that Turkey transitioned from tutelary to delegative democracy (Tas 2016). See also Tugal (2016).

explicitly referred to Articles 10 and 11 of the Convention in interpreting Eğitim-Sen's right to include in its constitution such a clause—which did not incite violence or pose an imminent threat—as a necessary condition for the progress of democracy and the protection of individual rights. However, the Court of Cassation (Yargıtay), the highest court for criminal and civil matters, quashed the judgment, arguing that restrictions of Articles 10 and 11 could be justified as necessary in a democratic society because Eğitim-Sen's call for education in a mother tongue posed a threat to the unitary State and to the existing legal system. After the final judgment of the Court of Cassation, Eğitim-Sen amended its constitution to remove the controversial clause but petitioned the ECtHR regarding its rights under Article 10 and 11. Eğitim-Sen took the case to the ECtHR in 2005. Yet, before waiting for the final judgment of the Court, in 2011 the union decided to adopt the same clause in its general meeting. In 2012, the ECtHR issued its final judgment and found violations under Articles 10 and 11. Upon this judgment, the government did not take any further actions against the union.

The implementation process of this judgment demonstrates the important impact of ECtHR law at the domestic level regarding the awareness and compliance of the judiciary with international law. The violation did not stem from faulty legislation or a lack of protective legislation. Therefore, the Committee of Ministers did not require any legislative changes under general measures. Yet, the Committee did note that the violation resulted from a misinterpretation of the Convention by the Court of Cassation. In its 2013 action report, the government noted that it undertook several training and awareness projects (including the Project on Freedom of Expression and Media in Turkey and the Project on Enhancing the Role of the Supreme Judicial Authorities in Respect of European Standards) aimed at increasing the consideration of and compliance with the Convention and the ECtHR case-law among judges

and prosecutors. These programs, which included seminars, workshops, and roundtable meetings, among other activities, were sometimes carried out in Turkey, while in other times Turkish judges and prosecutors visited other European countries to discuss best practices for effective implementation of ECtHR law. In its assessment, the Committee noted that it was awaiting more examples regarding the Turkish courts' interpretation of Articles 10 and 11 before closing the case.

It must be noted, once again, that the legislative changes in the first decade—from the mid-1990s until about mid to late-2000s—were undertaken with an eye towards integration with the EU. As noted in Chapter 2, the EU membership process began in 1987, when Turkey formally applied to become a member of the European Economic Community, the predecessor to the EU. In 1999, Turkey was granted candidacy status for full membership and, in 2005, membership negotiations were formally initiated. Although the ECtHR was established under the Council of Europe, and is therefore a separate institution from the EU, Turkey's compliance with ECtHR law was taken very seriously by the EU, evidenced by the frequent references to the ECtHR rulings to assess Turkey's progress of democratization and human rights. For instance, the European Commission's 2005 Progress Report on Turkey refers to the *Eğitim-Sen* case to point out the importance of the Turkish judiciary's compliance with the Convention.[101] Indeed, many of the projects referenced by Turkey to the Committee in the action report mentioned above (2013) were organized jointly by Turkey and the EU as part of the accession process. Hence, the influence of the EU accession process on Turkey's compliance with the ECtHR cannot be overstated.

[101] At the time, the ECtHR had not issued its final ruling on the case. However, the Commission's report noted the Court of Cassation's failure to interpret the Convention articles to protect freedom of expression.

ii. Limitations and persistent violations. ECtHR law played a significant role in public sector workers' right to unionize. The legislative reforms and judicial training programs aimed at judges and prosecutors were pivotal for the effective protection of the right to unionize. Yet, persistent unionization problems on the ground raise questions about the extent of change instigated by international law.

As noted in the previous chapter, *sürgün* (exile) was a systematic anti-union tactic employed by the government against Kurdish trade unionists. This policy at once aimed at undermining the power of KESK and depoliticizing the Kurdish region by forcing activists to migrate to other parts of the country. The practice can be viewed as part of the government's overall assimilation policy at the time, which led to thousands of Kurds, particularly those residing in rural areas, to be displaced (Human Rights Watch 1994; Çelik 2005; Kurban et. al. 2006; Özerdem and Jacoby 2007).[102] Most of these *sürgün* decisions were issued by governors endowed with extraordinary powers under the years-long state of emergency declared in Kurdish provinces.[103] In its early judgments on *sürgün* cases, the ECtHR only found procedural justice violations regarding the lack of access to judicial review (Article 13).[104]

The applicant in the *Metin Turan v Turkey* (2006) case was a founder of Enerji Yapı-Yol Sen. He was transferred from a Kurdish city to a small Anatolian province by the decision of a state of emergency governor on the ground that the applicant's continued participation in activities organized by KESK posed a threat to public order and safety. For the first time, the ECtHR recognized that the applicant's *sürgün* was due to his trade union activities, and hence

[102] The first ECtHR case on forced displacement was *Akdıvar v. Turkey* (1996). See Çalı (2010) and Kurban (2017) for an analysis of ECtHR case law on this issue.
[103] Most Kurdish provinces have been under state of emergency for most of the 1980s and 1990s. The state of emergency was finally lifted in 2002 by the AKP government.
[104] See, for instance, *Ertaş Aydın and Others v. Turkey* (2005) and *Bulga and Others v. Turkey* (2005).

constituted a violation of Article 11. The Committee, however, hastily closed the case in 2009. Since the state of emergency was lifted in 2002, the Committee concluded, there was no legislation in place that would cause further violations.

That the end of the state of emergency did not provide sufficient safeguards against the government's crackdown on trade unionists in the Kurdish provinces was evidenced by the continued *sürgün* cases brought before the Court after 2002.[105] Müslüm Çiftçi was forced to migrate from yet another Kurdish province due to commencing a hunger strike in protest of the repression of public sector workers, including the *sürgün*s. The ECtHR once again found a violation of Article 11 (*Müslüm Çiftçi v. Turkey* 2010). This time, however, the Committee did not rush to close the case. In its 2012 action report, the government referenced a 2012 decision by the Council of State, the highest administrative court, where the court decided that the transfer of trade union officials due to their trade union activities was incompatible with Turkey's obligations under Article 11. While taking note of the judicial compliance, the Committee stated that to ensure full execution of the judgment, a legislative amendment was necessary in Article 18 of Law No. 4688. This article prohibited dismissing public sector workers due to their trade union membership and activities. However, it did not protect against the forced transfer of unionists. It is not clear in the Committee's resolutions whether the requested amendment is on forced transfers or broader protections for trade union members.

The general problem in the Turkish state's practice on this issue, however, is not Law No. 4688. The administrative and judicial authorities of the state interpret the activities of trade unionists as support for the PKK, and hence, a threat to public safety. In that sense, the judgment of the Council of State referenced in the action report is promising. However, the ECtHR refuses

[105] See also *Dedecan and Ok v. Turkey* 2009.

to recognize the systematic nature of state repression against KESK members, due both to their trade union activities and to their Kurdish identity. An important indication of this denial is that in all these cases brought before the ECtHR, the Court dismissed the alleged violation of discrimination against trade union members or Kurds (Article 14). Had the Court found an Article 14 violation, the Committee would have to require the Turkish state to undertake more systematic changes to end discrimination at all branches of the state. It is not surprising that the Court has not found an Article 14 violation in trade union rights cases. Even in the thousands of cases brought before the Court by pro-Kurdish activists—including extrajudicial killings, torture, sexual abuse, forced displacement, burning of villages, and obstruction of justice—the Court treated each case as a matter of individual rights and refused to recognize that the Turkish state discriminates against Kurds. The ECtHR's refusal to recognize the discriminatory practices of the state has been criticized by legal scholars (Çalı 2010; Kurban 2017), given that in early forced displacement cases, the Court lifted the requirement of exhausting domestic remedies in response to the applicants' claims that the remedies provided by the state would be "illusory, inadequate, and ineffective" in light of the state's condonement of or complicity in the crimes committed against the applicants (*Akdıvar v. Turkey* 1996).[106]

As the AKP government consolidated its power in the late 2000s, however, it started to backslide on promises of democratization and liberalization (Öniş 2016; Özbudun 2014) and to step up its repression of Kurds. In 2009, a wave of criminal charges was brought against hundreds of pro-Kurdish lawyers, politicians, academics, trade unionists, journalists, and activists on account of being members of the organization *Koma Civakên Kurdistan* (KCK,

[106] *Akdıvar* was brought by the transnational collaboration among pro-Kurdish lawyers in Southeast Turkey and the London-based lawyers. Upon the Court's judgment in Akdıvar, the ECtHR was flooded with cases brought before it without exhausting domestic remedies (Çalı 2010).

Kurdistan Communities Union), an allegedly terrorist organization established as the "urban branch" of the PKK. As part of this investigation, many KESK members have been arrested and imprisoned, KESK offices and houses of KESK members have been raided by police officers, and members have been subjected to police violence (ILO CEACR Observation 2012). The detentions included many KESK officials in leadership positions, including the head of KESK, Lami Özgen, and the former head of KESK, Mustafa Avcı. While Özgen was later released, Avcı was tried under 12 different charges, mostly related to organizing and participating in peaceful protests and seminars (*Mustafa Avcı v. Turkey* 2007). In May 2017, the ECtHR found that Avcı's unfair detention due to his participation in peaceful activities constituted a violation of his right to liberty (Article 5). There are currently 19 other cases currently pending before the Court—including one case that involves 102 applicants (*Irmak and others v. Turkey*) and one case brought by four KESK officials (*İşçi and others v. Turkey*)—regarding the KCK arrests. These cases illustrate the persistence and extent of the government's crackdown on KESK and Kurdish activists.

The Right to Engage in Collective Bargaining

i. **Reforms and Glimpses of Hope.** The right to establish and join trade unions is devoid of its meaning if workers are not able to reach collective bargaining agreements with their employers. As noted in the previous chapter, claiming their right to enter into collective bargaining has been an integral part of the KESK unions' struggle since the 1990s. In the early 1990s, because there was no domestic legislation on this issue, the general approach of state authorities and jurists was to assume that public sector workers could not engage in collective bargaining. International law, once again, provided the only legal security for public sector workers. KESK unions started to test this issue by signing collective bargaining agreements with

left-wing, pro-worker municipalities. Just as in the Eğitim-Sen case mentioned above, the lower courts proved to be more progressive than the supreme courts. When the issue was first brought before the Gaziantep District Court in 1993, it relied on ILO conventions to recognize the public sector workers' right to enter into collective bargaining. However, the Court of Cassation quashed the decision, noting that, in the absence of a specific legislation in domestic laws, the right to collective bargaining could not be exercised by public sector workers. After this judgment, the Audit Court (Sayıştay),[107] in a separate judgment, also considered that the collective bargaining agreement must be deemed void, and requested that the difference of payment between that which was authorized under the collective bargaining agreement and that which was mandated by law be paid back to the state budget.

In 1997, Tüm Bel Sen, the municipal workers' union, took the first case regarding public sector workers' right to collective bargaining. In the judgment in *Demir and Baykara v. Turkey* (2008), delivered by Grand Chamber nine years after the case's application, the Court deemed the right to collective bargaining "an essential element" of trade union freedom, marking the height of the ECtHR's pro-union judgments and constituting the most solid legal ground for trade unionists all around Europe in their subsequent applications to the ECtHR.

The Committee of Ministers closed the case soon after the judgment, as the government had already undertaken a number of reforms before the final judgment of the ECtHR. Most importantly, as noted in the previous section, Law No. 4688, enacted in 2001, specifically regulated the terms and conditions under which public sector workers were allowed to enter into collective bargaining agreements. Additionally, the 1995 amendment to Article 53 of the

[107] The Audit Court, also known as the Court of Accounts, is responsible for auditing all accounts relating to the revenue, expenditure, and property of government departments financed by the state budget. Although the Constitution does not list the Audit Court as one of the supreme courts (as are the Constitutional Court, the Court of Cassation, the Council of State, and others), the decisions of the Audit Court are not subject to judicial review.

Constitution, which, by noting that public sector unions "may *hold* collective bargaining *meetings* with the administration in accordance with their aims" implied a right to consultation with the government as an employer, was changed to "public servants and other public employees have the right to *conclude* collective *agreements*" in 2010 (emphasis added in both quotations). Upon examining the legislative changes undertaken by the state, the Committee of Ministers decided to close the case in 2011. Hence, the Committee concluded that Turkey had fulfilled its obligations in securing public sector workers' essential trade union freedoms.

ii. **Limitations and persistent violations**. Continued cases from Turkey once again proved the Committee wrong. In 2010, a year before the Committee decided to close *Demir and Baykara*, Tüm Bel Sen filed two new petitions to the ECtHR regarding the violation of its right to engage in collective bargaining (*Tüm Bel Sen v. Turkey*).[108] This time, the municipalities did not violate the contract and paid the higher wages decided in the collective bargaining agreements. The Audit Court, in its decision prior to the 2010 amendment to Article 53 of the Constitution, ruled that, while public sector unions may hold collective bargaining meetings, they may not conclude collective bargaining agreements. Therefore, the Audit Court once again requested the extra payments municipal workers gained from the collective agreement. In response, the ECtHR reiterated its findings in *Demir and Baykara* and found Turkey to be in violation of Article 11.

Since 2011, more reforms have been undertaken to resolve the municipal workers' constant struggle with the Audit Court, in particular, the new amendments to Law No. 4688 by Law No. 6289, which changed its name to the Law on Public Servants' Trade Unions and

[108] The Court joined the two applications in one case since the alleged violations were essentially the same (para. 14).

Collective Agreement. The ECtHR acknowledged these changes in its 2014 judgment, finding Turkey in violation nonetheless, due to its failure to retrospectively apply these changes to Tüm Bel Sen. Therefore, it is likely that the Committee will not require additional lengthy general measures before closing the case. Nevertheless, when we take a closer look at the situation in Turkey, it is not possible to speak of the right to enter into collective bargaining agreements for public sector workers in real terms. In fact, the EU-Turkey Joint Report (2013:7) noted that "it is not correct to call the salary fixing system in the public sector collective bargaining" as the current system "merely" involves "consultation" rather than actual "negotiation."

The 2012 changes have not altered the essential problem at the heart of the right to collective bargaining and, in some ways, have made it even worse. The collective agreements governing all public sector workers' "financial and social rights" are signed for a two-year term by the Collective Agreement Committee (previously the Collective Consultation Committee). The committee is composed of 15 members of the Public Employers Committee and 15 members of the Public Employees' Unions Committee, all of whom may join the collective agreement meetings. In the current system, only the heads of each committee sign on behalf of 2.5 million civil servants and 1.8 million pensioners. The head of the Public Employees' Unions Committee is determined by the trade union with the highest representation in civil service. Since the public sector unionism has taken a corporate structure during the AKP period (Chapter 6), the union with the highest representation is Memur-Sen, which has close ties to the government. Under the previous system, a majority of votes in each of the groups was required to sign an agreement. KESK's participation in the agreements was marginal, due to its position as the third biggest public sector union, but the current system aims to silence it completely.

Moreover, the right to strike is also effectively undermined under Law No. 4688, and the 2012 changes did not alter this situation. The act states that if the parties are unable to reach an agreement within 15 days, the dispute may be referred to the Public Workers Arbitration Board (PWAB), a mixed committee composed of mostly government appointed state officials and jurists, with little trade union oversight. The decisions of the PWAB are final and are not subject to judicial review. Critics have defined this system as a form of obligatory arbitration with a view towards preventing the right of public sector workers to go on strike during negotiations (Çelik 2010; Gülmez 2013:86; Kutal 2013:174; Uçkan 2013:91). Scholars have pointed out the organic relationship between three core trade union rights: the right to establish and join trade unions, the right to collective bargaining, and the right to strike (Çelik 2010; Ewing and Bogg 2014; Gülmez 2013). If trade unions are not allowed to engage in collective bargaining, then establishing trade unions is devoid of meaning. And, similarly, going on strike—the power to stop production or service—is the only compelling threat workers have against employers during collective bargaining agreements. As Chapter 3 showed, the ECtHR has recognized this relationship in its jurisprudence.

As is evident from this description, public sector workers are not allowed to sign collective bargaining agreements directly with employers in specific workplaces or different branches of public work. There is, however, one exception. Article 32 of the new act states that municipalities and provincial administrations may negotiate higher pay for their workers under "social welfare" (*sosyal denge*) agreements, in the event that the administrations consent to it. Hence, with this new amendment, the government put an end to Tüm Bel Sen's collective bargaining agreements with leftist municipalities, thereby creating further problems before the ECtHR by reducing the right to collective bargaining from a core element of trade union rights to

a special right reserved only for municipal workers. And, even for municipal workers, it is hard to regard the narrowly defined "salary fixing" scheme under "social welfare" agreements, with no right to strike, as collective bargaining agreements in any real sense.

The Right to Engage in Collective Action

i. Reforms and Glimpses of Hope. The right of public sector workers to engage in collective bargaining is the least secure among all three core trade union rights. Nonetheless, some progress has been made in response to the ECtHR judgments. Currently, there are five lead cases before the ECtHR—all brought by KESK unions or members—regarding the criminal or disciplinary reprisals meted out to members for participating in a strike or other collective action activities and the lack of judicial review at the domestic level for disciplinary sanctions against public sector workers (Table 5.1.). It is important to note here again that in response to these cases, the ECtHR ruled that public sector workers' right to join peaceful protests organized by their unions is protected under Article 11. More significantly, the ECtHR stated that the right to strike is an "indissociable corollary" of trade union rights (*Enerji Yapı-Yol Sen v. Turkey* 2009).

In order to comply with the ECtHR judgments, the Turkish government undertook a series of reforms. First, a Constitutional amendment in 2010 (Article 129/3) now allows public sector workers to dispute disciplinary actions imposed on them by courts. The relevant section of the Public Servants Act (Law No. 657) was also amended accordingly. This is a significant reform, as public sector workers will now be able to seek effective remedy at the domestic level against such sanctions. Second, the 1996 Circular (No. 1996/21) banning all strike action for public servants, issued by the Prime Ministry, was repealed in 2007. This circular was at the origin of the violation in *Enerji Yapı-Yol Sen*. Moreover, in all five cases, the Committee welcomed the new Law on Trade Unions and Collective Agreement (Law No. 6356) enacted in

2012 and guaranteed workers' right to freedom of assembly and to engage in union activities broadly (Articles 25/3 and 66). The Committee also welcomed the examples of jurisprudence provided by the government, signaling that supreme courts have aligned their interpretations of trade union rights in accordance with ECtHR requirements.

