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ALTERNATIVE DISPUTE RESOLUTIONS IN COLLECTIVE EMPLOYMENT DISPUTES IN TÜRKİYE AND THE UNITED KINGDOM

TÜRKİYE VE BİRLEŞİK KRALLIK'TAKİ TOPLU İŞ UYUŞMAZLIKLARININ ALTERNATİF UYUŞMAZLIK ÇÖZÜM YOLLARI İLE ÇÖZÜMLENMESİ

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Anahtar Kelimeler

Alternatif Uyuşmazlık Çözüm Yolları,
Toplu İş İhtilafları,
Türkiye,
Birleşik Krallık.

Özet

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Bu makale, Türkiye ve Birleşik Krallık'taki toplu iş ihtilaflarının alternatif uyuşmazlık çözüm yöntemleri kullanılarak çözümlenmesini incelemeyi amaçlamaktadır. Söz konusu iki ülkede de bu toplu iş uyuşmazlıklarının alternatif uyuşmazlık çözüm yöntemleri ile çözümlenmesi mümkündür ancak bu uyuşmazlıkların çözümü hususunda her iki ülkede farklı düzeyde zorlama unsurları kullanılmaktadır. Bu bağlamda, etkili uyuşmazlık çözümü için objektif bir değerlendirme yapabilmek adına ilgili Uluslararası Çalışma Örgütü (ILO) kriterleri referans noktası olarak kullanılmıştır. Bu kriterlerden olan hizmetlerin çeşitliliği ilkesi alternatif çözüm yöntemlerinin çeşitliliği ve eş zamanlı olarak kullanıcıların hizmetine sunulabilmesi, gönüllülük ilkesi tarafların uyuşmazlıkların çözümü için alternatif çözüm yöntemlerini seçme özgürlüğü ve bu yöntemleri kullanma hususunda zorlanıp zorlanmaması, profesyonellik ilkesi ise devletin çözüm sürecine müdahale etmekten kaçınması ve uyuşmazlık çözüm sistemlerinde işçi ve işveren temsilcilerinin eşit temsili anlamına gelmektedir. Bu makale ile, Birleşik Krallık sisteminin bazı hususlarda geliştirilmeye ihtiyacı olsa da belirtilen kriterleri yerine getirme konusunda Türk sistemine göre daha başarılı olduğunu ortaya koymak amaçlanmıştır.

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Abstract

This paper aims to examine the settlement of collective employment disputes (CEDs) using alternative dispute resolution (ADR) techniques in both Türkiye and the United Kingdom (UK) where different levels of compulsion elements are employed for the resolution of CEDs via ADR methods. The evaluation of these methods is conducted according to pertinent International Labour Organization (ILO) criteria for effective dispute resolution, specifically focusing on the range of services pertaining to the diversity of available ADR methods and their simultaneous availability in Member States, voluntarism referring to the freedom of parties to select ADR methods for the resolution of CEDs, and professionalism refraining government from intervening in the process of CEDs resolution and necessitating equal footing of employees' and employers' representatives in systems regarding dispute resolution. Based on these considerations, the comparative assessments, taking the ILO criteria into account, indicate that the UK system, even though it needs improvement, is comparatively more compatible than the Turkish system in fulfilling the specified criteria.

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I. INTRODUCTION

This paper introduces the resolution of collective employment disputes (CEDs) through alternative dispute resolution (ADR) methods in Türkiye and the United Kingdom (UK) and analyses them by considering the International Labour Organization's (ILO) effective dispute resolution criteria. However, there are several differences between individual disputes and CEDs. The most outstanding difference is that while power disparity is the main concern in individual employment disputes, CEDs are generally based upon an assumption of 'power equilibrium' due to unionisation, providing two powerful weapons; collective bargaining agreements (CBAs) and industrial action[1].

Collective bargaining is a key institution in industrial relations, offering employees enhanced bargaining power and equality in negotiations with employers through their unions[2]. Union representatives negotiate on behalf of employees to secure better employment terms than individuals could on their own. If parties reach an agreement, they agree on CBAs that regulate terms and conditions of employment relations. Hence, ILO considers collective bargaining as a fundamental principle and right at work[3]. Nonetheless, where the negotiation process has broken down, CEDs take place[4]. CEDs are disputes involving a group of employees, represented by a trade union, and employers relating to CBAs when the bargaining process reaches breaking points[5]. These disputes can be resolved by adversarial and/or peaceful dispute resolution methods[6].