As a result, even though none of the five cases are closed yet, the final reports seemed to indicate that the Committee was ready to close *Kaya and Seyhan* (2009) and *Dilek and Others* (2007) as soon as the government provided up-to-date information on individual measures in repeat cases, i.e. whether disciplinary sanctions imposed on applicants have been removed from their records.

ii. Limitations and persistent violations. The reservations of the Committee indicated in its examination of the cases mentioned above, and other problems not mentioned in the Committee reports, indicate that Turkey is far from granting public sector workers the right to engage in industrial action.

First, there are many restrictions on the right to engage in collective action that the Committee seems to overlook. The Law on Trade Unions and Collective Agreement (Law No. 6356) of 2012 provides some safeguards for the right of workers to engage in industrial action. But, legally speaking, the Turkish state never considers public sector workers as "workers" *per se*, and the rules and regulations regarding public sector workers' trade union activities are governed by a different piece of legislation, namely the Law on Public Servants' Trade Unions and Collective Agreement of 2012. An important indication of the lack of this recognition is that Turkish laws always refer to public sector workers as "civil servants" or "public servants" (*memur* or *kamu görevlisi*). This distinction is reflected even in the names of the public sector

unions, KESK explicitly uses the word "emekçi" (laborer or worker) in its name, while the union with close ties to the government, Memur Sen, adopted the name "civil servants' union." Therefore, the limited safeguards provided for workers in the Law on Trade Unions and Collective Agreement do not apply to public sector workers.

Moreover, there is a conceptual ambiguity regarding the definition of a legal strike in this legislation (Law No. 6356). This new act only allows for strike activity during collective bargaining (Article 58), although the Constitutional restrictions on political, solidarity, and other types of strikes have been lifted (EU-Turkey Joint Report 2013). Even this restriction is an indication that this law is not intended for public sector workers, because, as noted in the previous section, the Law on Public Servants' Trade Unions and Collective Agreement states that, in the event that the employers' and the employees' groups are unable to reach a deal at the end of the collective agreement period, the dispute would be appealed to the PWAB. Therefore, this new law effectively prevents lawful strikes for public sector workers without explicitly banning them. Finally, and most importantly, the Public Servants Act (Law No. 657, Article 27) explicitly bans public sector workers from organizing and joining strikes. The Committee's failure to take this practical and legal impediment into account is striking, given that in 2015, the ILO recognized the continued prohibition imposed on public sector workers' right to take industrial action.

The Committee reports did, however, note some important concerns regarding the right of public sector workers to engage in collective action. Most importantly, in its assessment of the Turkish government's execution of the *Karaçay* judgment, the Court recognizes that there is a discrepancy between the current legislation and the judicial practice. Two pieces of legislation ban strike activity and collective action at large. First, the Law on Public Servants' Trade Unions

and Collective Agreement, while not explicitly banning collective action, states that workers can participate in trade union activity outside of working hours or, with the approval of the employer, during working hours (Article 18). The law, however, in effect undermines workers' right to organize collective action by requiring the permission of the employer during work hours. Having to receive permission from the employer is contrary to the essence of the idea of industrial action, as the purpose of a collective action is to create hardship for the employer to gain benefits for workers. Second, the Public Servants Act (Law No. 657), in addition to explicitly banning all strike activity (Article 27), mandates disciplinary measures against public sector workers who fail to show up to work (Article 125). But, there seems to be a decoupling between judicial and legislative practice here. In its 2013 decision, the Council of State explicitly referred to the ECtHR case law in overturning disciplinary sanctions imposed on an Eğitim-Sen member for joining a trade union protest and not showing up to work for one day.[109] Gülmez (2014) notes that the Council of State's protecting the right to join a protest without any reference to the relevant laws banning strike activity indicates that public sector workers now have a right to participate in collective action and abandon work for 1-2 days. The legislative prohibition, however, still places significant disincentives on collective action. The administration still reserves the right to impose sanctions, including a salary cut, on workers for participating in collective action, but the workers have the possibility to litigate and reverse the sanctions.

The Committee also seems to provide leeway to the government with respect to the criminal charges brought against trade unionists for participating in collective action as well. In its observations on the execution of *Urcan and Others v. Turkey* (2008), the Committee

[109] Council of State ruling, merits: 2009/1063, decision 2013/1998.

welcomed the 2004 changes to the Criminal Code, pursuant to the applicants' filing their case to the ECtHR the same year. The new amendment (Article 236) still renders collectively abandoning or slowing down work a criminal offense. The Committee finds it promising that the second section of the same article states that, provided that the discontinuance of work is for a short period, the intention is pursuing professional or social rights, and abandonment does not jeopardize the continuity of the public service, the penalty may be reduced or may not be imposed. The Committee concluded that the new code provides judges some margin for interpretation by not automatically criminalizing all collective action of public sector workers. The wording in this legislation regarding "not jeopardizing public service," however, poses a stark contrast to the essence of industrial action, which is intended to give workers the right to obstruct service in order to protect their rights against the employer. While the ECtHR has noted that public sector workers' right to strike is not absolute, and in certain cases may be restricted, the lack of clarity in the law regarding what those conditions might be casts doubts on the effective protection of workers' rights. And, given the number of cases from Turkey on violations of public sector workers' trade union freedoms, the Committee's optimism seems ungrounded.

The final set of cases pending before the Committee of Ministers deals with excessive and disproportionate force used by the police against trade unionists who participate in peaceful protests, where the Court found a violation of Article 11 in conjunction with Article 3 (prohibition of torture and ill-treatment). The government's performance on this issue is the least satisfactory, and it constitutes the most alarming trade union rights issue according to the Committee. Currently, there are 56 cases, eight of which are brought solely by trade unionists,

grouped as repetitive cases under the lead case, *Oya Ataman v. Turkey* (2006).[110] These cases are labeled as "enhanced supervision," meaning that the issue constitutes a high priority for the Committee and Turkey is expected to undertake immediate measures to stop violations.

Police violence is a distinctive feature of the government's crackdown not only on trade unionists but also against any kind of dissent. And, once again, police violence and the refusal to tolerate any form of dissent have increased since the 2010s, when the government consolidated its power and started to roll back promises of liberalization and democratization made in part because of Turkey's accession talks with the EU. Police violence in Turkey drew significant international attention as videos and pictures of attacks against peaceful demonstrators during the 2013 Gezi Protests were widely circulated in the international press and social media. These cases before the ECtHR showcase the violent state repression trade unionists face when participating in simple protest activities or reading press releases, in addition to the above-mentioned legal restrictions on trade union activities.

The Committee singled out the case brought by DİSK and KESK (2012) regarding the use of tear gas, paint sprays, and pressurized water, particularly the use of a gas bomb in hospital premises, during May Day protests. Most importantly, the Committee for the first time emphasized "the systematic nature of the problem," specifically referencing the case brought by the president of DİSK (*Süleyman Çelebi v. Turkey* 2010), and urged Turkey to take immediate measures to ensure that members of the public are able to participate in peaceful demonstrations without fear of violence or retaliation (Committee of Ministers Report 2017). Also noteworthy is that, while Turkey has fulfilled its obligations under individual measures in all other trade union rights cases, in this group of cases, Turkey has fully satisfied neither the individual measures nor

[110] The lead case *Ataman* is not brought by trade unionists.

the general measures (Table 5.1.). The individual measures in these cases, different from others, both require the retrial of applicants, where necessary, and the effective investigation of police violence by identifying and punishing perpetrators.

Conclusion

This chapter examined the compliance of Turkey and the UK with the ECtHR's violation judgments on trade union rights cases. Despite the positive portrayal of the ECtHR's effectiveness in the execution of judgments in the literature, I argued that a close inspection of the actual practices on the ground reveals that the structural changes states undertake in compliance with these rulings are very limited and fail to fulfill the expectations of trade unionists. While the slow incorporation of Convention rights into domestic judicial systems and increased references to ECtHR rulings—albeit non-systematic—are promising and significant, overall, the ECtHR judgments fail to provide enough incentives for states to grant basic trade union rights to workers in Turkey and the UK.

I also showed that state capacity and regime type arguments do not explain the similar trajectory of states doing the absolute minimum to comply with the ECtHR judgments. In each case, the reforms were undertaken with the intention of having the Committee to close the cases rather than a genuine will to take effective measures that would prevent further violations. Nonetheless, there were some differences in the two countries. Turkey's more violent and repressive form of anti-union policies, exacerbated for Kurdish trade unionists labeled as terrorists for engaging in peaceful protests, presented more fundamental problems for workers. Hence, there were more lead and repeat cases from Turkey before the Court. None of the problems, however, except for police violence against protestors, are issues that could not be solved by egislation allowing public sector unions to engage in basic trade union freedoms.

Hence, I argued that the primary issue in trade union rights is a lack of political will, rather than of state capacity.

Given the limited remedies for workers provided by the ECtHR judgments, why do labor activists still continue to take cases to the ECtHR? Is international human rights law little more than an empty promise for labor activists? Under what conditions can human rights law become a resource for labor activists? The next chapter will answer these questions by examining the broader impact of human rights law on the ground, paying closer attention to the voices and mobilization from below.

Table 5.1. Lead Trade Union Rights Cases from Turkey and the UK before the ECtHR

Case Title	App. date	Judg. date	Imp*	Union branch	Union Confed.	Category	Status	Final Report	Monet. Award	Individual Measures	General Measures
Eğitim-Sen v. Turkey	2005	2012	CR	Eğitim-Sen	KESK	Lead	Pending	2013 Action report	yes	Yes	Pending approval
Kaya and Seyhan v. Turkey	2004	2009	3	Eğitim-Sen	KESK	Lead	Pending	2013 Action report	Yes	Pending approval	Pending approval
Urcan and Others v. Turkey	2004	2008	3	Eğitim-Sen	KESK	Lead	Pending	2016 Action report	Yes	Yes	Partial
Müslüm Çiftçi v. Turkey	2003	2010	3	Tarım-Gıda Sen	KESK	Lead	Pending	2012 Action report	n/a	n/a	Partial
Karaçay v. Turkey	2003	2007	3	Yapı-Yol Sen	KESK	Lead	Pending	2013 Action report	Yes	Yes	Partial
Metin Turan v. Turkey	2002	2006	1	Enerji Yapı-Yol Sen	KESK	Lead	Closed	2009	Yes	Yes	Yes
Enerji Yapı-Yol Sen v. Turkey	2001	2009	3	Enerji Yapı-Yol Sen	KESK	Lead	Pending	2017 Action report	Yes	Yes	Partial
Dilek and Others v. Turkey	2001	2007	3	Enerji Yapı-Yol Sen	KESK	Lead	Pending	2013 Action report	Yes	Yes	Pending approval

Oya Ataman v. Turkey	2001	2006	CR	N/a	N/a	Lead/ enhanced	Pending	2017 Action report	Yes	Partial	No
Demir and Baykara v. Turkey	1997	2008	CR	Tüm Bel Sen	KESK	Lead	Closed	2011	Yes	Yes	Yes
Tüm Haber Sen and Çınar v. Turkey	1995	2006	CR	Tüm Haber-Sen	KESK	Lead	Closed	2010	n/a	Yes	Yes
Wilson, National Union of Journalists and Others v. the UK	1996	2002	CR	NUJ and RMT	TUC	Lead	Closed	2011	Yes	Yes	Yes
ASLEF v. the UK	2005	2007	CR	ASLEF	TUC	Lead	Closed	2011	yes	Yes	Yes
Associated Society of Locomotive Engineers and Firemen (ASLEF); Basın Yayın İletişim ve Posta Emekçileri Sendikası (Haber-Sen) first adopted the acronym Tüm Haber Sen when it was founded in 1995, then in 1996 adopted the acronym Haber-Sen; Eğitim ve Bilim Emekçileri Sendikası (EĞİTİM-SEN); Kamu Emekçileri Sendikası Konfederasyonu (KESK); National Union of Journalists (NUJ); The National Union of Rail, Maritime And Transport Workers (RMT) ; Tarım Gıda-Sen merged wıth Orkam-Sen in 2001 to form Tarım, Orman Çevre ve Hayvancılık Hizmet Kolu Kamu Emekçileri Sendikası (Tarım Orkam-Sen); Tüm Belediye ve Yerel Yönetim Hizmetleri Emekçileri Sendikası (Tüm Bel Sen); Trades Union Congress (TUC); Yapı, Yol, Altyapı, Tapu ve Kadastro Emekçileri Sendikası (Yapı-Yol-Sen) later emerged from Enerji, Yol, Yapı, Altyapı, Tapu ve Kadastro Emekçileri Sendikası (Enerji Yapı-Yol-Sen)											
*Importance by measure of ECtHR: Case reports are cases that set precedents since the inception of the new Court in 1998, Level 1 cases make a significant contribution to the development of the case law, Level 2 cases go beyond merely applying existing case law, while not making a significant contribution, Level 3 cases simply apply the existing case law											

CHAPTER 6. BROADER IMPACT: GRASSROOTS MOBİLİZATİON OF INTERNATİONAL LAW

"*...human rights is like a Trojan horse...*"

Declan Owens, Lawyer representing a blacklisted worker before the ECtHR.

The previous chapter showed that the direct impact of ECtHR judgments is limited. While the increased attention of domestic judges to human rights law is an important consequence of ECtHR litigation, on the whole, the legislative changes undertaken in order to comply with the rulings of an international court fail to provide effective protection for basic trade union rights. Is human rights law full of "empty promises" (Hafner-Burton and Tsutsui 2005), as suggested by some scholars? Are workers duped by the promise of human rights law? Is litigation at an international court a waste of time and resources?

While direct remedies and states' compliance with court rulings are important aspects of measuring the impact of international law, they are not the sole indicators. In this chapter, I build on sociolegal studies to examine the broader impact of international law. By broader impact, I refer to the ways in which litigation efforts at an international court transform the dynamics of mobilization—including campaign strategies, discourses, expectations, solidarity ties, and identity construction among grassroots labor activists—as well as the effect of these mobilization efforts on state behavior. Hence, I analyze both the changes in social relations at the grassroots level and the indirect remedies of the ECtHR.

In Turkey, I analyze the change in legal mobilization dynamics of KESK activists during the foundational years in the 1990s to their litigation efforts at the ECtHR in the 2000s. In the UK, I examine the grassroots mobilization of the Blacklist Support Group (BSG). Based on a

comparative case study of these two movements, I argue that, despite the limitations of direct remedy of ECtHR rulings, when activists use human rights law and language to build a movement they are able to achieve tangible outcomes even before waiting for the ECtHR judgments. Hence, I show that without grassroots mobilization, judgments of an international court fail to instigate meaningful change on the ground.

Furthermore, I show that workers and lawyers engage in *strategic mobilization of human rights*, meaning that they approach human rights with skepticism, but they adopt human rights in order have their trade union rights claims resonate with a broader audience. Different from other sociolegal scholars' findings, I find that legal mobilization at an international court does not necessarily transform identity construction or in-group solidarity ties among workers, both of which are still primarily based on class-based concepts. But, human rights law allows labor activists to (1) Build their mobilization efforts on a legal and legitimate basis when domestic laws are hostile towards them; and (2) Cast trade unionists as bearers of human rights at a time when trade unions are seen by many as a regressive force in the economy.

This chapter also shows that grassroots activists serve as the second tier of vernacularization of human rights—the process through which human rights travel into local contexts. Chapter 4 showed that legal advocacy groups constitute the first layer, by identifying the ECtHR as a legal resource and translating human rights knowledge to local labor activists. This chapter shows that in the second stage, labor activists vernacularize human rights to the public by claiming their rights as human rights. I show that discursive opportunity structures and the ability to engage in grassroots mobilization are the two determining factors for this second tier to be realized. The BSG provides the best example of this theory.

Mobilizing Labor's Human Rights and Its Discontents

Though many labor scholars agree that organized labor has been in decline since the 1980s in many parts of the world, there is no consensus among labor scholars on the desirability of resort to human rights. Some labor scholars have been enthusiastic that human rights provide labor activists a new opportunity to demand their rights through an internationally recognized framework and to renew focus on labor issues (Compa and Diamond 1996; Gross 2003; Gentile and Tarrow 2009; Mantouvalou 2011). Others, however, point out that the narrow and selective focus of the newly popularized labor rights in human rights frameworks could harm workers' interests. Caraway (2006) contends that human rights provisions, such as the ILO conventions, prioritize the *freedom* rather than the *empowerment* of trade unions. Thus, they fail to address fundamental problems of labor, such as union fragmentation and decreased bargaining power in an increasingly globalized economy, while promoting freedom of expression or freedom of association. The ECtHR rulings, in that sense, arguably provide a minimum set of trade union freedoms, but the implementation of judgments by the Committee does not guarantee the empowerment of unions. Moreover, some scholars argue that human rights law individualizes the collective nature of labor conflicts (Ewing 1998; Gearty 2011), and depoliticizes "class-based" strategies that labor activists have traditionally used, such as rank and file mobilization (McCartin 2005; Savage 2009).

Critics have also drawn attention to the symbiotic relationship between neoliberalism and judicialization, whereby international legal frameworks have become guardians of private property and trade rights while turning a blind eye to labor rights issues (Gill 1995; Munck 2005). After all, the judicialization of politics increased precisely as social welfare states in Europe began retreating from their redistributive role, and the increased demand for flexible

labor (temporary or subcontracted work, often with no benefits or welfare safety nets) left workers in a vulnerable position. As noted in Chapter 4, in the UK collective bargaining and union membership fell drastically as Employment Tribunals expanded their jurisdiction and started to take a more prominent role in adjudicating workplace disputes. In short, according to critics, there seems to be nothing to celebrate about the institutional shift "away from the traditional vehicles for labor rights, such as social citizenship, the welfare state, trade unions, and collective bargaining, which are in decline in many parts of the world, to legal and constitutional mechanisms" (Fudge 2011, 9).

Skepticism regarding using legal frameworks to address deep-seated power imbalances seems prudent. My analysis of the direct impact of ECtHR judgments in the previous chapter similarly confirms the pessimism of labor scholars and the realism of international relations theorists (Hathaway 2002; Hafner-Burton 2005; 2007; Neumeyer 2005; Vreeland 2008). Yet, even the most restrictive contexts are not totalizing in their effects, and the very tools of control can sometimes be used for counter-hegemonic purposes (Mitchell 1991; Scott 1985). Utilizing human rights frameworks does not mean that workers are beguiled by the promise of law (Lovell 2012), or that they completely buy into the "myth of rights" (Scheingold 1974). Activists can invoke rights language and engage in litigation tactics while being aware of the "ever-present risk of co-optation and disempowerment" (Madlingozi 2014, 113). Following the sociolegal scholarship on law and social change, in this chapter, I analyze the ways in which human rights law can be constitutive of collective mobilization.

Legal Mobilization of Labor's Human Rights

Legal mobilization refers to the efforts to mobilize the law—including, but not limited to litigation and changing rights discourses, as well as organizational opportunities and institutional resources— for social change. Legal mobilization theory conceptualizes law as a discursive tool "that structures social relations and shapes the knowledge, understandings, aspirations, and strategic gambits of legal 'users or claimants'" beyond what we find in legal documents and courtrooms (Lovell et. al. 2015, 3). Scholars have demonstrated that while law, for the most part, sustains the existing hierarchies of power, it also has the potential to become a resource for activists when combined with other forms of activism.

Although this framework emerged out of US-based studies on law and social change (Scheingold 1974; Zemans 1983; McCann 1994), it has been adopted by many legal mobilization scholars working on domestic courts outside of the US (Epp 1998; Gauri and Brinks 2008) and international courts (Cichowski 2007; Simmons 2009; Kurban 2017). This latter group of scholars specifically focused on the role of "legal support structures," such as legal advocacy groups and financial sources, that enable litigation efforts to push for changes in legislative or institutional frameworks. Chapter 4 demonstrated the importance of legal support structures for legal mobilization at an international level by identifying the ECtHR as a resource and directing activists' attention to it.

While legal support structures hold strong explanatory power in legal mobilization, solely focusing on elite preferences—i.e. lawyers, jurists, legal advocacy groups—and institutionalized forms of activism—such as through NGOs—generates an inadequate picture of law and social change. McCann's (1994) interpretive approach to law and social change, which builds on the

work of Scheingold (1974), laid the foundations of a bottom-up legal mobilization theory. Emphasizing the constitutive nature of law and mobilization, many other legal mobilization scholars (Paris 2001; Goldberg-Hiller 2002; Gallagher 2017; Holzmeyer 2009; Vanhala 2011; Lovell 2012) have explored how litigation strategies can be used in conjunction with other forms of activism at the grassroots level, such as campaigning, protest activities, lobbying, and developing media stories. McCann (1994:285) notes that "although judicial victories often do not translate automatically into desired social change, they can help to redefine the terms of both immediate and long-term struggles among social groups." As such, activists push not just for legislative changes but also for changes in the dynamics of mobilization in a broader sense, including developing new strategies, aspirations, norms, and discourses by workers and other actors.

In recent years, an increasing number of scholars have adopted this bottom-up approach in comparative studies, ranging from South Africa (Madlingozi 2014) to Columbia (Rodríguez Garavito and Rodríguez-Franco 2016) and East Asia (Chua 2014; Gallagher 2017). Emphasizing the importance of analyzing law's impact holistically, Rodríguez Garavito and Rodríguez-Franco (2016: 20) suggest that "indirect and symbolic effects may have legal and social consequences that are just as profound as the decision's direct material effects." Findings from these studies similarly signal the need to examine the "radiating effects" (Galanter 1983) of courts and legal mobilization beyond policy outcomes by paying attention to how legal strategies can help build advocacy coalitions and reshape social understandings of socioeconomic rights.

Research exploring how these broader dynamics between law and social change play out at the international level, however, has been scarce. This chapter takes legal mobilization theory a step further by studying the unique dynamics of activism at an international human rights court

around an issue that has historically fallen outside of human rights frameworks, namely trade union rights. First, I argue that in cases where activists are able to build a grassroots movement in conjunction with ECtHR litigation—rather than wait for the final ruling of the Court—they are able to achieve tangible goals. Even in cases where activists lose the ECtHR case, they are able to push the government to take action in lieu of the pending ECtHR case and through pressure of grassroots mobilization. Therefore, I show that the impact of grassroots mobilization of human rights is more effective than the direct remedies the ECtHR provides.

This seemingly counterintuitive finding leads to the following question: If workers are able to achieve their goals without the judgments of the Court, is there no need for international human rights law? Second, I demonstrate that human rights law provides workers a legal ground on which to build their mobilization campaign. In the UK, the strategic mobilization of human rights allowed BSG activists to establish new alliances, gain purchase in the media, and undertake a discursive change in labor rights by building a more positive image for trade unionists in an attempt to counter hostile popular perceptions. In Turkey, workers formulated their demands to the state directly in reference to human rights law in the 1990s. At the same time, they organized powerful mass mobilization campaigns. The adoption of human rights language in campaign efforts took place after the 2000s when human rights have become a more dominant framework to talk about social injustices. However, during this period, because KESK had already lost much of its mobilization capacity, it was not able to undertake an effective human rights campaign.

Vernacularizing Labor's Human Rights

Another strand of sociolegal research, focusing on the vernacularization of human rights, is useful to make sense of the various forms in which local groups challenge, shape, and utilize

human rights (Levitt and Merry 2009; Merry 2006b; Chua 2015).[111] Expanding on this theory, Chapter 4 suggested the vernacularization of human rights is composed of two tiers, constituting a division of activist labor. The legal advocacy groups taking cases to the ECtHR serve as the first level of vernacularization. In the face of weak protections of trade union rights at the domestic level, these groups were the first to target the ECtHR for remedy. They play a dual role of driving litigation efforts at the domestic and international level, as well as identifying human rights law as an opportunity for workers by communicating this knowledge to local labor activists. Hence, in addition to undertaking legal action, they inform the workers about their new set of rights under human rights law. This chapter shows that grassroots activists serve as the second tier of intermediaries by undertaking a *discursive change* in labor rights, recasting the symbolic associations between human rights and labor rights through campaigns, demonstrations, lobbying, and the creation of media stories. Consequently, grassroots activism not only helps to bring international human rights from an ivory tower down to the local level, but also advances its own cause by altering public perceptions of trade union members as bearers of human rights.

Much of the evidence for the vernacularization of human rights draws on mobilization around civil and political rights, such as women's rights (Merry et al. 2010; Levitt and Merry 2009) or sexual orientation and gender identity issues (Chua 2015). In some of these contexts, local activist groups adopt human rights language in order to secure funding, resources, and support from international organizations (Levitt and Merry 2009). Activists can also approach human

[111] Social movement scholars have studied "collective action frames" to make sense of the "conscious strategic effort by groups of people to fashion shared understandings of the world and of themselves that legitimate and motivate collective action" (McAdam et al. 2001, see also Benford and Snow 2000). In this chapter, I prefer to engage with the vernacularization of human rights literature, as it offers a more dynamic approach to discursive changes within social movements, rather than the more fixed conceptualization of "frames." (See Steinberg 1999 and Merry 2006b for more on this criticism).

rights pragmatically, repurposing their meanings as necessary (Merry 2006b, 44). In case studies ranging from New York (Merry et al. 2010) to Myanmar (Chua 2015), however, transnationally connected NGOs and activists—not just legal advocacy groups—spearheaded the adoption of human rights language through workshops and seminars. Activists organize these training sessions to teach and encourage members to articulate their grievances through human rights language, for instance, by pointing out to a woman that her partner's forcing her to have a sexual relationship is a case of rape and a violation of her body (Merry 2006b, 43-44). The principal function of the vernacularization of human rights as a mobilization technique in these case studies is to foster the formation of a new collective identity around human rights and to recruit new members to the movement.

I show, however, that labor activists and lawyers take a more measured and utilitarian approach towards human rights. Labor activists' role in *strategic mobilization of human rights* differs from that of a "translator" persuading members to see themselves as "rights-bearing subjects" (Merry et al. 2010). Instead, labor activists assume a new collective identity situationally and even unintentionally. While some members of KESK and BSG—mostly the movement leaders in each— began identifying themselves as human rights activists owing to their campaigning and alliance with other human rights groups, solidarity within the group is still formed primarily around the traditional class-based identity. Hence, labor activists' vernacularization of human rights is strictly unidirectional, aimed toward a broader audience rather than their own members.

The conditions of labor activists' mobilization of human rights are shaped by labor activists' traditional mistrust of human rights law. Human rights law has only become a legal resource for labor activists in Europe within the past two decades. Therefore, until recently, human

rights law has neither constituted an element of labor activists' repertoire of mobilization strategies, nor has it been a part of their cultural "tool kit."[112] And, despite recent progressive ECtHR judgments, as the previous chapter showed, the direct remedies are still quite limited. Consequently, activists cautiously and strategically integrate human rights language in their campaigns to shape public opinion even as traditional ideologies and values based on class animate their movement ties and recruitment mechanisms. My findings show that the BSG activism, which started in 2009, occurred at a perfect time to utilize these discursive and political opportunity structures. KESK, on the other hand, emerged during the early 1990s, when the ECtHR had not yet issued any of its pro-union judgments and human rights had not become a natural element in the cultural tool kit of social movements.[113] During the 2000s, KESK started incorporating human rights language into its campaigns, but by this time, KESK's mobilization capacity was curbed. Hence, the second tier of vernacularization of human rights is better observed in the BSG case study. That labor activists start incorporating human rights language in their campaigns only after human rights become part of the dominant discourse provides further evidence to the workers' ambivalence and even reluctance to resort to human rights. Workers have many reasons to be skeptical of human rights; as Chapter 2 showed, labor rights have historically held a secondary status in human rights frameworks.

This discussion suggests that the strategic mobilization of human rights is distinct from the strategic calculation suggested by game theoretical approaches to social movements (Fireman and Gamson 1979; Opp 1999). The latter start from the assumptions that activists freely pick and

[112] Swidler (1986: 273) describes cultural "tool kit" as material and symbolic resources that shape "strategies of action."
[113] As I discuss below, the Kurdish movement, which came to determine the national agenda for the next three decades, was a major actor in popularizing human rights discourse.

choose which strategies to employ in order to maximize their interests, and that the highly abstract rules of the game constraining actors' preferences can be replicated with minor changes across time and space (Hall and Taylor 1996). By contrast, I argue that labor activists' use of human rights takes place within a historical and political context in which: a) Trade unions are seen as a regressive force in the economy; b) The ECtHR has come to have binding rulings (on cases brought by individuals and unions) at the domestic legal systems; c) A committed group of lawyers takes strategic action at the international level; d) Human rights language has become globally resonant; and e) Labor activists have given up on their socialist ideals. While the ultimate decision of labor activists to mobilize human rights might be reasonable, the first part of this dissertation showed that their decision-making process was embedded within given historically and culturally contingent institutional settings (Migdal 2001; Woods and Hilbink 2009). My use of "strategic mobilization" here refers to labor activists' attitudes and expectations from human rights. I differentiate this attitude from a wholehearted embrace of human rights, in which case, we would expect human rights to be a defining notion in movement identity constellations and in-group solidarity ties. The conclusion chapter considers the conditions under which this strategic approach might change in the future.

Legal Mobilization of Human Rights from Below (I): The Blacklist Support Group

In March 2009, a massive blacklisting of construction workers in the UK was exposed. The Information Commissioner's Office (ICO), the national data protection authority in the UK, raided the offices of The Consulting Association (TCA) to reveal that forty-four companies, including major multinational corporations, conspired in the blacklisting of more than 3,200 individuals. The system required collaboration among several actors. The construction firms collected information on workers without their knowledge or consent and reported it to TCA.

TCA, founded and funded by construction firms, oversaw this massive institutionalized blacklisting by systematically compiling, analyzing, and selling data about workers. These data were then used by firms in hiring and firing decisions, since the list included information about workers who were deemed "trouble makers, criminal elements or other undesirable people" (Department for Business, Innovation and Skills 2009: 9), which in effect meant employees who raised their voices on health and safety issues in the workplace and/or were active in the trade union movement. As a result, thousands of workers went unemployed for years or were forced to look for jobs as unskilled workers unable to seek employment in the industry to which they devoted years of careful work.

Several aspects of this story make it a rather shocking incident. These include the extent and the nature of blacklisting in a country that has a long commitment to democratic values and protection of individual rights, the complicity of the police in this crime, the inability to prosecute the blacklisters under British law, and the "ruined lives" that resulted from this institutionalized blacklisting (Ewing 2010). But it was not just the scene or the severity of these crimes that is noteworthy; it is also the response of those it victimized. Losing hope in the UK justice system, two blacklisted workers recently took their cases to the ECtHR (*Brough v. the UK* 2016; *Smith v. the UK* 2017). Moreover, a new grassroots organization, the Blacklist Support Group (BSG), responded to the TCA raid by launching a public campaign committed to exposing blacklisting practices as fundamental violations of human rights.

The BSG's mobilization efforts provide an instructive case study to analyze legal mobilization at the international level for two reasons. First, despite the collaboration of legal advocacy groups and British unions in bringing important trade union rights cases before the ECtHR since the 1990s, trade unions had never pursued a strong human rights campaign before.

The BSG's embrace of human rights and their successful organization from the grassroots may have long-lasting effects on trade union strategy. Second, within the past year, both cases brought before the blacklisted workers before the ECtHR have been dismissed by the ECtHR. But, the BSG had already mounted a human rights campaign beginning in 2009 and had already achieved tangible gains by the time the ECtHR delivered its rulings.

Building the Movement: Origins of Legal Mobilization at the Domestic Level

The BSG started as a grassroots organization. Litigation at the domestic level has been a key factor in exposing blacklisting and building the movement initially. The Employment Tribunal case in 2006 involving the electrician Steve Acheson, now the chair of the BSG, and two of his colleagues was the key event where evidence on blacklisting for the first time came to the surface. A whistleblower, who worked in the human resources department of a construction company, came to the fore in order to testify on his role in blacklisting. The evidence provided to the court only confirmed what many already knew: that many of these workers could not find jobs in the industry for years because they were blacklisted. After the employment tribunal case findings had been publicized, the ICO launched a formal investigation into blacklisting in the construction industry. Upon searching TCA's premises in 2009, the ICO seized its documents and immediately closed it down.

A solidarity network was then formed among blacklisted workers, who came together to voice their demands. Then came media attention, union support, the involvement of leading labor lawyers and legal advocacy networks, and finally the attention of the Labour Party. Similar to the mobilization efforts around the pay equity movement mentioned in Chapter 4, the unions were slow to take up the issue of blacklisting. The unions themselves also confirm that the BSG took

the lead in mobilization, as UNITE Legal Director Howard Beckett noted in a BSG parliamentary meeting: "Back in 2009-10, the Blacklist Support Group were the only people doing any real campaigning on the issue, but the unions have now caught up." And today, the BSG's campaign gained nationwide attention, specifically after the exposure of the police involvement in blacklisting.

The litigation efforts served to bring many blacklisted workers together for the common cause of seeking justice. After the ICO raid in 2009 exposed the blacklisting of thousands of workers, a class action suit was initiated against blacklisting firms by the BSG, working in collaboration with a solicitor's firm. Three major unions in the construction industry (UNITE, GMB, and UCATT) then joined in the application and provided legal and financial support to more than 580 claimants in the lawsuit initiated against thirty-seven blacklisting firms at the High Court. This court case has been one of the most important recruitment mechanisms of the BSG, allowing the workers who join the class action suit to participate in broader mobilization efforts.

Appearances before the High Court were instrumental in assembling and maintaining grassroots activists and showcasing BSG activism in the media. Hearings occasioned large demonstrations where blacklisted workers wearing black and white t-shirts flooded the courtroom. One BSG activist, after a High Court hearing, said to me: "We go into the courtroom and the judge sees us with our blacklisted t-shirts, and he comments on it. In the previous hearing, the judge had to request a bigger room to accommodate all of us. This is big, you know, that the judge recognizes us!" In May 2016, the case was settled out of court in a deal deemed a major victory by the BSG. The companies issued a public apology for blacklisting and agreed to pay a multi-million-pound compensation for the workers.

The High Court settlement, despite its financial and symbolic importance for workers, did not meet all the expectations of blacklisted workers. Some workers had not been able to pursue their claims successfully under domestic laws due to legal entanglements regarding proof requirements on establishing direct employment relations with the parent company and time limits. The ECtHR was an important legal avenue for these workers. More importantly, the blacklisted workers had other substantive demands. To have their voices be heard both in courts and in public opinion, the BSG mounted a sustained resistance movement against blacklisting by strategically mobilizing human rights since 2009. Their primary goals included: (1) blacklisting the blacklisters by denying them public contracts, (2) criminalizing the practice of blacklisting, and (3) increasing transparency, particularly by exposing police collusion in blacklisting.

Legal Advocacy Groups: Strategic Litigation and First Step in Vernacularization

The legal advocacy groups that *identified the ECtHR as a target institution* and led the litigation efforts were the same groups discussed in Chapter 4. Following the 2009 ICO raid, Keith Ewing, the president of the IER, wrote an important report commissioned by UCATT on blacklisting in the construction industry (Ewing 2010). Ewing evaluated the 2010 Blacklist Regulations in this report and identified several problems with the new legislation. While many of these issues he identified, namely blacklisting still not being a criminal offense and there being no clear guidance for the destruction or forfeiture of the list, had been recognized by the ILO's Committee of Experts (2012), the government failed to take action on these issues. The report framed the issue as a grave human rights violation and pointed to the ECtHR as the ultimate destination, should other efforts fail. David Smith, an applicant of the ECtHR cases and the Secretary of the BSG, told me that when he first read Ewing's report, he thought "now we know what to do!" Hence, this report was very influential not only in informing the blacklisted

workers about their rights protected under the Convention, but it also facilitated the use of human rights language strategically in campaign activities.