Adversarial dispute resolution methods generally refer to industrial action. Industrial action is a generic term that describes a multitude of actions that can be taken by either employees or employers to pressure the other party to concede or withdraw a demand made in industrial context[7]. There are several types of industrial action such as (i) withdrawal of cooperation (ii) work to rule employees perform only their specified duties but slow down operations, (iii) strike including wildcat strikes, picketing, or sit-downs, (iv) refusal of the workforce by the employer (lockout), (v) overtime ban[8]. The right to take industrial action, a disruptive action, is crucial for maintaining union strength and helps balance the power disparity between individual employees and employers. Without this ability, unions would struggle to negotiate effectively in bargaining meetings and therefore, employers could potentially impose terms unilaterally[9].

ADR methods might help resolve CEDs as alternative to industrial action since they can encourage disputants to reach possible consensus points via open-ended[10]. In addition, they can reduce rigidities in the parties' bargaining positions by providing novel perspectives into discursive debates[11]. They do not aim to produce a verdict but propose to address the central concerns of the parties. Therefore, real benefits may be better realized in ADR methods than industrial action. Hence, ADR methods are the main concern of this research.

Collective employment law aims to create a framework of rights for both employers and trade unions reducing the number of conflicts and encouraging them to resolve their differences by peaceful means[12]. Furthermore, the fact that taking industrial action is becoming more difficult because of demanding rules increases the importance of ADR methods. Therefore, it is recommended to introduce ADR methods as the appropriate resolution of CEDs to prevent disruptive damages[13]. This article examines how CEDs are resolved through ADR methods in Türkiye, where it is compulsory, and in the UK, where it is voluntary. Towards to end, this paper assesses both systems based on relevant ILO effective dispute resolution criteria, named as range of service, voluntarism, and professionalism.

II. ADR METHODS IN COLLECTIVE EMPLOYMENT DISPUTES IN TÜRKİYE

Collective labour law has been influential in shaping the working conditions of employees in Türkiye. According to the recent and most updated official statistics in 2022, the unionization rate of employees was 14.26% (2,280,000)[14]. Around 900,000 employees regulated their working standards by CBAs[15]. The number of CEDs resolved through mediation was 184 in 2022, affecting the working conditions of nearly

[1] BOGG, Alan: The Democratic Aspects of Trade Union Recognition, 1. edn, Hart Publishing, London, 2009, p.275.
[2] BARROW, Charles, Industrial Relations Law, 2. edn, Cavendish Publishing, Oxford, 2002, p.146
[3] ILO: Collective Bargaining: A Policy Guide, Geneva, 2015, p.4
[4] GRENIG, Jay: "Evolution of The Role of Alternative Dispute Resolution in Resolving Employment Disputes", Dispute Resolution Journal, 71(2), 2016, p.115.
[5] KOUKIADAKI, Aristea: Individual and Collective Labour Dispute Settlement Systems: A Comparative Review, ILO, 2020, p.4. Also, ILO: Substantive Provisions of Labour Legislation: Settlement of Collective Labour Disputes.https://webapps.ilo.org/static/english/dialogue/ifpdial/llg/noframes/ch4.htm (Accessed:08.05.2024)
[6] ADAMS, Zoe/BARNARD, Catherine/DEAKIN, Simon/BUTLIN, Sarah: Deakin and Morris' Labour Law, 7.edn, Hart Publishing, London, 2021, p.804.
[7] IDS: Industrial Action, Thompson Reuters, London, 2021, p.16
[8] IDS, p.16
[9] BARROW, p.273.
[10] ODAMAN, Serkan, "Resmi Arabuluculuk Sistemi ve Uygulamasındaki Sorunlar ile Çözüm Önerileri" Sicil İş Hukuku, 48, 2022, p.35.
[11] BOGG, p.83.
[12] COLLINS, Hugh/EWING, Keith/MCCOLGAN, Aileen: Labour Law Text and Materials, Hart Publishing, Cambridge, 2005, p.970.
[13] CANBOLAT, Talat: "6356 Sayılı Kanun'da Barışçıl Çözüm Yolu Olarak Arabuluculuk", Çalışma ve Toplum, 4, 2014, p.249.
[14] Ministry of Labour and Social Security (MLSS): Labour Statistics, 2022, p.45. https://www.csgb.gov.tr/media/93643/calisma-hayati-istatistikleri_2022.pdf (Accessed: 05.02.2024).
[15] MLSS, p.12

83,000 employees[16]. There were only 16 industrial actions (strikes) affecting around 1,000 employees' working lives in the same year[17]. In this regard, this part examines the role of arbitration and mediation in resolving CEDs in Türkiye.