Dave Smith filed one of the two cases currently pending at the ECtHR, upon exhausting domestic remedies. His file at TCA was seventeen pages long and covered information about his trade union activities, including his work as an elected trade union health and safety representative. As a result of his futile attempts to find work in construction sites starting in 1999, he was forced to look for employment elsewhere and later become the secretary of the BSG. In his 2014 application to the ECtHR, Smith alleged that his blacklisting breached Articles 8 and 11 of the Convention protecting private life and freedom of association, respectively. The other case was brought by another blacklisted worker, Terence Brough, and regarded the absence of legal protection against his blacklisting in 1988. Brough was labeled a "militant troublemaker" in the blacklist report due to his trade union activities, and there was clear evidence that he was denied work by a firm who checked his details with the TCA. His appeals in domestic courts have been declined, since refusing employment to a worker on the basis of trade union membership was not unlawful in the UK until 1992. He alleged that the lack of legal protection against blacklisting at the time of his own inclusion in a TCA report violated Article 11 (right to freedom of association) and Article 14 (freedom from discrimination).

When Smith's lawyers, including John Hendy,[114] first approached him and communicated their willingness to represent his case, they knew from the beginning that they were going to lose the case in domestic courts. But the lawyers explained to him that they are taking over his case pro bono because they wanted to take the case to the ECtHR in order to

[114] Hendy advised on all UK trade union rights cases since *Wilson* 2002, see Chapter 4.

"change the law in human rights." Smith's case, therefore, was one of the trade union rights cases that British legal advocacy groups take to the ECtHR as part of their *strategic litigation at the ECtHR.* As noted in Chapter 4, these lawyers file suits for only those cases that they believe have a chance at setting precedents or those that they can use to leverage legislative changes at the domestic level. In that sense, their strategy is not to flood the Court with individual cases.

The pro-labor organizations and legal professionals continued to serve as "translators" by *communicating human rights law to workers* through various mediums. As noted above, the report prepared by Ewing (2010a) was highly influential in informing workers about their rights under the Convention and the possibility of taking their case to the ECtHR. Recently, the IER and the Haldane Society of Socialist Lawyers held a joint conference entitled "Blacklisting: The secret war between big business and trade union activists." Similarly, International Union Rights, a journal published by the pro-labor organization ICTUR, recently had a special issue on blacklisting in order to inform workers and lawyers on domestic and international struggles and the legal protections against blacklisting. Hence, they create opportunities for activists to seize on an internationally recognized framework to express their grievances.

Grassroots mobilization of human rights

The BSG pursues multiple avenues to combat blacklisting, with litigation one among many. BSG activists have creatively framed their labor rights strategically as human rights, thereby serving as the second stage in the vernacularization of human rights. The strategic use of human rights in legal mobilization by BSG activists has contributed to forming new alliances, gaining national attention, and making progress in achieving their three main goals.

The BSG's vernacularization of human rights has taken the form of a *direct action*

strategy. BSG activists routinely mold human rights language in their campaign efforts, rather than solely turning to international law for adjudicating claims. Numerous campaigns the BSG organized in collaboration with the trade unions aimed at leveraging publicity for their cause and the lack of legal remedies at the domestic level. One such example is the campaign that activists called "crocodile tears," a series of protest tours that consisted of naming and shaming these managers, either by invading their offices or holding protests outside their offices. One of the slogans shouted and portrayed in banners was "Nuremberg defense on blacklisting won't wash." This reference to Nazi Germany was directly used in the legal team's submission to the ECtHR in response to the government's observations on the blacklisting case, where the legal team reminded the Court that the Convention was put together in the aftermath of the Holocaust in order to prevent "the development of totalitarian regimes" in the future (*Brough v. the UK*, Reply on Behalf of the Applicant).

Similarly, in order to draw attention to the inability to bring lawful criminal charges against blacklisting firms, the BSG, together with the Campaign Opposing Police Surveillance (COPS), conducted a "citizens' arrest" by visiting the offices of the construction giant Sir Robert McAlpine. The purpose of the action was to symbolically arrest Cullum McAlpine, who had admitted during the investigations of the parliament that he was the first chairman of TCA. The protest signs held up during the "arrest" made clear references to the human rights protected under the Convention. Thus, at a time when their call for criminal charges was being ignored by domestic courts, the BSG mobilized human rights to legitimate their claims under international law and brought trade unions on board in their mobilization efforts.

BSG activists have consistently and strategically *framed their grievances as human rights violations in media coverage*. Steve Acheson, the chairman of the BSG, said to the press after a

High Court hearing: “These directors, they’ve worked outside the law, they’ve breached our human rights. They know what they’ve done wrong, they know what they were inflicting upon thousands of families and I’d like to see some of them face prison sentences.” And in an editorial, the BSG secretary Dave Smith (2014, 3) wrote to ICTUR, “Blacklisting is no longer an industrial relations issue; it is a human rights conspiracy between multinational construction firms, the police, and the security services.” The use of human rights language in public declarations has been a conscious effort to steer public opinion in recognizing blacklisting as an egregious crime.

Human rights have become quite politicized in the UK in recent years. ECtHR judgments on highly contentious issues, such as prisoners’ rights to vote and the treatment of terrorism suspects, have been widely covered in the media. Much of the debate on these judgments spurred outrage among conservatives and media coverage led to heated discussions on judicial interference and sovereignty. Most notably, in the fall of 2014, the Conservatives published a plan[115] as part of their election campaign to undermine the enforceability of the ECtHR rulings in the UK by scrapping the HRA and pledged to move forward with it after winning the May 2015 elections with the majority vote. The issue seems to be put to rest for the moment, after the shock that Brexit created, both nationally and internationally, within the past year. Yet, despite the alarming possibility of the UK’s pulling out of the European Convention system, the media coverage and the government’s actions nevertheless testify to the importance of human rights on the national agenda. While the UK public opinion views the ECtHR very unfavourably (Voeten

[115] The plan, which was met with backlash from civil society organizations and human rights advocates all around the country, would enable a future Conservative government to limit implementation of only the “most serious cases” and ensure that “the rulings of Strasbourg will not have legal effect in the UK without the consent of parliament” (Watt and Bowcott 2014)

2013), human rights have become such a globally resonant discourse to talk about social injustice that even the Conservatives do not openly oppose them. Instead, they dispute the content of what counts as human rights. As the Prime Minister David Cameron said prior to the 2015 elections, referring to the Convention: "When that charter was written, in the aftermath of the second world war, it set out the basic rights we should respect. But since then, interpretations of that charter have led to a whole lot of things that are frankly wrong." (Bowcott 2014). Some of the rights that the ECtHR has included, as Chapter 3 shows, are the rights to strike and collective bargaining. These rulings have provided a new avenue to labor activists, at a time when trade unionists were portrayed as the villains. Hence, the BSG specifically has seized on this contentious aspect of human rights to gain leverage on public attention.

Lobbying, specifically with the Labour Party, also constituted an important campaign strategy the BSG pursued alongside trade unions. As noted above, one of the main goals of BSG was to blacklist the blacklister. BSG pressure on Labour members of the Parliament (MPs) yielded successful results on this front. In an official statement, the Scottish Affairs Committee (2014) popularized one of the demands of the BSG by calling for blacklisting the blacklisters or disqualifying the blacklisting firms from all publicly funded work. And, indeed, the Welsh government has already taken steps to deny blacklisting companies public sector contracts in Wales (Dickins 2013). The Scottish government excluded all blacklisting companies from public contracts. Northern Ireland Assembly and other local authorities are undertaking similar changes in their procurement policies (Smith 2014). Moreover, the Labour Party, under the newly elected leadership of Jeremy Corbyn, recently announced that they would be undertaking new ethical guidelines in order to ban all Labour-run councils from entering into public contracts with blacklisting firms (Simpson 2016).

At the same time, the BSG's vernacularization of human rights has facilitated a *discursive change among politicians*. The new Labour leadership is particularly keen on supporting blacklisted workers since the new Shadow Chancellor John McDonnell has been one of the founding members of the BSG since 2009. Labour MPs have adopted the human rights language used by BSG activists, advancing it in the popular media, with one MP prominently describing the findings in the ICO report as "one of the worst cases of organized human rights abuses in the UK ever'." (Smith and Chamberlain 2015: 41).

The BSG has *formed new alliances* with other human rights activists during their campaigns, thereby increased its organizational capacity. One of the primary aims of the movement was to initiate an independent public inquiry into blacklisting in order to uncover police collaboration with TCA in spying on blacklisted workers. Recently, a former undercover officer publicly admitted to spying on a number trade union activists, and new evidence from the ICO documented that the secret police attended clandestine TCA meetings (Smith and Chamberlain 2015, Boffy 2014, see also Scottish Affairs Committee of the House of Commons 2015). Finally, before the last general elections in May 2015, Home Secretary Theresa May ordered a public inquiry into undercover officers spying on political campaigners and the blacklisted workers were recently granted core participant status in the inquiry. In a public statement, the BSG noted that "an opportunity like this only comes along once in a generation" and that "[i]f our liberal democracy is to have any meaning then we deserve to know in whose interests the state acts" (Labour Representation Committee 2015). Since other high profile political campaigners also have stakes in this inquiry, it has the potential to become a top national issue. These groups include the women activists who have been sexually abused by undercover officers who presented themselves as activists, and the family of Stephen Lawrence,

a young black man killed in a racially motivated crime. The renowned human rights lawyer Imran Khan is representing both the BSG and the Lawrence family in the inquiry. The BSG has already been working together with some of these activists who are part of COPs in some of their campaigns in order to draw attention to police collusion in blacklisting, as mentioned above. Thus, through collaborating with other activists, the BSG has become part of a nationwide investigation of human rights abuses.

BSG activists' engagement with human rights in multiple forms of mobilization has, not only allowed them to change trade union strategy and political discourse on trade unions, but has led human rights to become a constitutive element of their movement. Strategic use of human rights helped blacklisted workers expand their organizational capacity by forming new alliances and leverage public opinion. At the same time, their efforts yielded tangible results, such as blacklisting the blacklisters, initiating a public inquiry, and winning a huge settlement in a High Court case. All these results happened prior the ECtHR dismissed the cases before it.

Strategic mobilization of human rights: a dual consciousness?

My participant observation data shows that despite using human rights language widely in their campaigns, during private meetings, where there were no journalists present, workersmade no references to human rights. During conversations and meetings amongst blacklisted workers, they do not articulate their grievances or concerns using human rights language. Discussions regarding how to compel trade unions to pay more attention to blacklisting, how to have a BSG activist elected to a trade union's executive board, or how to reduce the wage gap between agency work under an umbrella organization and direct employment never include human rights language.

Instead, BSG discussions during internal meetings, feature more traditional forms of workers' mobilization, such as class struggle or class-based solidarity. Even when they share stories of their victimization due to blacklisting, they describe having sought employment as unskilled workers, or the shame they face in their families for being unemployed, without any reference to human rights. During one of the meetings, one BSG activist referred to the blacklisters as "fat, greedy" employers, which resonates more with the traditional class-based descriptions of the top hat wearing bourgeoisie, but they reserve remarks such as "human rights abusing wretches" for when they are in front of cameras.

I asked them about why they use human rights language only when they are talking to the media. Smith explained to me that "the only claim you can take to the employment tribunals is victimization for trade union activities…. That's the [employment] law that you have to use. But the newspapers aren't interested in that. They are interested in human rights violations at Crossrail." Hence, they use this human rights framework very *strategically*, when talking to the press or in devising campaign slogans. The BSG is a grassroots activist network, organized in a non-hierarchical way and its decision-making processes are bottom-up. Yet, some BSG activists, such as the secretary or the chairman, make more appearances in the media than others. These more prominent figures in the media put a special effort into using human rights language, even if the blacklisted workers themselves do not necessarily use this language in private meetings

As a result of human rights litigation and campaigns that are undertaken in alliance with other human rights activists, *a new form of collective identity* is being shaped around human rights. This new identity is being formed organically, rather than being instructed in a top-down manner and currently, it is limited to the leadership level. The BSG leaders, who speak to the

media and more often work alongside other human rights activists, more openly embrace this new identity. As Dave Smith noted during our interview, "You know, I now call myself a human rights activist." It would, however, be premature to argue that a human rights identity has been broadly endorsed by many other blacklisted workers. Even among BSG leaders, this new identity in no way replaces the old ones formed around class consciousness and trade union membership. In their public declarations, BSG activists are careful to tie human rights language together with traditional descriptions of their class identity. This effort is best exemplified in the words of John Bryan, a blacklisted bricklayer and UCATT steward from Bermondsey. He explains:

> Ordinary people just fighting and struggling to get a decent job and a safe job, that's all we were doing. Fighting for a decent wage and a safe job and you were blacklisted for asking what is just basic human rights. I thought by being a councilor I could help that fight for building workers, for working people in general to improve our conditions and now I found I was being blacklisted for that as well. Bankers and the rich people are not blacklisted for fighting for their class. All I was doing was fighting for my class, local people, building workers and people of Bermondsey, that's all I was doing.

While mobilizing human rights has aimed at legitimation and public attention, it also mediates the righteous anger many workers have. In his public response to an out of court settlement blacklisting firms offered to workers, Jack Fawbert, a blacklisted carpenter, wrote:

> £4000 from you criminals for decades of human rights abuses that forced many decent people, including myself, out of the industry, leading to me suffering years of deprivation to build another career in education, seeing my kids on free school meals and the family nearly splitting up. And for what? For simply

> representing my fellow workers on a building site as a UCATT shop steward and legally appointed safety rep….

While engaging with human rights law and language in multiple fronts, activists have tended to *retain their skepticism* and their belief in rank-and-file mobilization as the most important form of activism for workers. After his trial regarding his arrest during a blacklist protest, Dave Smith said to the press: "It seems that it is one law for big business and another law for the rest of us. Multinationals and the secret police can conspire against trade unions and destroy evidence that would be used in court cases, and nothing happens. But if we dare to protest about the human rights scandal, we get arrested." Some activists even expressed resentment about having to resort to human rights law:

> Before the advent of Margaret Thatcher … we had a system of labor rights that existed since 1906 and that system held with one or two aberrations. We were happy with that. We never articulated a strong or deep understanding of or affiliation to international human rights. But as soon as the advent of Thatcher here and of course, Reagan in America, the whole world changed and we had a new focus a new perspective …. All of a sudden … we were campaigning using the language of labor rights are human rights and so on …; not that it did us any good, [laughs] but you know….

Activists, therefore, exhibit a dual consciousness regarding human rights law and language. On the one hand, they use it strategically to leverage public attention; on the other hand, they are very aware of the limits of human rights law and what it can offer them.

The legal professionals are similarly cautious about the promises of human rights litigation. Commenting on the limited effectiveness of human rights law, Declan Owens, one of

the lawyers representing blacklisted workers at the ECtHR, said that using human rights frameworks is like a "Trojan horse," explaining that it may just be an entry point to gain more attention to the labor cause, allowing in the long run to bring a whole set of other issues. Thus, he specifically noted that the aim of the ECtHR application is, not only getting a compensation award and setting a precedent, but also gaining more advantage in lobbying efforts and raising labor issues, once again, to the top of national agenda. Victoria Philipps, the solicitor at *ASLEF*, similarly noted that the litigation opportunity at the ECtHR is "just another weapon in the armory." Thus, these committed labor lawyers view themselves as the "legal arm" of a broader fight for the labor cause. Hence, both the lawyers and the activists have a keen understanding of the limits of human rights law and do not view litigation at the ECtHR as a replacement for direct action.

Neither the lawyers nor the activists entertain any utopian ideals about the success of winning a case at the ECtHR or the results of the domestic litigation procedures. Instead, during interviews, both the lawyers and activists repeatedly pointed out that the ECtHR is only one among many strategies to achieve social justice for workers. At meetings, activists often express their disbelief in the legal system that does not allow them to "lock up" these people who ruined their lives. And they express concerns about the lengthy proceedings. During an informal conversation, a BSG activist referred to all the formal efforts of litigation and lobbying as "little more than a cover" and explained that what ultimately matters is the rank-and-file mobilization. McCann (1994) argues that this "double consciousness" of the lawyers and activists, where they use litigation as a tactic and take many cases to courts but do not sacrifice a legal realist perspective and see courts siding with the powerful, does not have to be inherently contradictory. On the contrary, he states that these are "interrelated components of strategic legal interaction"

(McCann 1994, 233, see also Matsuda 1987). Lawyers and activists can strategically use the law, despite its limitations and problems, without being duped by the promise of the remedies it provides.

In short, the collective identity forged through the embodied mobilization of human rights language supplemented existing bases for solidarity held among BSG activists. Trade union membership and class consciousness remained the primary sources of group affiliation and potent motivations for activism, even as human rights produced new political directions for the group's efforts.

Legal Mobilization of Human Rights from Below (II): Public Sector Workers' Unionization in Turkey

As in the BSG case study, human rights law provided workers in Turkey a legal basis to build their movement in the 1990s. Utilizing ECtHR litigation in conjunction with mass mobilization, KESK overcame the ban on public sector workers' unionization in the 1990s. Yet, later in 2000s, as KESK lost its rank and file mobilization capacity, it started to rely heavily on litigation. With little pressure from below, these cases failed to prompt better human rights protection on the ground.

Building the Movement: Origins of Legal Mobilization at the Domestic Level

The spring of 1989 marked the revival of organized labor, which had slipped into dormancy after the 1980 coup in Turkey. At the beginning of 1989, collective bargaining negotiations covering 600,000 workers employed in state economic enterprises (SEEs) hit a deadlock. Due to the austerity measures adopted in the aftermath of the 1980 coup, real wages

had been in a constant decline since 1979,[116] and strict restrictions were imposed on trade union activities. Over a period of three months in the spring of 1979 , workers mounted a series of powerful and imaginative protests, including slowing down work, walking barefoot, staging hunger strikes, boycotting food served in the workplace, tying salary slips to helium balloons, and instigating massive walkouts, all of which were later remembered as *Bahar Eylemleri* (Spring Actions) (Çelik 2015). In one pointed example, hundreds of workers in Diyarbakır petitioned for divorce under the pretext that they were not able to take care of their families due to poverty wages (Doğan 2012: 303).