A. Collective Mediation

Turkish collective mediation system is described as "partial freedom system"[18]. It means that although the parties essentially have freedom in resolving CEDs, some limitations have been imposed on their freedoms[19]. In other words, parties must exhaust peaceful resolution methods before resorting to adversarial ones, and for some disputes, the option to resort to adversarial ones is eliminated. Instead of them, the option to apply to the High Arbitration Board (HAB) is provided. Therefore, collective mediation aims to aid the disputants in reaching an agreement without resorting to strikes/lockouts[20]. On this basis, Turkish employment law divides the mediation process into two categories which are ordinary mediation and extraordinary mediation[21].

Firstly, according to article 49 of Trade Union and Collective Bargaining Agreement Act (TUCBAA), ordinary mediation emerges where (i) the employer does not come to the first meeting, (ii) one of the parties does not continue to attend the following meetings, and (iii) parties end the negotiation without an agreement. In these circumstances, disputants are required to apply to the mediation process before resorting to strike, lockout, or in cases where resorting to strike is prohibited initiating arbitral proceedings. The process commences with a party's notification to the competent authority within six days after one of the situations mentioned above. It is a last effort to resolve CEDs with the help of an expert person. Where the parties agree on any of the names on the official list of mediators of the Ministry of Labour and Social Security (MLSS), the person agreed by the parties will, as a rule, be appointed as a mediator under Article 60(7). The regulation does not allow disputants to agree on a mediator outside the list. When the parties cannot agree on the name of the mediator, the competent authority would *ex officio* appoint a mediator from the list.

There is no legal clarity in legislative provisions on how to conduct mediation meetings for mediators[22]. Mediators make efforts to reconcile the parties during bargaining negotiations, offer ideas, help them find a solution, and if no agreement is reached, they may add their recommendations to their report[23]. Nonetheless, they are not entitled to make binding decisions, to impose a solution on the parties and to act in the capacity of judge or arbitrator[24]. These recommendations might be considered following dispute resolution methods and hence, the mediator must express his/her impressions impartially without blaming any party[25]. If an agreement is reached, the terms and conditions are written down in an agreement and then afterwards, the mediation agreements become CBAs, also known as "redaction"[26], and become legally binding[27]. Parties can benefit from mediation before applying adversarial dispute resolution methods that may lead to the loss of the job and may impair the productivity of business by agreeing on CBAs considering suggestions offered by the mediators.[28] Where an agreement cannot be reached, the mediator draws up, as stated above, a report including parties' resolution proposals and suggestions of mediators and submits it to the competent authority.[29] Under Article 50(5), the competent authority notifies the parties of the dispute about the content of the report within three working days at the latest because the report might be taken into consideration if the dispute goes to the subsequent HAB or private arbitrator[30].

Extraordinary mediation, unlike ordinary mediation, emerges when a lawful strike decision is taken or a strike/lockout is postponed by the President under Art 60(7) and 63(1). Firstly, in a dispute for which a legal strike decision has been taken by satisfying the requirement of the law[31], it is envisaged that the Minister of Labour and Social Security may mediate in the resolution of CEDs personally or the Minister may assign a mediator. However, the Minister is not obliged to act as a mediator or assign a mediator for each legal