The innovative mass wave of protests was a major blow to the top-down and violent imposition of neoliberal policies, which began in 1980. The immediate result was a victory for workers—albeit for a short period—as they were able to strike a lucrative deal with their public sector employer, reversing a decade-long decline in wages.[117] Following the protests and concessions to workers, the ANAP (Anavatan Partisi, the Motherland Party) took a big hit and suffered losses in the subsequent elections as a result of the administration's neoliberal policies. The victory, however, was short lived. The wages eventually resumed their declining trend with the implementation of budget cuts mandated by the structural adjustment programs of the IMF. Moreover, SEE workers were subjected to increased precarity and insecurity in employment due to rapid privatizations and the roll-out of a subcontracting system throughout the 1990s (Cam 2002; Tokol 2005).

[116] Based on State Institute of Statistics data, Cam (2002) notes that real wages shrank by two-thirds for civil servants and halved for workers registered to the Social Security Institution (SSI). The latter includes workers employed at SEEs. To be exact, the index of real salaries and wages paid daily per worker fell from TL126.00 in 1978 to TL43.21 in 1988 for civil servants, and from TL128.25 in 1979 to TL65.21 in 1988 for SSI workers.
[117] Within a two-year period, real wages of civil servants rose by 50% and SSI workers' wages almost doubled. To be exact, the index of real salaries and wages paid daily per worker rose to TL63.24 for civil servants and to TL111.42 for SSI workers in 1990 (Cam 2002).

Despite their short-lived success, the *Bahar Eylemleri* served to catalyze public sector workers' bottom-up struggle for unionization and their demands for democratization in the years to follow. The mobilization efforts of public sector workers took off in the second half of the 1980s through the establishment of *derneks* (associations) to discuss and advance their professional interests. Teachers were at the forefront of the struggle. First, in 1987, they started publishing the journal *abece* where they discussed current problems faced by teachers as workers and their need to unionize. Then, in February 1988, they established their proto-union Eğitimciler Derneği (Eğit-Der). At the time, teachers were prohibited from joining professional associations or participating in political activities, broadly construed. Therefore, the founding members of Eğit-Der were retired teachers. Active teachers registered as "honorary members" to get around the ban. The number of honorary members quickly reached 25000, tripling the number of regular members. Their goal was to organize enough workers to transition from Eğitimciler Derneği to Eğitimciler Sendikası (Educators' Union). Other branches of public sector work also established their *derneks*, such as ÇAYAD (postal workers' association), BEM-DER (municipal workers' association), and the Turkish Nurses' Association. In the fall following the *Bahar Eylemleri*, public sector workers organized the first Sendikal Haklar Kurultayı (Trade Union Rights Assembly) to organize and fight for unionization. They had three main demands: the right to unionize, the right to collective bargaining, and the right to strike.

Legal Advocacy Groups: Strategic Litigation and First Step in Vernacularization

Chapter 4 discussed the importance of international law during these formative years, as well as the role of legal advocacy groups in *identifying the ECtHR as the target institution*, *engaging in strategic litigation*, and *communicating human rights law* to public sector workers. At the time, there was a disagreement among jurists about whether, in the absence of a specific

regulation in the 1982 Constitution, public sector workers had the right to unionize. A few labor scholars active in the teachers' unionization efforts argued that the lack of a specific regulation should be interpreted as the freedom to unionize. Most importantly, these scholars relied on international law—the ILO Conventions and the ECtHR law, in particular—to argue that public sector workers have the right to unionize, the right to collective bargaining, and the right to strike. Turkey had reservations on the relevant articles of the European Social Charter at the time, but in 1987 the right to individual petition to the ECtHR had just been ratified, drawing these scholars' attention to the Court. Moreover, Article 90 of the Constitution gave direct effect to international law. Throughout the 1990s, a small group of committed lawyers and labor scholars filed some of the most important trade union rights cases to the ECtHR, including *Tüm Haber-Sen v. Turkey* (2006) and *Demir and Baykara v. Turkey* (2008). Moreover, this group played an active role in organizing, by attending meetings, seminars, and panels. They also published scholarly and non-scholarly articles in magazines, journals, and newspapers to spread to the workers the idea that international law provides a legitimate basis for workers to unionize. One of these outlets was the *abece* journal, where Işıklı and Gülmez, among others, frequently wrote to inform teachers about their rights under international law.[118]

Grassroots mobilization in conjunction with human rights litigation

The applications to the ECtHR that produced the landmark judgments took more than a decade to be finalized. For instance, *Tüm Haber-Sen* was filed in 1995 and *Demir and Baykara* was filed in 1997. The ECtHR took 11 years to reach a final judgment in each case. In the meantime, the workers did not sit and wait for these judgments to be finalized. Similar to the

[118] See for instance, Gülmez (1988b) and Işıklı (1989).

BSG activists, public sector workers mounted a large grassroots mobilization campaign. Different from the BSG activists, however, human rights language was not heavily used in the campaigns. Instead, human rights law helped build the movement by providing a legal basis for workers.

From the beginning of their struggle to unionize, public sector workers effectively used *litigation strategy* at the national and international level *in conjunction with direct action strategy*. The first bold move came from the teachers as they established the first public sector workers' unions that later formed Eğitim-Sen together: Eğitim İşkolu Kamu Görevlileri Sendikası (Eğitim-İş, Education Sector Public Employees' Union) in 1990, followed by Eğitimciler Sendikası (Eğit-Sen) the same year. Before the general elections in October of the following year, six more unions were established. The government retaliated by sealing the union offices, preventing unionists from holding their meetings, taking criminal and disciplinary action against union founders and members. To nip the nascent unionization efforts in the bud, on February 1991 the Ministry of Interior issued a circular banning all public sector workers from joining or establishing unions. Riding the momentum of the *Bahar Eylemleri*, the workers immediately took to the streets. Once again, public sector workers engaged in innovative protests, including burning their pay slips, preparing stands to put their personal belongings up for sale, sending hundreds of telegraphs to the government, and organizing press announcements (Milliyet 1991a).

The protests were met with police repression (Milliyet 1991b). The first action against repression taken by public sector unions at the international level was to file complaints with the ILO regarding the interference with the right of public sector workers' to unionize, in particular, the exiles and the arrest and detainment of their founding members (ILO Complaints 1991 April

and May). Without waiting for the response of the Committee, Eğit-Sen members continued to take direct action calling on the government to take immediate measures to ensure workers' right to unionize. On September 14, workers gathered in front of their main union offices and broke the seals.

In the aftermath of the 1980 coup, many leaders of organized labor were tortured, killed, or imprisoned. The Türkiye İşçi Partisi (TİP, Workers Party of Turkey) was closed.[119] Unlike the relationship between the British workers and the Labour Party, workers in Turkey no longer had direct ties with any of the remaining parties, although some of the center-left parties, such as the Sosyal Demokrat Halkçı Parti (SHP, Social Democratic People's Party) and the Demokratik Sol Parti (DSP, Democratic Left Party) were more responsive than others to the demands of the workers. Nonetheless, the workers' forceful grassroots mobilization influenced the general elections of October 1991. Almost all parties, with a few exceptions, promised to comply with international standards on trade union rights in their election campaigns.[120] ANAP had already taken a big hit with the *Bahar Eylemleri* and started losing popular support. While ANAP also declared its commitment to international law, it was silent on public sector workers' trade union rights. The winning parties in the elections, SHP and Doğru Yol Partisi (DYP, the True Path Party) formed a coalition government promising to protect the rights of public sector workers. SHP (1991), in particular, stated that "all workers' and civil servants' trade union rights will be fully secured."

The height of public sector workers' unionization came in 1992. The new coalition

[119] TİP briefly merged with the Communist Party of Turkey in 1987 to form Türkiye Birleşik Komünist Partisi (United Communist Party of Turkey) but the Constitution Court closed the party in 1991. The case was taken to the ECtHR and the Court delivered a violation judgment (*Case of United Communist Party of Turkey and Others v. Turkey*, 1998), but the party was never reestablished.

[120] See Gülmez 1992 for a detailed discussion on the campaign materials of competing parties in the 1991 elections.

government appointed a labor-friendly Minister of Labor, and the administrative courts issued new judgments recognizing Turkey's obligations under international law to uphold public sector workers' right to unionize. During this year, the left-wing unions came together to form, Kamu Çalışanları Sendikaları Platformu (KÇSP, Public Employee Unions' Platform), which became KESK in 1995. The right-wing professional *derneks*, which initially denounced public sector workers' right to unionize, also established unions during this year. Overall, 42 new trade unions were formed in addition to the KÇSP. The first official statistics on union membership in the public sector were released in 2002. But, in 1991, Eğit-Sen claimed its membership as 10,000 (ILO Complaint 1991a), and Eğitim-İş, as 20,000 (ILO Complaint 1991b). After the merger of these unions, Eğitim-Sen claimed its membership as 97,000 in 1999, composing 14% of the public education sector. KESK (1996) claimed its membership as 391,500 in 1996, composing approximately 10% of the public sector.

Until the mid-to-late 1990s, KESK unions[121] organized massive street protests to build their power and demand the right to strike and the right to collective bargaining, in addition to the legal recognition of public sector unions. As one of my interviewees noted, "KESK was built based on *sokak mücadelesi* (struggle in the streets)," and as many others have emphasized, it prioritized "*fiili mücadele*" (action-based-struggle[122]) over all else. Some of the largest protests were organized in Ankara, with tens of thousands of workers pouring into the capital from other cities. These included the "*Hak Direnişi*" (Rights Struggle) in 1992, a protest jointly organized with other private sector unions in 1994, and a massive protest with hundreds and thousands of public sector workers in 1995. These more notable protests were accompanied throughout the

[121] As I noted above, KESK was formally established in 1995, but since its constituents had formally organized actions together under KÇSP, I refer to them as "KESK unions" for ease in conceptualization.
[122] This phrase could also be interpreted as rank-and-file mobilization.

1990s by regular work stoppage actions (going on strike was illegal for public servants), hunger strikes, and civil disobedience acts, such as not conforming to the dress code for public servants or going to the hospital collectively to demand sick leave. At the same time, every collective action attempt made by public sector workers was met with police violence as well as disciplinary and criminal action. According to Eğitim-Sen's report, from 1996-1998, a total of 242 members were forced to transfer to different cities[123] and a further 101 were sentenced to prison (although decisions were not yet final). Moreover, by 1998, nearly 19,000 members had been subjected to disciplinary measures due to trade union activities. KESK's collective action and the police repression had become so routinized that the media commonly referred to the pay raise received by public sector workers as a result of their street protests as a "cop zammı" (truncheon raise).[124]

As discussed in detail in Chapter 4, KESK defended its trade union rights based primarily on international law. KESK activists and lawyers viewed international law as their only legal basis to demand their basic trade union rights. During the 1990s, concurrent with the direct action strategy, KESK unions filed three complaints with the ILO regarding violations of freedom of association and 15 applications to the ECtHR. KESK unions specifically referred to international law and human rights in their rules and regulations. Eğitim-Sen's first constitution in 1995, as well as the current one, make several references to human rights, stating that the union "uses its rights based on international agreements including, the Universal Declaration of Human Rights, ILO Conventions, European Convention on Human Rights, and the European Social Charter. Based on the understanding that these agreements are binding in domestic law, it

[123] Of these decisions, 122 were revoked due to Eğitim-Sen's initiatives.
[124] See for instance, Milliyet (1994a).

seeks to change the Constitution and domestic laws to reach contemporary standards" (3b). Similarly, KESK's current constitution states that one of its fundamental goals is to ensure that "the struggle to ensure all rights and freedoms based on human rights agreements and international law and agreements are fully secured" (4c).

Despite the simultaneous use of international law and direct action strategies, neither human rights nor the ECtHR cases shaped the language of street protests and campaign materials during the 1990s. In contrast to the BSG activism, KESK's grassroots mobilization adopted a class-based discourse as well as a general rights language in its grassroots mobilization, with little reference to international law. References to democratization, which had been a significant theme in left-wing politics in the aftermath of the coup, were common in campaigns. Additionally, owing to their alliance with the Kurdish movement, KESK unions also rallied for peace and demanded an end to state-sponsored violence. While rights language was widely used since the beginning, there were no specific references to human rights or the ECtHR. Common slogans included "workers and public servants hand in hand," "we want collective bargaining, not charity," and "our struggle for trade union rights, including strike and collective bargaining, cannot be stopped."[125] The lack of references to human rights in workers' struggles in Turkey throughout the 1990s proves once again the strategic approach of the workers towards human rights. The BSG resorted to human rights language in order to enter a public discourse where human rights had become a broadly accepted discourse. KESK had not yet adopted human rights langugae in its campaigns during the early 1990s. Although many applications were submitted to the ECtHR by public sector workers in Turkey, at the time, the Court had yet to deliver any of its pro-union or pro-worker judgments. Human rights had barely started to enter the public

[125] See for instance, *Milliyet* (1992, 1993, 1994).

discourse. In 1987, Turkey accepted the right of individual petition to the ECtHR. First, the Kurdish movement flooded the Court with grave human rights violation cases from the Southeast. Towards the end of the 1990s, the Court started to deliver some of its landmark judgments on these cases and, hence, awareness about the Court slowly started to emerge. At the same time, following Turkey's application to become a member of the EC—the predecessor of the EU—a parliamentary body called the Human Rights Investigation Commission was established. Turkey's failure to comply with basic human rights standards in its "war on terror" and its repression of peaceful protests had become a common theme of EU reports throughout the 1990s and were regularly portrayed in mainstream media. Therefore, only towards the end of the 1990s was a general consciousness of human rights beginning to be formed in Turkey.

The broad mobilization campaign of KESK yielded some important victories for the movement.[126] First, as a result of protests by public sector workers, the government was forced to repeal the 1991 circular banning public sector workers from establishing unions. Second, in part due to the work of legal advocacy groups, the administrative courts recognized Turkey's obligations under international law (the Convention and the ILO) and public sector workers' right to unionize and engage in collective bargaining. Third, workers pressured the government to ratify two new ILO Conventions, nos. 87 on the right to organize and 151 on the right of public sector workers to organize, in 1993. Finally, in 1995, soon after Tüm Haber-Sen's closure case was taken to the ECtHR by the activists, Turkey finally recognized with a constitutional amendment public sector workers' right to unionize. Most importantly, this progress was made before the ECtHR had issued any of its pro-union judgments, although 15 applications pending before the ECtHR and the repeated reference by legal advocacy groups in domestic courts to

[126] These developments on the legal front are discussed in detail in Chapter 5.

Turkey's obligations represented the threat of litigation. Therefore, the ECtHR law had an impact, but not as a direct result of Court rulings. Since a broad-based human rights consciousness had yet to be formed, KESK activists did not resort to human rights language in their campaign efforts to appeal to the public during this period.

Litigation with weak mobilization

In the period following its foundational years, starting from the late 1990s, KESK began to lose momentum and its ability to mobilize rank-and-file members. The primary reason for this was that the state, particularly under the AKP regime, started to structurally disempower public sector unionism rather than impose brute force and outright bans. As the ability of KESK unions to influence state behavior through grassroots mobilization waned and in the face of dwindling options to counter state repression, KESK began to lean more heavily on litigation strategy. As a result, they moved from strategic litigation to flooding the ECtHR with many cases, for both policy outcomes and remedies for individual members.

The AKP rose to power in 2002, marking a new era in Turkish politics. The new conservative government promised a model of "moderate Islam" with a commitment to liberal reforms, democratization, and a free market economy while upholding Islamic values. The AKP's version of moderate Islam was hailed in the West as an example for the Muslim world. In 2004, the Economist explained the "importance of backing Erdoğan" as follows:

> Although the Turkish prime minister and his Justice and Development Party have Islamist roots, they are proving in office to be of the liberal variety that believes in free markets and secular democracy. If democracy is to be successfully fostered across the Muslim world, especially in Arab countries, it is vital to encourage this Turkish

exemplar.

During its first few years in power, the AKP lifted the state of emergency in the Kurdish provinces, abolished the death penalty, and made progress against torture and ill-treatment by undertaking police training programs and passing legislation reducing time in custody. In recognition of Turkey's commitment to democratic reforms and economic liberalization, the EU officially started accession talks with Turkey in 2005.

Why would KESK lose all its power under a liberal regime that promised democratization and integration with Europe? This question is best answered by working backward from the current situation of public sector workers in Turkey, 15 years after the AKP's rise. After the attempted coup on July 15, 2016, the AKP government declared a state of emergency that is still in effect a year later. Within this period, over 138,000 public sector workers, including over 4,000 judges and prosecutors and more than 44,000 people in the education sector (8,000 academics) were dismissed under the state of emergency without parliamentary approval and without due process.[127] Over 118,000 people have been detained. Additionally, 149 media outlets, 1,284 schools, and 15 universities have been shut down. The public sector workers named in these decrees have, not only lost their jobs or face criminal investigations, but have also been banned from all public work, and many of them have had their passports revoked. Moreover, the co-chairs of the pro-Kurdish party, Halkların Demokratik Partisi (HDP), with which KESK has close ties, are in prison along with other HDP members of the parliament. While the events of the last year in Turkey may seem like a rupture in AKP governance, a closer look at the state building process of the AKP demonstrates that this past

[127] The data is from Turkey Purge https://turkeypurge.com/about-us. The overall number of public sector workers in Turkey is 3.6 million.

year is an accelerated version of the slow repression of dissent at every level of the state bureaucracy during the past 15 years.