[16] MLSS, p.18.
[17] MLSS, p.21.
[18] AKYİĞİT, Ercan: Toplu İş Hukuku, Seçkin Yayıncılık, Ankara, 2021, p.112; SUR, Melda: İş Hukuku Toplu İlişkiler, 10.B., Turhan Yayıncılık, Ankara, 2022. p.412-413.
[19] GÜLER, Ekin: "Toplu İş Uyuşmazlıklarının Çözümünde Yüksek Hakem Kuruluna Başvurma ve Özel Hakeme Başvurma", Gazi Üniversitesi Hukuk Fakültesi Dergisi, 19(3), 2015, p.56.
[20] CANBOLAT, p.249.
[21] EKMEKÇİ, Ömer: Toplu İş Hukuku, 4.B, Oniki Levha Yayıncılık, İstanbul, 2023, p.530-533; DEMİRCİOĞLU, Murat/CENTEL, Tankut, İş Hukuku, 13.B, Beta Yayıncılık, İstanbul, 2009, p.307; AKTAY, Nizamettin/ARICI, Kadir/KAPLAN, Tuncay: İş Hukuku, 5.edn, Gazi kitabevi, Ankara, 2012, p.652-657; SUR, p.421-422.
[22] CENTEL, Tankut: Labour Dispute Resolution in Turkey, Springer, Switzerland, 2019, 174.
[23] NARMANLIOĞLU, Ünal: İş Hukuku II Toplu İş İlişkileri, 3.edn, Beta Yayıncılık, İstanbul, 2016, p.528. See also, GÜLER, Şerafettin: "Toplu İş Uyuşmazlıklarının Barışçı Yollarla Çözümünde Arabulucu, Görevli Makam ve Yetkili İşçi Sendikasının Fonksiyonları", Hak-İş Uluslararası Emek ve Toplum Dergisi, 5(13), p.39.
[24] CENTEL, p.174,175.
[25] TUNCAY, Can/KUTSAL, Burcu: Toplu İş Hukuku, 7.B, Beta Yayınevi, İstanbul, 2019. p.268-269; GÜLER, "Toplu İş Uyuşmazlıklarının Çözümünde Yüksek Hakem Kuruluna Başvurma", p.39.
[26] It means making the necessary corrections on a written text to make it ready for publication. It comes from the French word "redaction". See TDK, TDK Sözlükleri, https://sozluk.gov.tr/ (Accessed: 03.07.2024)
[27] CANBOLAT, p.260.
[28] YAMAN, Erkan: Toplu İş Uyuşmazlıklarında Barışçı Çözüm Yolları, Seçkin Yayıncılık, Ankara, 2023, p.107-108.
[29] SUR, p.428-429.
[30] AKYİĞİT, p.572; ODAMAN, p.48
[31] TUCBAA, Article 61: One-quarter of the workforce must make an application and a simple majority (i.e. more than half) of the votes cast must be in favour of industrial action to go ahead.

strike decision[32]. Moreover, in extraordinary mediation, the Minister does not have to choose the mediator from the list of the MLSS[33]. In practice, since the mediation process is carried out by the Minister themselves or the person appointed, the phrase "political mediation" has been used[34]. The purpose of extraordinary mediation is not to prevent taking industrial action but to end an industrial action, which is already started, without causing harm to both parties and society[35].

Extraordinary mediation, under Article 63(1) of TUCBAA, can also take place when the strike or lockout is postponed by the President if it has the potential to disrupt general health or national security[36]. A concern might be raised about the right to postpone strikes because the authority to postpone strikes for reasons of national security or public health should not reside with the President, but instead, with an independent body that has the trust of the relevant parties. In this case, according to Article 60(7), the Minister or mediator assigned by the Minister mediates the dispute. If parties resolve their disputes with the aid of the Minister or the appointed mediator, the agreements would be treated as CBAs, similar to ordinary mediation. It should be noted that there is an important difference between these two extraordinary situations. While the Minister must act or assign a mediator in the second type of extraordinary mediation, it is optional and depends on the Minister's will in the first type of extraordinary mediation.

In this context, the compatibility of these ADR provisions with international standards should be discussed. Firstly, the extraordinary mediation system is very centralized and enables the State to interfere in industrial relations. Hence, it can be questioned to what extent the Minister's mediator role and right to appoint a mediator comply with the general standards of the impartiality requirement of mediators. The ILO expresses that the prohibition or postponement of strikes can be justified "in the event of an acute national emergency" such as insurrection or natural disaster, destroying national condition for the functioning of the society[37]. Hence, the right of the President to intervene can be acceptable but only in very rare circumstances. There is a need to be cautious because, for instance, a "national emergency" might have varying interpretations, and the President might have the potential to exploit them to intervene in industrial relations by prioritizing the interest of the state over that of individuals. The report of the ILO Committee of Expert on Application of Conventions and Recommendations in 2024 highlighted that there has been no postponement of strike since 2019 and invited Government not to unreasonably interfere with the rights of taking industrial action[38].