The human tragedy caused by these massive purges is probably unprecedented in Turkey, as many people continue to flee the country through illegal means or by applying for refugee status (Hansen 2017). But, the extent of the purge in such a short amount of time is particularly shocking, providing further evidence to KESK's long-standing claims of dissident blacklisting. An overwhelming majority of the purges are due to alleged ties to the Islamist Gülen movement. Fethullah Gülen, who resides in the US, was accused of leading a terrorist organization by the government for allegedly plotting the attempted coup. That the AKP had a close alliance with Gülen in paving its way to power and in rebuilding the state bureaucracy was well-known, although the extent of the alliance was difficult to document (Şık 2012;[128] Taş 2017). Erdoğan recognized this alliance himself by publicly declaring after their alliance broke off that he had been "deceived" by Gülen (Hurriyet Daily News 2017).[129] Many others used the same argument to pledge their allegiance to the AKP after purges began in the wake of the coup attempt. The government, however, has used the purges to suppress all dissent, including from leftists not affiliated with the military or with Gülen, since journalists and academics well-known for their criticism of the Gülen-AKP alliance are also being purged. KESK (2017) declared in May 2017 that about 3% of the purges are KESK members.

[128] Şık was detained for a year after the publication of his book, which was subsequently banned. See Tuğal's (2013) article on the relationship between the two movements.

[129] The alliance between the AKP and the Gülen movement famously fell apart when the AKP blamed Gülen for exposing a massive corruption scandal in 2013. The scandal included taped conversations of Erdogan as well as other top AKP officials, but Erdoğan denied the allegations, arguing that the tapes were fabricated. A key name that came out of the exposed tapes was Reza Zarrab, supposedly aiding the AKP in money laundering and operating illegal trade between Turkey and Iran. Zarrab was arrested in the US in 2016 and his attorneys include Rudolph W. Guiliani and Michael B. Mukasey. See (Weiser 2017). 0

To think that even a fraction of the hundreds of thousands of people who have been persecuted were actually involved in plotting a secretive coup unknown to the government is absurd. Yet, at the same time, since a large number of the purges did target Gülenists, the events of the past year provide some insight into the extent of the favoritism and corruption in the public sector during the AKP period. In addition to the purges, within the past year many state officials started to be prosecuted for past crimes, now that Gülenists do not have the immunity provided by the AKP. For instance, 10 years after the murder of the Armenian-Turkish journalist Hrant Dink, top police officers and prosecutors are now being charged with complicity in the crime.[130] In an attempt to justify the purges to the military, the National Security Minister declared that they had just discovered that during the period from 2000-2014, the military school entrance exams had been stolen (Hurriyet 2016). Such scandals have surfaced before during the AKP era; letters requesting direct favoritism were circulated on social media and people claimed numerous times that the public servants' entrance exam had been stolen.[131] Yet, as the checks and balances were eradicated through the AKP's consolidation of power within different branches of the state—most importantly, through the military (Akça and Balta-Paker 2013), the judiciary (Özbudun 2014, 2015), and the police force (Özbudun 2014; Tuğal 2013) —it has become increasingly difficult to assess the credibility of such allegations. In short, the events ensuing the coup attempt brought the abuses of power and repression of trade union rights that crippled KESK's strength to the fore.

The most important factor for KESK's slow disempowerment during the AKP period is the corporatist-clientalist relationship the government has developed with Memur-Sen based on

[130] The new indictment also holds Gülen personally responsible for plotting the murder (Cuhmuriyet 2017).
[131] Part of the 2010 exam was cancelled after allegations that the exam had been stolen. (Cumhuriyet 2016).

favoritism in the public sector. Table 6.1. displays the membership levels of public sector trade unions. During the AKP period, Memur-Sen's membership increased dramatically—20 times its 2002 level. Labor scholars and journalists frequently wrote about the favoritism granted to Memur-Sen members in all sectors of public work, particularly regarding hiring and promotion decisions (Çelik 2014). Moreover, as Chapter 5 showed, the current pay-fixing scheme can hardly be defined as a collective bargaining agreement process. Memur-Sen, as the biggest trade union representative in the public sector, seals the deal for all 3.6 million public sector workers while workers do not have the legal right to strike. KESK repeatedly claimed that Memur-Sen does not defend workers' rights in bargaining meetings. In 2014, KESK (2014) claimed that Memur-Sen settled for a lower annual pay raise than what the government initially suggested. Memur-Sen does not only denounce the right to strike for public sector workers, but its leaders also filed a lawsuit against KESK members for organizing an illegal strike activity (Memurlar 2011). The corporatist ties between the government and Memur-Sen are based on the understanding that the government gives Memur-Sen members priority in public sector positions and Memur-Sen, in return, does not protest or mobilize to demand trade union rights for public

Table 6.1. Membership levels in public sector unions

	KESK	Memur Sen	Kamu-Sen
2002	262,000	42,000	329,000
2007	231,000	249,000	350,000
2011	232,000	515,000	394,000
2015	236,000	836,000	445,000

Data: Ministry of Labor and Social Security

sector workers.

While KESK's membership levels did not fall dramatically in the 2000s, losing a little more than 10 percent of its membership, it would normally have been expected to consolidate its membership base and expand after its foundational years in 1990s. Compared to the explosion of Memur-Sen's membership, KESK's stasis in practice meant that it lost a significant amount of organizing power. At the same time, as the ECtHR cases show, the governments' direct repression of KESK's unionization efforts has not ceased, although the brute force used against protestors declined relative to the 1990s. Eğitim-Sen has faced closure attempts, KESK members are subjected to disciplinary and criminal measures for participating in trade union activities, and many KESK leaders were arrested during the KCK operations[132]. But comparison to the 1990s, when KESK successfully resisted bans and repression, demonstrates that the structural disempowerment strategy employed by the AKP government has been a more effective strategy than violent repression and outright bans. As Eğitim-Sen's general secretary Sakine Esen Yılmaz said, "The employer is the state, the violator is the state as well as the judge [and] the legislator…. We are very weak in the face of such a structure." The consolidation of state power under the AKP regime and the corporatist union structure put in place undermined KESK's mass appeal and its ability to mobilize rank-and-file members in the public sector. The KESK unionists I interviewed unanimously confirmed state repression and Memur-Sen's ties to the AKP as setbacks in their unionization struggle. As Oya Aydın, a former KESK lawyer, explained:

How many members did KESK have in 2000 and how many members does it have now?

[132] The government declared KCK as the urban arm of the PKK and arrested hundreds of activists, including many KESK officials. See Chapter 5.

> And, what about Memur-Sen ['s membership levels]? There is a serious barrier to the right to organize. I mean, you can't become a member of a dissident trade union. If you do, you are on the losing team.

As KESK began to lose the momentum of its foundational years and started to weaken in the face of state repression, it also failed to maintain its internal stability and the support of its members. Part of the criticism came from its nationalist members, who were disappointed with KESK's alliance with the Kurdish movement. In 2005, Eğitim-İş separated from Eğitim-Sen to form its own union. Perhaps more important is the criticism from its members that KESK is failing to keep up its internal democracy and to respond to the changing dynamics of public sector unionism (Taşdan 2013; Çelik 2014; Aksoy and Günbayı 2016; Damar 2017). For instance, a recent study on the expectations of Eğitim-Sen members from the union shows that, while they do not regard other unions in the sector as real unions advocating for trade union rights, they are dissatisfied with Eğitim-Sen's inability to respond to demands from below in a democratic way (Aksoy and Günbayı 2016). Lower-rank KESK union officials and some of the former KESK officials I interviewed expressed the same criticism. As one explained,

> There is a need to renew the mobilization and organizing strategy. What I mean by organizing is both its internal democracy and structurally…. How are we going to organize sub-contracted and part-time workers [in the public sector]? Some small steps have been taken in this regard. This is an issue that has been talked about for a long time now [within KESK]…. This is the primary question. Second, is that [KESK] needs to form more direct ties with members, responding to their demands… [and] pay more attention to the needs of new members. It needs to break the understanding that KESK is interested in politics and it is not paying attention to our needs.

KESK's ability to respond to these criticisms from within are undoubtedly important moving forward. The lack of institutional ties generally leads unions to seek coalitions with other social actors, as KESK has done with the Kurdish movement, and facilitates union revitalization through rebuilding its power at the grassroots level (Pizzorno 1978; Baccaro, Haman, and Turner 2003). However, in the current undemocratic climate of Turkey, the future of KESK, or, for that matter, the future of democracy at large in Turkey, does not seem hopeful.

Given that KESK's mobilization capacity was crippled and its ability to influence state policy through lobbying was nonexistent, it is not surprising that KESK's ECtHR litigation strategy changed. As Chapter 4 showed, the number of applications taken by KESK to the ECtHR more than doubled from the 1990s to the 2000s. While in the first years KESK used international human rights law and grassroots mobilization to build the movement and gain the right to organize, in later years KESK lost its ability to leverage international law to influence state behavior. Hence, currently, KESK unions bombard the ECtHR with the same type of cases (repetitive cases) rather than picking and preparing cases (lead cases) that would influence policy outcomes. Domestic courts are largely unresponsive to KESK's demands, with few exceptions. As Chapter 5 showed, in response to the violation judgments of the ECtHR, the state undertakes superficial legislative changes that make it seem like public sector workers have the right to collective bargaining and the right to take collective action, while in practice they are able to exercise neither. Hence, the case study of KESK shows that litigation at an international court does not by itself lead to better protection of rights on the ground.

Strategic mobilization of human rights: a dual consciousness?

Similar to BSG activists, the adoption of a human rights activist identity is more common

among KESK leaders and, in particular, lawyers. KESK's alliance with the Kurdish movement has influenced this embrace of human rights identity, as many lawyers who identify as human rights defenders work both on KESK cases and Kurdish cases. Öztürk Türkdoğan, for instance, was the former head of the Human Rights Association and has also worked at SES as a legal advisor since its inception. As Chapter 4 showed, many lawyers work on both trade union rights cases and Kurdish cases. On the other hand, none of the lower-ranked officials I interviewed identified themselves as human rights activists.

KESK's alliance with the Kurdish movement and its reliance on international law led to the increased incorporation of human rights language in their formal rules and regulations, press talks, pamphlets, and campaigns. For instance, the campaign around Eğitim-Sen's controversial clause on the right to education in one's mother tongue made specific reference to international human rights. Similarly, KESK campaign materials often refer to "insanca yaşam hakkı" (the right to live with dignity). Moreover, KESK and its unions produce periodic reports on rights violations, with specific references to the ECtHR, EU, and ILO norms. KESK unions also include victorious ECtHR cases and the implications of newly-confirmed human rights claims on their websites and membership pamphlets in order to create awareness about them.

In conformity with my findings in the UK, all my interviewees in Turkey emphasized that litigation plays a secondary, supportive role to *fiili mücadele*—action-based struggle. They particularly emphasized this point with reference to KESK's foundational history. İrfan Kaygısız described as secondary the labor activists' approach towards the law during KESK's initial years: "*Fiili mücadele* was the priority. The legal struggle fed, supported, and facilitated it." Öztürk Türkdoğan similarly explained that "when we established the unions there were no legal regulations. Therefore, we led our struggle based on international law. If you're going to use

international agreements, the ECtHR will be your first choice, undoubtedly."

Despite the consensus that the legal struggle should assume a secondary role, there is a disagreement about the ability of KESK to actually uphold its commitment to *fiili mücadele.* Esen Yılmaz, for instance, explained that "the two [litigation and *fiili mücadele*] are moving in parallel. In some ways, we have to litigate so much because of the repression we face in our *fiili mücadele.*" Other union leaders and lawyers also confirmed this more favorable opinion of KESK's ability to prioritize direct action today, despite difficulties. Lower-rank union officials and previous members of KESK, however, were hardly sanguine: "In the first years, the law was secondary. I don't know...; putting direct pressure on the employer, bargaining with them, taking direct action was essential. Now, the legal struggle has become the main way to solve problems. It is troublesome, of course." Another interviewee similarly said, "as KESK lost its militant edge, it winds up litigating at the ECtHR more." Therefore, compared to KESK's foundational years, current members point out that litigation and direct action strategy are divorced from each other: "The cases that are taken to the ECtHR are already cases that have not been able to be won through *fiili eylem* (direct action)," one interviewee noted. He further expressed the low expectations he has in such cases by explaining that, "if a case is being taken to the ECtHR, that means it is already lost [in *fiili eylem*]." Yet, even the critical interviewees were quick to note that KESK is not a "sell out," but that it has no other option:

> We should recognize the following. It is not that we have given up everything and turned our face to Europe or that we delegated our work to international support. That is out of the question. The existing situation [that KESK is in] is already a weak situation. The labor movement's effective use of the ECtHR and human rights is already limited [due to its weak position]. We should not attribute our own weakness to human rights itself.

The disillusionment with the ECtHR cases and their impact (or the lack thereof) is also shared by KESK lawyers. As Tiryaki noted, "We are not that keen on applying to the ECtHR. We don't prefer to do that because it takes so long. [By the time the judgment is delivered], the violation has already done its harm…." At the same time, he noted that once the union goes through all the domestic courts and still does not get a response, activists have no other alternative.

Another important shift in litigation strategy from the 1990s to the 2000s is the inability to engage in litigation with an eye towards policy change. All interviewees complained about Turkey's failure to comply with the ECtHR standards on trade union rights over the past 15 years. As explained in Chapter 5, Turkey did the absolute minimum to fulfill the requirements of the Court, without granting public sector workers the right to strike or the right to collective bargaining. After Türkdoğan complained at length about the shortcomings of the execution of judgments and Turkey's unwillingness to comply, I asked him why KESK unions continue to take cases to the ECtHR. He explained that "this is a rights struggle. We cannot just not take our cases to the ECtHR because Turkey does not comply." Esen Yılmaz further noted that "the ECtHR judgments and international law are important for the purposes of legitimating our struggle. This is what we rely on for our legitimacy. You say that this is unconstitutional, but we're saying that, look, the international agreements are saying something different." In that sense, despite the lack of their impact, ECtHR judgments provide a sense of righteousness for the movement. Moreover, although the litigation process takes a very long time, in cases where individuals have directly suffered persecution, the ECtHR judgments provide some remedy. Tiryaki noted that the compensation award "may help ease their pain a bit," but he criticized the ECtHR for having decreased the amount of monetary compensation in violation cases. Türkdoğan, similarly, noted that in cases where individuals have been subjected to disciplinary

and criminal action, the government lifts these measures after ECtHR judgments. Hence, on the whole, the expectations from ECtHR litigation seem to have changed since the 1990s.

The dual consciousness that KESK activists and lawyers exhibit reflects the impasse they have found themselves at during the AKP era. They realize that the remedies the ECtHR provides are limited, but their ability to take action at the domestic level—lobbying, campaigning, protesting—is even more limited. Litigation, therefore, has become the strategy of despair, rather than a catalyst for grassroots mobilization.

Conclusion

These case studies provide significant insights into making sense of the impact of ECtHR judgments in different settings. First, the findings show that, despite the limited impact of ECtHR's direct remedies, when litigation strategy is combined with other forms of mobilization, labor activists are able to achieve tangible goals and change state behavior. The foundational years of KESK and the BSG case exemplify successful cases of legal mobilization, where workers did not wait for the judgments of the ECtHR to engage in mass mobilization. International human rights law provided a legal basis for trade unionists to demand their rights enshrined in international documents directly from the government. In later years, however, KESK lost its mobilization capacity under the totalizing power of the state and the growing corporatist structure in public sector unionism. Litigation has become its only option for addressing violations. As a result, ECtHR litigation by itself failed to suffice in solving unionization problems on the ground.

The ethnographic studies of labor activism presented in this chapter also build on other studies emphasizing the role of transnationally linked "intermediaries" to suggest that human

rights law travels into local contexts through the vernacularization of human rights. I found a two-tier process whereby norm translation is first filtered through or mediated by legal advocacy groups who identify litigation opportunities at the international level and make human rights norms accessible to local labor activists. Next, grassroots activists vernacularize these norms for the public through campaign efforts. The BSG case study provided a perfect example of the two-tier process, whereby legal advocacy groups drive the litigation efforts at the first level. Then, labor activists engage in strategic mobilization of human rights to reach a broader audience and cast trade unionists as bearers of human rights. In the KESK case study, the vernacularization of human rights, however, largely remained at the first level during the 1990s. A group of committed and knowledgeable labor lawyers and scholars vernacularized human rights for labor activists, but the labor activists did not translate this knowledge to a broader audience to claim labor rights as human rights. Once the human rights discourse became a more acceptable framework for addressing social justice issues in the 2000s, KESK did incorporate human rights language in its campaign materials. However, by this time, KESK had already lost its capacity to mobilize masses.

I also showed that groups that are particularly skeptical of human rights can mobilize human rights strategically. Strategic mobilization differs from other human rights movements, as vernacularization efforts are not directed toward the members of the group but toward a broader audience. Labor activists did not utilize human rights language when building their movement or when recruiting new members. The primary basis for their collective identity and their solidarity ties within the movement were still based on class consciousness. Their use of human rights language in their campaign efforts was instead oriented toward convincing the public that trade unionists are bearers of human rights. The BSG case study shows that amidst heated nationwide

debates on the legitimacy of the ECtHR regarding civil and political rights issues, the BSG seized on this controversy to insert trade union rights in popular understandings of human rights, which normally omit or marginalize labor rights. KESK members, on the other hand, recognize the limits and drawbacks of relying solely on ECtHR litigation, but their ability to mobilize grassroots support is curbed.

CHAPTER 7. CONCLUSION:

IS LITIGATION AT AN INTERNATIONAL COURT A RECOURSE OR A CURSE?

Organized labor is in decline in many parts of the world. Part of this decline is spurred by the changing dynamics of industrial relations under globalization: manufacturing industries are moving to countries where labor is cheap and unions are weak, new work schedules under zero-hour contracts or just-in-time production models undercut the prospects for workers to organize, and global supply chains present serious challenges to ensuring fair labor conditions and to holding multinational corporations atop the production chain responsible for violations. Direct state repression of organized labor is also a source of this decline. The challenges are many, multi-layered, and complicated. This dissertation examined the conditions under which an international human rights court became a resource for labor activists in addressing some of these challenges. What kind of changing opportunity structures drive workers to seek remedies at the international level? And what is the impact of their efforts? Is litigating labor rights as human rights a recourse or a curse for workers?

First, the ECtHR emerged as a new opportunity for workers to direct their mobilization efforts. Based on an analysis of workers' rights cases brought before the ECtHR from 1960 until 2013, I showed that the Court has adopted a new approach towards labor issues over the past two decades and has issued landmark decisions recognizing a number of fundamental labor rights as human rights. The diversity of the growing case law on labor rights at the ECtHR—a Court that shunned labor rights claims for decades—is striking, as it now encompasses issues such as workers' health and safety, migrant workers' rights, and unfair dismissals. I argued that this dramatic change in the Court's case law is driven both by workers' increased demands directed

towards the Court as well as the ECtHR's willingness to expand its jurisprudence by incorporating new types of labor rights into its existing case law. The Court's judgments on trade union rights cases stood out among others, as the ECtHR folded the right to organize, the right to collective bargaining, the right to strike, and other trade union rights into its interpretation of freedom of association. These landmark cases, brought primarily by labor activists in Turkey and the UK, were highly influential in setting new standards on trade union rights across Europe.

My comparative case study of changing political opportunity structures at the domestic level showed that even liberal democracies like the UK can be very restrictive in terms of trade union freedoms. I argued that the neoliberal turn in Turkey and the UK—notwithstanding differences in implementation—created an environment in which domestic institutions were unresponsive to the demands of labor. Hence, at a time when neoliberal policies have structurally disempowered organized labor, the ECtHR, as a human rights court, emerged as one of the few institutional sites left at which organized labor could direct mobilization efforts. Moreover, a committed group of labor lawyers and scholars who were knowledgeable about human rights law served as intermediaries and drew the attention of workers to the ECtHR as a new resource. The confluence of these changes at three levels—international, domestic, and grassroots—shaped workers' new strategy of litigating labor rights as human rights.

The ECtHR has been singled out by researchers for its success in executing judgments, which are legally binding in all 48 member states (Goldhaber 1997; Helfer and Slaughter 1997; Moravcsik 2000). The contribution of the ECtHR to upholding human rights in Europe cannot be underestimated. In my analysis of states' compliance with the ECtHR rulings, I looked beyond the Court's own assessment of states' performance and examined the actual impact of the general measures states undertake on workers and unions. In line with the findings of other scholars, my

study showed that, in both countries, judges at the domestic level have started to incorporate ECtHR law more into their decisions, in large part due to increased pressure by activist labor lawyers in the cases they brought before the courts.

But, even with all its success, the ECtHR's direct remedies were remarkably disappointing for workers. The legislative reforms that states undertook in order to comply with the judgments of the ECtHR were minimalist in fashion, and, in most cases, failed to prevent future violations. In that sense, my findings on the direct remedies of human rights law confirmed the realists' arguments that judgments by an international human rights court fail to provide enough material incentives on states for protect human rights.

The realists, though, miss a key part of the story. I show that the effects of ECtHR law on strengthening workers' mobilization efforts is more transformative than are the direct remedies provided to workers by the ECtHR in violation judgments. In cases where workers engage in grassroots mobilization in conjunction with litigation at the ECtHR, they are able to pressure the government to take action on labor rights violations even before the ECtHR delivers its final ruling.

The BSG case study shows that even when workers ultimately lose the ECtHR case, they are able to achieve some of their core aims by using human rights language in their campaigns. Using human rights language allowed workers to ground their grievances on a firm legal basis (ECtHR law), cast trade unionists as bearers of human rights, and build their organizational capacity by forming alliances with other human rights groups.

The KESK case study, similarly, shows that during the first decade in which public sector workers were established, human rights law provided a critical legal basis for workers to demand their rights and mobilize masses. KESK won the right to join and establish unions before the

ECtHR delivered its final ruling. However, as KESK started to lose its capacity to mobilize and take rank and file members into the streets, litigation turned into a strategy of despair rather than a catalyst for grassroots mobilization. Despite winning more cases before the ECtHR, litigation, without being buttressed by pressure from below, failed to instigate meaningful change on the ground.

My analysis of workers' litigation efforts before the ECtHR corroborates the core assumption of legal mobilization theory: litigation efforts can catalyze grassroots mobilization. My study shows that this assumption holds for litigation at the international level as well. My findings take this theory a step further by pointing out that the rulings of an international court, distinct from rulings of domestic courts, by themselves have limited impact on the ground. International courts are not in the immediate orbit of politicians or the public. Without pressure from below, states undertake superficial measures to fulfill the requirements of a distant supervisory body with limited knowledge about the actual labor conditions on the ground. Even in liberal democracies with strong rule of law traditions, grassroots mobilization from below is critical to pressure politicians to take trade union rights seriously. Therefore, grassroots mobilization is not just one possible byproduct of collective litigation efforts, it is an essential part of legal mobilization at the international level if collective litigation efforts are to have any meaningful impact on the ground.

I also argued that workers engage in *strategic mobilization of human rights*. Labor activists and lawyers in both case studies exhibited reluctance to engage in rights litigation and, in some cases, a resentment towards having to resort to a distant international court for remedy. I showed that labor activists mobilized human rights to popularize the idea that their grievances as trade unionists are legitimate to a broader audience. Scholars working on legal mobilization and

vernacularization of human rights have similarly shown that activists or local groups may in some cases ignore or resist using these human rights frameworks. However, these studies indicate that in cases where vernacularization of human rights is effective, the process is mediated by a group of transnationally linked activists or lawyers who persuade local groups or activists to view their grievances as human rights (Merry 2006; Chua 2013). Others showed that even if activists are skeptical of appeals to legal institutions, activists ultimately develop a rights consciousness as they participate and socialize in legal mobilization (McCann 1994; Chua 213).

My findings differ from these studies as I show that labor activists, deeply skeptical of human rights, do not wholeheartedly embrace human rights. As a result, human rights language does not shape the way workers articulate their grievances during their private meetings or their solidarity ties—which I termed as workers' *off-stage* behavior. Workers' subjectivity and in-group ties are still heavily defined by class-based concepts. Yet, *on-stage*, i.e., as they articulate their grievances to the media or prepare protest signs, they rely heavily on human rights language. Hence, workers use human rights strategically to gain entry to a public discourse in which human rights language has become the dominant language to address social justice issues.

Looking to the Future

Workers' recent approach to human rights has been characterized by skepticism and resentment. This approach has two historical sources. The first is that labor rights have historically held a secondary place in human rights law. As I show in this dissertation, the ECtHR—established as a civil and political rights court—has only recently begun to recognize basic labor rights as human rights. Second, workers' perceptions of international law have been shaped by the existence of welfare states in which unions constituted a major political actor representing workers. Workers did not need to appeal to an international human rights courts in

order to claim their basic trade union rights. They were able to solve their disputes through the bargaining power of their unions. As Chapter 5 showed, workers frequently referred to a glorious past where unions were stronger. Hence, other activist groups that advocate for issues constituting a core issue area in human rights (such as sexual orientation and gender minority rights), or those that do not necessarily have a "glorious" past may not exhibit the resentment I found in my research on labor activists.

Nevertheless, it is possible for labor activists to drop their skepticism and embrace human rights off-stage in the future if conditions change. I suggest that two conditions would need to change for such a switch to occur in workers' attitudes. First, the ECtHR would need to continue to issue progressive judgments. Second, the alliances workers form with other groups would need to endure for a prolonged period. I showed that BSG leaders and high-level officials and lawyers at KESK were more inclined to identify themselves as human rights activists than were the workers they represent. These groups, who coordinate action with other human rights groups and who represent their movement to the media, frequently engage with human rights language. Such engagements facilitate the formation of new subjectivities among leaders and lawyers. If these engagements expand and endure, it is likely that a human rights identity would trickle down to labor activists more broadly. Consistent use of human rights language and cooperation with other human rights activists may lead unionists to alter workers' subjectivities and collective identity formations.

Of these possibilities, however, the odds are lower that the ECtHR will continue to issue pro-worker judgments. As discussed in Chapter 3, the ECtHR is under a great deal of political pressure. Part of this pressure materialized in the Brighton Declaration of 2012, in which member states urged the Court to use margin of appreciation more frequently. In other words,

they asked the Court to give more leeway to states in their implementation of the Convention rights. Additionally, the employers' group at the ILO recently lashed out against the right to strike and asked the Committee of Experts not to consider it as part of core labor rights. Most importantly, the ECtHR is under direct pressure by member states as they increasingly threaten to leave the ECtHR or decry its rulings. Turkey and the UK are two of the leading states on this front. Recent developments in each country are quite disconcerting from a human rights perspective.

Ever since the Blair administration passed the 1998 Human Rights Act, which embedded the ECtHR law into the domestic legal system, subsequent Conservative governments threatened to rip up the HRA and replace it with a British Bill of Rights. These claims were particularly heightened in the run-up to the 2015 elections, as they constituted an important part of the Conservatives' election campaign. Then, in 2016, Brexit happened. The weight of the UK's exit plans and the ensuing chaos so thoroughly dominated the public discourse that the government seems to have put its plans regarding the ECtHR on hold for the moment. Yet, Brexit sent shock waves throughout Europe and cast doubt on the UK's future membership in other European institutions, as well as the stability of these institutions should the UK indeed withdraw its membership. Notably, British labor activists have lost every trade union rights case they have submitted to the ECtHR within the past decade. As discussed in Chapter 5, British activists interpreted the ECtHR's dismissal of trade union rights cases from the UK as the direct result of the political pressure that the ECtHR is under, particularly from the UK government.

The current situation in Turkey is more alarming than that of the UK. As discussed in Chapter 6, the Turkish government has purged hundreds of thousands of public-sector workers, including judges, police officers, and military commanders in top positions since the military

coup attempt in June 2016. Currently, these workers are banned from all public work with no access even to their retirement benefits, while many are also banned from leaving the country. Thousands are detained or are under arrest, facing criminal charges. The purges were sanctioned by decrees that carry the force of law, which effectively means that there is no due process, as dismissed individuals are not even made aware of the charges against them. As these decrees were issued during the state of emergency, there is no appeal process.

The ECtHR rejected all petitions by purged individuals in the wake of a promise by the Turkish government to establish an appeal process. In June 2017, the government finally set up a special appeals commission, after much delay—it was supposed to be established back in February—under constant urgings from the ECtHR. Given the current political climate, where all dissent is suppressed with charges of terrorism, it is unlikely that hundreds of thousands of individuals will win their jobs and freedoms back. And it is highly unlikely that the ECtHR can solve a structural problem of this scale. The issue may present a legitimacy crisis at the ECtHR if it fails to deliver remedies, or it may put Turkey's membership to the CoE in danger.

Furthermore, in the aftermath of the coup and the run-up to the referendum in April 2017, President Erdoğan rallied crowds calling for the return of capital punishment, despite its ban in all CoE member states. As a result of these concerns over democracy and human rights in Turkey, in April 2017, the parliamentary assembly of the CoE voted to resume monitoring Turkey's democratic status, a supervisory role which it had relaxed in 2004. Turkey's relations with the EU also soured during the past year, in particular, with Germany and the Netherlands, with Erdoğan accusing Germany of Nazi-like behavior for blocking Erdoğan's referendum campaigns in the country. Most recently, Germany declared that it will withdraw its forces from the Turkish military base. EU lawmakers have been calling for a formal halt of membership

negotiations due to Turkey's failure to fulfill the democratic criteria (Emmott 2017). However, Turkey and the EU have mutually beneficial economic and security cooperation schemes in place. In 2015, the EU agreed to pay €3 billion to Turkey in exchange for its commitment to increase security on the Turkish-EU border, preventing Syrian migrants from crossing (European Commission 2016). Furthermore, the EU is Turkey's biggest investor and trading partner. Therefore, the EU's pressure on Turkey with regard to democratization and human rights has been arrested on multiple fronts. Given the authoritarian path on which the Turkish government has set the country, it is not likely that European institutions will be able to reverse the trend without a change in the domestic balance of power.

With the political turmoil miring both Turkey and the UK, as well as the rise of authoritarian tendencies around the world, the lessons this dissertation provides on the limits and opportunities of an international human rights court are all the more important.

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Appendix I: ECtHR Labor Cases Database: Guidelines on Coding

I led a group of 14 trained undergraduate students at the University of Washington in creating the database. Working over eight months in 2014 and 2015, we reviewed more than 5,200 labor cases to identify and code 1,267 labor cases.

The coding work was completed in two stages: I developed a general screening scheme to identify labor cases, by using keywords[133] and by selecting cases where articles relevant to labor rights violations of the European Convention on Human Rights are invoked (Articles 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, Article 1 of Protocol 1, and Article 1 of Protocol 12).[134] After this initial screening, which brought up over 5,200 cases, students checked every case and coded only labor cases according to a set of guidelines to an excel sheet.

Creating a database of labor rights under human rights law presented certain challenges in terms of determining what kinds of rights claims exactly counts as labor rights. This challenge was compounded by the fact that the ECtHR only recently started to fold labor rights into its existing framework through interpretation. The Convention and its protocols do not explicitly refer to any labor rights except prohibition of forced labor and slavery (Article 4) and a vague reference to trade union rights under freedom of association (Article 11). The legalistic approach contends that human rights derive their source from codified international law (Brysk 2002). But the changing approach of the ECtHR towards labor rights over the past few decades itself is a testament that human rights are indeterminate, malleable, and evolving (Goodale and Merry 2007).

[133] I conducted a key word search in the HUDOC database for "work*" including the word "work" and derivatives of it, as well as the French correspondent "trava*" since some cases are in French.
[134] See Appendix II for a list of Convention articles and protocols.

While I adopt a constructivist approach to human rights and acknowledge the ambiguous nature of human rights, I needed to provide a guideline for students to decide which cases to code as labor rights. I strived to adopt a very broad and inclusive approach in determining what counts as labor rights and devised the set of guidelines below. I formed these guidelines based on the list of select cases on "work-related rights" and "trade union rights" available as factsheets on the ECtHR's official website, and the legal scholarship on labor case law at the ECtHR (Ewing and Hendy 2010; Mantoulavou 2012). Additionally, discussions on the listserv of Workers' Health and Safety Watch in Turkey that I am a member of were very helpful. This group prepares annual and monthly data on workers who die due to work. Their discussions on which incidents constitute a work-related injury or death informed and broadened my understanding of labor rights.

In order to ensure reliability among students, I encouraged them to mark any case about which they were unsure. Every week we held weekly meetings where we discussed the kinds of cases students coded that week. These guidelines helped students determine which cases to code as labor cases among those that turned up in our search on the HUDOC website.

Guideline questions to determine which cases invoke labor rights:

- Is the applicant's rights as a worker a primary concern in the case?
- Is the alleged right violation in direct relationship to the applicant's work or ability to work?
- Would the person have suffered the alleged right violation if they hadn't worked?
- Has the alleged rights violation occurred in the workplace or on the way to work?
- Is the applicant an employee or an employer? If the latter, the case is probably not a labor rights case, unless the issue at stake involves at least one worker.

Below are some examples of cases that guided the database, but the list is not exhaustive.

Examples of issues to include:

- Journalists who claim their rights were violated due to work: suffered an injury, have been imprisoned or detained, or had their publication house/newspapers/media outlets closed down due to the nature of their publications.
- Legal professionals who claim their rights were violated due to work: suffered an injury, have been imprisoned or detained, had their license revoked due to alleged professional misconduct or membership to an association, have been required to join an association.
- Military personnel who are discriminated against at work, suffer an injury, or lack legal recourse.
- Cases regarding payment of pensions, retirement benefits, severance payments etc. including cases brought by family members of workers.
- Applicants who complain about violation of their property rights where the property is their main source of income, particularly farmers.
- Workers whose rights were violated due to religious reasons (religious holiday observance, wearing of religious symbols etc.)
- Immigrants who bring cases regarding their right to work.
- Medical workers and legal professionals who have been threatened by government officials or suffered violations for treating dissidents, including people deemed "terrorists" by the state.
- People whose right to freedom association was violated due to participating in labor rights protests, e.g. May Day celebrations.
- Prisoners who were forced to work

- Cases regarding (un)paid internships

Examples of issues not to include

- Claims by politicians regarding their work as representatives; such as politicians complaining of libel, politicians who are required to join or not to join an association, political parties closed down. These are generally issues pertaining to democratic politics and not issues related to the rights of a person as a worker.
- Criminal cases regarding fraud, money embezzlement etc.
- Residents who suffered from medical issues due to a nearby nuclear plant or other factory/workplace.
- Tax issues of business owners.

Appendix II. European Convention on Human Rights

Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.1950

The Governments signatory hereto, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of Human Rights and Fundamental Freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend;

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

ARTICLE 1

Obligation to respect Human Rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

SECTION I RIGHTS AND FREEDOMS

ARTICLE 2

Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

ARTICLE 3

Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ARTICLE 4

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this Article the term "forced or compulsory labour" shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations.

ARTICLE 5

Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

ARTICLE 6

Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 7

No punishment without law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

ARTICLE 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 9

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10

Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 11

Freedom of assembly and association

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

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

ARTICLE 12

Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

ARTICLE 13

Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

ARTICLE 14

Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

ARTICLE 15

Derogation in time of emergency

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

ARTICLE 16

Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

ARTICLE 17

Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and 14 15 freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

ARTICLE 18

Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

SECTION II EUROPEAN COURT OF HUMAN RIGHTS

ARTICLE 19

Establishment of the Court

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

ARTICLE 20

Number of judges

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

ARTICLE 21

Criteria for office

1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.

2. The judges shall sit on the Court in their individual capacity.

3. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

ARTICLE 22

Election of judges

The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.

ARTICLE 23

Terms of office and dismissal

1. The judges shall be elected for a period of nine years. They may not be re-elected.

2. The terms of office of judges shall expire when they reach the age of 70.

3. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

4. No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the required conditions.

ARTICLE 24

Registry and rapporteurs

1. The Court shall have a Registry, the functions and organisation of which shall be laid down in the rules of the Court.

2. When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's Registry.

ARTICLE 25

Plenary Court

The plenary Court shall

(a) elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;

(b) set up Chambers, constituted for a fixed period of time;

(c) elect the Presidents of the Chambers of the Court; they may be re-elected;

(d) adopt the rules of the Court;

(e) elect the Registrar and one or more Deputy Registrars;

(f) make any request under Article 26, paragraph 2.