Additionally, in 2022, only a fifth of CEDs were resolved by collective mediation and most of them were mainly resolved due to the efforts of the parties rather than the contribution of the mediator[39]. It is not difficult to say that collective mediation has not been very beneficial for two reasons. Firstly, the parties, who could not reach an agreement in bargaining negotiations and want to come to the stage of a strike or lockout immediately, may see the mediation process as unnecessary and a waste of time[40]. In other words, parties perceive mediation as an obstacle that needs to be overcome to take industrial action. The second reason might be that parties are not allowed to choose a mediator from outside the official list[41]. The purpose of collective mediation is to help parties reach a mutual solution rather than protect weaker parties, unlike individual employment disputes. Employees are already represented by trade unions, having an important role in equalising power disparity between the parties. Hence, the parties should be able to choose a neutral third-party who is experienced, reliable, and an expert in the collective labour law but from the outside of the list. Having said that, it is asserted that a mediator must have certain qualifications to mediate in CEDs and undoubtedly, only those who meet these qualifications must conduct mediation meetings. Otherwise, it may mean that mediation meetings, leading to signing CBAs and severely affecting the work life of relevant employees, might be conducted by not a well-qualified person[42].

B. Collective Arbitration

Another ADR method in Türkiye is arbitration. Collective Arbitration is a procedure for settling CEDs by submitting them to an independent and neutral third party for a final and binding decision[43]. Collective arbitration can be divided into two different types of procedures as mandatory arbitration and

[32] CANBOLAT, p.268.
[33] AKTAY, p.657.
[34] TUNCAY, Can/SAVAŞ, Burcu: Toplu İş Hukuku, 5.B, Beta Yayıncılık, İstanbul, 2016, p.352.
[35] AKYİĞİT, p.543.
[36] See for more information, CANİKLİOĞLU, Nurşen: "6356 Sayılı Kanun'a Göre Grev Yasakları ve Grevin Ertelenmesi", Çalışma ve Toplum, 4, 2013, p.306-314.
[37] GERNIGON, Bernard/ODERO, Alberto/GUIDO, Horacio: ILO Principles Concerning the Right to Strike, International Labour Organisation, Geneva, 1998, p.24. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_087987.pdf, (Accessed: 05.02.2024)
[38] International Labour Organisation: Application of International Labour Standards 2024 Report III (Part A) Report of the Committee of Experts on the Application of Conventions and Recommendations International Labour Conference 112th Session, Switzerland, 2024, p.353. https://www.ilo.org/resource/conference-paper/application-international-labour-standards-2024 (Accessed: 05.05.2024)
[39] ŞAHLANAN Fevzi: Toplu İş Hukuku, 1.B, Oniki Levha Yayıncılık, İstanbul, 2020, p.525; MLSS, p.12
[40] ŞAHLANAN, p.525-526.
[41] CANBOLAT, p.271.
[42] ODAMAN, p.46.
[43] ILO: Collective Dispute Resolution through Conciliation, Mediation and Arbitration: European and ILO Perspectives, Cyprus, 2007, p.4-5.

private arbitration[44]. Mandatory arbitration is a type of arbitration that is regulated by the TUCBAA and it is known as legal arbitration since its formation and operating principles are regulated by the law[45]. Mandatory arbitration appears as a way for the States to intervene in the industrial relations[46]. It is based on Article 54 of the Turkish Constitution stating that in situations in which strikes/lockouts are prohibited by the law, disputes are resolved by the High Arbitration Board (HAB)[47].

TUCBAA 54(1) holds that the HAB consists of members of employers' and employees' confederations and academicians. Therefore, it has a mixed structure. This is a positive phenomenon in terms of satisfying the ILO's effective dispute resolution criteria as is discussed further below. The HAB can create CBAs by deciding about the cases, but this function may bring about two conflicting arguments. On the one hand, where the parties are mandated to the HAB, this might hinder the right of the parties to freely negotiate the terms of CBA. On the other hand, if a dispute cannot be resolved despite all efforts, it is important for industrial relations, since the dispute cannot be left unresolved, to resolve the disputes in a short time without causing long-term uncertainty. Therefore, parties should be primarily encouraged to resolve disputes without engaging in the HAB and it should be regarded as a last resort for the resolution.