ARTICLE 26

Single-judge formation, Committees, Chambers and Grand Chamber

1. To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.

2. At the request of the plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers.

3. When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected.

4. There shall sit as an *ex officio* member of the Chamber and the Grand Chamber the judge elected in respect of the High Contracting Party concerned. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.

5. The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the High Contracting Party concerned.

ARTICLE 27

Competence of single judges

1. A single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination.

2. The decision shall be final.

3. If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further examination.

ARTICLE 28

Competence of Committees

1. In respect of an application submitted under Article 34, a committee may, by a unanimous vote,

(a) declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or

(b) declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court.

2. Decisions and judgments under paragraph 1 shall be final.

3. If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 1.(b).

ARTICLE 29

Decisions by Chambers on admissibility and merits

1. If no decision is taken under Article 27 or 28, or no judgment rendered under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately.

2. A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

ARTICLE 30

Relinquishment of jurisdiction to the Grand Chamber

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

ARTICLE 31

Powers of the Grand Chamber

The Grand Chamber shall

(a) determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43;

(b) decide on issues referred to the Court by the Committee of Ministers in accordance with Article 46, paragraph 4; and

(c) consider requests for advisory opinions submitted under Article 47.

ARTICLE 32

Jurisdiction of the Court

1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47.

2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

ARTICLE 33

Inter-State cases

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party.

ARTICLE 34

Individual applications

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

ARTICLE 35

Admissibility criteria

1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

2. The Court shall not deal with any application submitted under Article 34 that

(a) is anonymous; or

(b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.

3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

(a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or

(b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.

4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

ARTICLE 36

Third party intervention

1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.

2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

3. In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.

ARTICLE 37

Striking out applications

1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application; or

(b) the matter has been resolved; or

(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.

2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

ARTICLE 38

Examination of the case

The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.

ARTICLE 39

Friendly settlements

1. At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto.

2. Proceedings conducted under paragraph 1 shall be confidential.

3. If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

4. This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.

ARTICLE 40

Public hearings and access to documents

1. Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.

2. Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

ARTICLE 41

Just satisfaction

If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

ARTICLE 42

Judgments of Chambers

Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

ARTICLE 43

Referral to the Grand Chamber

1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.

2. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance.

3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

ARTICLE 44

Final judgments

1. The judgment of the Grand Chamber shall be final.

2. The judgment of a Chamber shall become final

   (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or

   (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or

   (c) when the panel of the Grand Chamber rejects the request to refer under Article 43.

3. The final judgment shall be published.

ARTICLE 45

Reasons for judgments and decisions

1. Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.

2. If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

ARTICLE 46

Binding force and execution of judgments

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two-thirds of the representatives entitled to sit on the committee.

4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph1. 5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

ARTICLE 47

Advisory opinions

1. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the Protocols thereto.

2. Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the Protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.

3. Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the committee.

ARTICLE 48

Advisory jurisdiction of the Court

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

ARTICLE 49

Reasons for advisory opinions

1. Reasons shall be given for advisory opinions of the Court.

2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

3. Advisory opinions of the Court shall be communicated to the Committee of Ministers.

ARTICLE 50

Expenditure on the Court

The expenditure on the Court shall be borne by the Council of Europe.

ARTICLE 51

Privileges and immunities of judges

The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

SECTION III MISCELLANEOUS PROVISIONS

ARTICLE 52

Inquiries by the Secretary General

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

ARTICLE 53

Safeguard for existing human rights

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party.

ARTICLE 54

Powers of the Committee of Ministers

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

ARTICLE 55

Exclusion of other means of dispute settlement

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

ARTICLE 56

Territorial application

1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.

2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.

3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.

4. Any State which has made a declaration in accordance with paragraph 1 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention.

ARTICLE 57

Reservations

1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this Article.

2. Any reservation made under this Article shall contain a brief statement of the law concerned.

ARTICLE 58

Denunciation

1. A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.

2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.

3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.

4. The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

ARTICLE 59

Signature and ratification

1. This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.

2. The European Union may accede to this Convention.

3. The present Convention shall come into force after the deposit of ten instruments of ratification.

4. As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.

5. The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

done atrome this 4th day of november 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

Protocol

to the Convention for the Protection of Human Rights and Fundamental Freedoms

Paris, 20.III.1952

The Governments signatory hereto, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE 1

Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

ARTICLE 2

Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

ARTICLE 3

Right to free elections

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

ARTICLE 4

Territorial application

Any High Contracting Party may at the time of signature or ratification or at any time thereafter communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of the present Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may from time to time communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

ARTICLE 5

Relationship to the Convention

As between the High Contracting Parties the provisions of Articles 1, 2, 3 and 4 of this Protocol shall be regarded as additional Articles to the Convention and all the provisions of the Convention shall apply accordingly.

ARTICLE 6

Signature and ratification

This Protocol shall be open for signature by the members of the Council of Europe, who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of ten instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.
done atparis on the 20th day of march 1952, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory governments.

Protocol No. 4

to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto

Strasbourg, 16.IX.1963

The Governments signatory hereto, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950 (hereinafter referred to as the "Convention") and in Articles 1 to 3 of the First Protocol to the Convention, signed at Paris on 20th March 1952,

Have agreed as follows:

ARTICLE 1

Prohibition of imprisonment for debt

No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.

ARTICLE 2

Freedom of movement

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

ARTICLE 3

Prohibition of expulsion of nationals

1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.

2. No one shall be deprived of the right to enter the territory of the State of which he is a national.

ARTICLE 4

Prohibition of collective expulsion of aliens

Collective expulsion of aliens is prohibited.

ARTICLE 5

Territorial application

1. Any High Contracting Party may, at the time of signature or ratification of this Protocol, or at any time thereafter, communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of this Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

2. Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may, from time to time, communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

3. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

4. The territory of any State to which this Protocol applies by virtue of ratification or acceptance by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, shall be treated as separate territories for the purpose of the references in Articles 2 and 3 to the territory of a State.

5. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups o individuals as provided in Article 34 of the Convention in respect of all or any of Articles 1 to 4 of this Protocol.

ARTICLE 6

Relationship to the Convention

As between the High Contracting Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 7

Signature and ratification

1. This Protocol shall be open for signature by the members of the Council of Europe who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of five instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

2. The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol. done atstrasbourg, this 16th day of september 1963, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory states.

Protocol No. 6

to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty

Strasbourg, 28.IV.1983

The Member States Of The Council Of Europe, signatory to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Considering that the evolution that has occurred in several member States of the Council of Europe expresses a general tendency in favour of abolition of the death penalty;

Have agreed as follows:

ARTICLE 1

Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

ARTICLE 2

Death penalty in time of war

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

ARTICLE 3

Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

ARTICLE 4

Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

ARTICLE 5

Territorial application

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the date of receipt of such notification by the Secretary General.

ARTICLE 6

Relationship to the Convention

As between the States Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional Articles to the Convention and all the provisions of the Convention shall apply accordingly.

ARTICLE 7

Signature and ratification

The Protocol shall be open for signature by the member States of the Council of Europe, signatories to the Convention. It shall be subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol unless it has, simultaneously or previously, ratified the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 8

Entry into force

1. This Protocol shall enter into force on the first day of the month following the date on which five member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 9

Depositary functions

The Secretary General of the Council of Europe shall notify the member States of the Council of:

(a) any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Articles 5 and 8;

(d) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol. done atstrasbourg, this 28th day of april 1983, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 7

to the Convention for the Protection of Human Rights and Fundamental Freedoms

Strasbourg, 22.XI.1984

The Member States Of The Council Of Europe, signatory hereto,

Being resolved to take further steps to ensure the collective enforcement of certain rights and freedoms by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE 1

Procedural safeguards relating to expulsion of aliens

1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

(a) to submit reasons against his expulsion,

(b) to have his case reviewed, and

(c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.

2. An alien may be expelled before the exercise of his rights under paragraph 1.(a), (b) and (c) of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

ARTICLE 2

Right of appeal in criminal matters

1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

ARTICLE 3

Compensation for wrongful conviction

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the nondisclosure of the unknown fact in time is wholly or partly attributable to him.

ARTICLE 4

Right not to be tried or punished twice

1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

3. No derogation from this Article shall be made under Article 15 of the Convention.

ARTICLE 5

Equality between spouses

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

ARTICLE 6

Territorial application

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which the Protocol shall apply and State the extent to which it undertakes that the provisions of this Protocol shall apply to such territory or territories.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of receipt by the Secretary General of such declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of two months after the date of receipt of such notification by the Secretary General.

4. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

5. The territory of any State to which this Protocol applies by virtue of ratification, acceptance or approval by that State, and each territory to which this Protocol is applied by virtue of a declaration

by that State under this Article, may be treated as separate territories for the purpose of the reference in Article 1 to the territory of a State.

6. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of Articles 1 to 5 of this Protocol.

ARTICLE 7

Relationship to the Convention

As between the States Parties, the provisions of Article 1 to 6 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 8

Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 9

Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date on which seven member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 8.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 10

Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

(a) any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Articles 6 and 9;

(d) any other act, notification or declaration relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

done atstrasbourg, this 22nd day of november 1984, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The

Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 12

to the Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.2000

The Member States Of The Council Of Europe, signatory hereto,

Having regard to the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law;

Being resolved to take further steps to promote the equality of all persons through the collective enforcement of a general prohibition of discrimination by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Reaffirming that the principle of nondiscrimination does not prevent States Parties from taking measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for those measures,

Have agreed as follows:

ARTICLE 1

General prohibition of discrimination

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

ARTICLE 2

Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General of the Council of Europe. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

4. A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

5. Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention in respect of Article 1 of this Protocol.

ARTICLE 3

Relationship to the Convention

As between the States Parties, the provisions of Articles 1 and 2 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 4

Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 5

Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 4.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 6

Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

(a) any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Articles 2 and 5;

(d) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

done atrome, this 4th day of november 2000, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 13

to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances

Vilnius, 3.V.2002

The Member States Of The Council Of Europe, signatory hereto,

Convinced that everyone's right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings;

Wishing to strengthen the protection of the right to life guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Noting that Protocol No. 6 to the Convention, concerning the Abolition of the Death Penalty, signed at Strasbourg on 28 April 1983, does not exclude the death penalty in respect of acts committed in time of war or of imminent threat of war;

Being resolved to take the final step in order to abolish the death penalty in all circumstances,

Have agreed as follows:

ARTICLE 1

Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

ARTICLE 2

Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

ARTICLE 3

Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

ARTICLE 4

Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month

following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

ARTICLE 5

Relationship to the Convention

As between the States Parties the provisions of Articles 1 to 4 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

ARTICLE 6

Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

ARTICLE 7

Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 6.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

ARTICLE 8

Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

(a) any signature;

(b) the deposit of any instrument of ratification, acceptance or approval;

(c) any date of entry into force of this Protocol in accordance with Articles 4 and 7;

(d) any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.
done atvilnius, this 3rd day of may 2002, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

VITA

EDUCATION

Ph.D., Political Science, University of Washington 2017
Dissertation: "Claiming Labor Rights as Human Rights: Legal Mobilization at the European Court of Human Rights"

M.A., Political Science, University of Washington 2012
Thesis: "Limits of Rights Claiming: Labor and Kurdish Cases from Turkey before the European Court of Human Rights"

B.A., Political Science and International Relations Bogazici University, Turkey 2008
Political Science, University of Salzburg, Austria, Erasmus Exchange Student Spring 2007

RESEARCH AND TEACHING INTERESTS

Comparative Politics	Sociolegal Studies	Social Movements
European Politics	International Law and Courts	Labor studies

FELLOWSHIPS AND RESEARCH GRANTS

Stuart Scheingold Prize for Best Graduate Paper in Public Law
2015
Paper entitled "A New Era for Labor Activism? Claiming Labor Rights as Human Rights"
National Science Foundation, Law and Social Sciences Program,
2014-2015
Doctoral Dissertation Research Improvement Grant, (SES #1423855) ($25,200)
Harry Bridges Center for Labor Studies Individual Research Grant,
2014 University of Washington ($2,500)
David J. Olson Graduate Fellowship for Labor Studies, 2013 and
2014 University of Washington ($2,500+ $3,000)
Chester A. Fritz and Boeing Fellowships for International Research and Study,
2013 University of Washington ($5,800)
EU Center of Excellence Graduate Research Grant, 2012
and 2013 University of Washington ($3,000 + $2,900)
Comparative Law and Society Studies Center Graduate Fellow,
2012-2017 University of Washington
J. Allen Smith Fellowship, University of Washington
2010-2011

PUBLICATIONS

[Forthcoming]. "The European Court of Human Rights: Towards a Holistic Approach to Human Rights" in *The Institutions of Human Rights: Developments and Practices*. Eds. Susan Kang and Gord DiGiacomo. University of Toronto Press.

2017. "A New Era for Labor Activism? Strategic Mobilization of Human Rights against Blacklisting." *Law & Social Inquiry*.

2013. "A New Hope for Young Workers in Turkey." *International Union Rights*. 20 (3): 3-4.

2012. "World Government." Encyclopedia entry in *The Wiley-Blackwell Encyclopedia of Globalization*. Ed. George Ritzer. Chichester, West Sussex: Wiley Blackwell V (U-Z): 2293-2296.

May 27, 2014. "Turkey's breakneck economic development led to mining disaster." *The Seattle Times*, WA.

March 8, 2015. "Soyadımı nasıl geri aldım." ("How I got my last name back"). *Bianet.* Istanbul, Turkey.

RESEARCH EXPERIENCE

Labor Cases at the European Court of Human Rights 2014-2015
Primary Researcher

Beyond Legal Mobilization:
Rethinking How Rights Matter in the Transpacific Filipino Cannery Workers July 2012
Research Assistant, (PI: Michael McCann and George Lovell) -March 2013

TEACHING EXPERIENCE

Courses Developed at the University of Washington

International Human Rights, Political Science Department and the Law, Societies, and Justice Program — Summer 2015 & 2016

Resistance Movements and Social Change, Political Science Department — Summer 2014

Teaching Assistantships

University of Washington
Law in Society, Instructor: Michael McCann, Spring 2014
Human Rights in Latin America, Instructor: Angelina Godoy, Winter 2014
Comparative Law and Courts, Instructors: Rachel Cichowski (Spring 2013) and Angela Day (Autumn 2013)
Introduction to Political Theory, Instructors: Christine DiStefano (Autumn 2011) and Jamie Mayerfeld (Spring 2012)
Modern Political Thought, Instructor: Christine DiStefano, Winter 2012

Bogazici University, Turkey
Introduction to Political Theory, Instructor: Ayşen Candaş, Spring 2008
Introduction to Comparative Politics, Instructor: Koray Çalışkan, Autumn 2007

INVITED TALKS

Severyns-Ravenholt Seminar in Comparative Politics, University of Washington, January 2016
"A New Era for Labor Activism? Strategic Mobilization of Human Rights against Blacklisting."
UW Jackson School of International Studies Panel Discussion, University of Washington, August 2016
"Coup and Its Aftermath in Turkey"
Global Classroom, University of Washington, Tacoma, November 2016
"Political Crisis in Turkey

CONFERENCES AND SEMINARS

Law and Society Association Annual Meeting, Mexico City, Mexico, June 2017
Presenter, "A Labor Rights Revolution at the European Court of Human Rights? Expansion of Human Rights from Below"
American Political Science Association, Philadelphia, PA, September 2016
Presenter, "A New Era for Labor Activism? Strategic Mobilization of Human Rights Against Blacklisting"
Law and Society Association Annual Meeting, New Orleans, LA, May 2016
Presenter, "Mapping Legal Mobilization from the Grassroots to the International Level: Trade Unions at the European Court of Human Right"
The Social Practice of Human Rights, Dayton, OH, October 2015
Presenter, "Mapping Legal Mobilization from the Grassroots to the International Level: Trade Unions at the European Court of Human Right"
Law and Society Association Annual Meeting, Seattle, WA, May 2015
Presenter, "A New Era for Labor Activism? Claiming Labor Rights as Human Rights"
London Labour Law Discussion Group, London, UK, December 2014
Presenter, "How do activists use human rights law? Mobilization of blacklisted workers at the European Court of Human Rights"
Law and Society Association Annual Meeting, Minneapolis, MN, June 2014
Participant at the Graduate Student Workshop
Presenter, "Claiming Labor Rights at the European Court of Human Rights"
Western Political Science Association Annual Meeting, Seattle, WA, April 2014
Presenter, "Legal Mobilization at the European Court of Human Rights: Kurdish and Labor Cases from Turkey"
Middle Eastern Studies Association Annual Meeting, New Orleans, LA, October 2013
Presenter, "Labor Rights as Human Rights: Legal Mobilization of Turkish Workers at the ECtHR"
West Coast Law and Society Retreat, Seattle, WA, September 2013
Presented dissertation proposal at the Graduate Student Workshop

International Studies Association Annual Meeting, San Francisco, CA, April 2013
Presenter, "Claiming Rights at the European Court of Human Rights: The Case of Turkey"
Middle Eastern Studies Association Annual Meeting, Denver, CO, November 2012
Presenter, "Rethinking the Democratization Effect of the European Union on Turkey"
Law and Society Association Annual Meeting, Honolulu, Hawaii. June 2012
Presenter, "Limits of Claiming Rights at the European Court of Human Rights"

PROFESSIONAL SERVICE

Law and Society Review, **International Studies Quarterly**
Reviewer
Equality Initiative in Political Science, University of Washington, 2016-2017
Steering Committee Member
Labor Studies Workshare, University of Washington, 2016-2017
Coordinator
Harry Bridges Center for Labor Studies, University of Washington, 2016-2017
Graduate Student Assistant
Qualitative Methods Workshop Series, University of Washington, 2012- 2013
Coordinator
International Conference on Cosmopolitan Rights and Responsibilities, University of Washington, May 2012
Selection Committee Member for Paper Presentations

LANGUAGES

Turkish (Native)
English (Fluent)
German (Reading competence)