To apply to the HAB, several conditions must be satisfied. First, it must be prohibited to take industrial action. The obstacles to strikes/lockouts in Turkish law are of three types: (i) the continuous prohibition of strikes/lockouts (ii) the postponement of legal strikes/lockouts by the President, (iii) the prevention of the implementation of a legal strike based on the results of a strike vote. In the first case, those who are engaged in some works such as natural gas, electricity, water, oil production, police, or soldiers of the Ministry of National Defence, are prohibited from going on strike or lockout[48]. In the second case, industrial action can be postponed for 60 days by the President where it has the potential to threaten general health or national security under Article 63(1). It should be highlighted that where there is a postponement by the President, which is a temporary strike/lockout ban, parties should be unable to reach an agreement until the last day of the 60-day postponed period to apply the HAB. Although referred to as postponement, such strike/lockout postponements in Turkish legal practice effectively act as a ban, and the parties cannot continue with the postponed strike/lockouts. Where parties are unable to settle the dispute until the end of the postponed period, it is inevitable to resolve CEDs through the HAB.[49] The 60 days is given for the parties to terminate the dispute with their own will[50]. The third case, where an affirmative number of voting is not obtained in a strike ballot, can be considered as another example of these situations, which is not possible to take industrial action.

The second condition for applying the HAB is regulated by Articles 50 and 51 of TUCBAA. It states that if ordinary and/or extraordinary mediations are unsuccessful in resolving CEDs, parties can bring their disputes to the HAB. After an unsuccessful mediation period, the parties must apply to the HAB for the resolution of the dispute. That is, the HAB is not able to ex officio commence the resolution proceeding[51]. If one of the parties does not apply to the HAB within 6 days after receiving the mediation report, it results in the loss of authority to negotiate CBAs under Article 51(1).

Another condition for applying to the HAB is that the parties should not leave the resolution of the dispute to a private arbitrator. If left, the parties cannot go ahead with strikes/lockouts, nor they can apply for mediation or the HAB[52]. In these cases, the disputes would have to be dealt with by the private arbitrator, examined further below. Where these three conditions are satisfied, an application can be made to the HAB within six working days following the finalization of the decision not to hold a strike as a result of the strike vote by the trade union, receiving the mediation report, or in case the postponement period results in a dispute, from the end of the 60-day period[53]. It should be noted that the parties can sign a CBA at any stage of the dispute but if the dispute comes to the HAB, the authority to make the CBAs passes to HAB.[54] YHK's decisions are final meaning that parties do not have the right to refuse[55]. Nevertheless, if the decision conflicts with statutory rules, parties can seek the annulment of the decision.[56]

The second method of collective arbitration is private arbitration which is also called voluntary arbitration. The arbitration agreement (clause) can be inserted into CBAs or parties can sign a separate arbitration agreement and collective arbitration is of significance in resolving CEDs[57] Nonetheless, the

[44] GÜLER, "Toplu İş Uyuşmazlıklarının Çözümünde Yüksek Hakem Kuruluna Başvurma", p.56.
[45] SUR, p.417.
[46] DEMİRCİOĞLU, p.304.
[47] ŞAHLANAN, p.529.
[48] See, TUCBAA, Article 62(1,3).
[49] TUNCAY, Toplu İş Hukuku, 7.B, 2019, p.272.
[50] ŞAHLANAN, p.529.
[51] GÜLER, p.61.
[52] ÖZDEMİR, Eda/ESKİYÖRÜK, Serhat: "İş Hukuku Uyuşmazlıklarının Tahkim Yolu İle Çözümlenmesi", Legal İş Hukuku ve Sosyal Güvenlik Hukuku Dergisi, 67, 2020, p.995.
[53] YÜREKLİ, Sabahattin: "Toplu İş Uyuşmazlıklarında Yüksek Hakem Kurulu Kararları" İstanbul Medeniyet Üniversitesi Hukuk Fakültesi Dergisi, 5, 2020, p.125-126.
[54] EKMEKÇİ, p.593-594.
[55] EKMEKÇİ, p.599; YÜREKLİ, 142-143.
[56] YÜREKLİ, p.139-140
[57] SUR, p.413.

arbitration agreement must be in writing[58]. Private arbitrators are chosen by the parties[59]. According to Article 52(4), applying to a private arbitrator depends on the will of the parties, and the parties can seek arbitration at any stage of the dispute. The parties can also decide other procedural issues such as the time or venue of the hearing. If parties do not agree on procedural issues, arbitration-related provisions (Articles 407-444) in Civil Procedural Act No. 6100 would be applicable in private arbitration[60]. If the parties agree to apply to a private arbitrator, they do not have to apply for mediation or bring a claim to HAB, besides, they cannot take industrial action. In this circumstance, Article 52 (3) states that the decisions of private arbitrators would be treated as CBA, as in decisions of the HAB[61] and there is no need for judicial approval to enforce the HAB's decision[62]. Therefore, this option might be used as a way of bypassing mandatory mediation or mandatory arbitration[63]. It should also be noted that Article 52 (4) allows the parties to choose the HAB as a private arbitrator. Nonetheless, the HAB does not have to accept a private arbitrator role since it is impossible to impose a duty for the HAB. In practice, it is never seen that the HAB is chosen as a private arbitrator[64]. This method differs from mandatory arbitration not only because private arbitration is based on the mutual agreement of the parties but also because it can be applicable at every stage of the dispute. Additionally, in private arbitration, arbitrators introduce new rules regarding workplace rather than performing judicial activity.[65] However, private arbitration does not appear as a highly preferred resolution mechanism since trade unions have the desire to resolve disputes on their own[66].

III. ADR METHODS IN COLLECTIVE EMPLOYMENT DISPUTES IN THE UNITED KINGDOM

CEDs are known in the UK as "trade disputes", term covering disputes between workers and their employers which is connected with "a) terms and conditions of employment b) termination or suspension of employment c) allocation of work or the duties of employment d) matters of discipline e) membership of a trade union f) facilities for officials of trade unions" under section 218 of Trade Union Labour Relations Consolidation Act (TULRCA), (1992). In the context of the UK, the individuals might be an "employee", "worker" or "independent contractor" and each has a different relationship with their employers/customers. However, the definition of the worker includes employees within its scope. It means that while all employees are workers, all workers are not employees. It should be emphasized that TULRCA uses the word "worker" instead of "employee" to protect more people, including employees[67]. By contrast, in Turkish Law, Article 2 of Employment Law No. 4857 defines "employee (işçi)" as someone who is a real person working under an employment contract. Due o the preference for the term "employee" in accordance with the scope of the regulations regarding employment contracts in Turkish law, the term 'employee' is used to maintain consistency throughout the paper.

Advisory Conciliation and Arbitration Service (ACAS), a non-departmental public body of the UK, has roles in resolving CEDs and avoiding industrial action[68]. When its roles are scrutinized, ACAS draws the boundary of this function as "from working with trade unions and employers when issues of potential conflict arise; to resolving conflict after a workforce has been balloted about potential action; to engaging workforces where there is no formal trade union recognition or formal mechanisms for resolving disputes."[69]. When fulfilling its functions, ACAS does not have the compulsion to offer its services and it comes to the stage in situations where all internal (in-house) dispute resolution procedures have been exhausted[70].

ACAS helps parties to resolve CEDs without engaging in industrial action. Trade unions can call for a strike as a threat to convince employers to accept employees' wishes. However, some trade unions have adopted policies not to ballot for industrial action unless ADR methods have been tried in the UK to avoid the negative consequences of industrial action such as reducing productivity for businesses or losing the job for employees[71]. Hence, the most profound impacts of ADR methods in CED in the UK emerge where a dispute has involved industrial action.

[58] Civil Procedural Act No. 6100 (2011), Article 412.
[59] KUTAL, Metin: "Türk Toplu İş Hukukunda Barışçı Çözüm Yolları", İstanbul Üniversitesi İktisat Fakültesi Mecmuası, 43, 1987, p.312.
[60] ŞAHLANAN, p. 528
[61] KUTAL, p.313.
[62] TUNCAY: Toplu İş Hukuku, 7.B, 2019, p.307; YÜREKLİ, p.144.
[63] CENTEL, p.183.
[64] EKMEKÇİ, p.591
[65] KUTAL, p.305; SUR, p.417.
[66] SUR, p.417.
[67] IDS, p.70.
[68] ACAS: Acas Annual Report and Accounts 2020-2021, p.15. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002534/acas-ara-2020-2021-accessible.pdf, (Accessed: 11.12.2023)
[69] ACAS: Acas Annual Report and Accounts 2020-2021, p.15.
[70] BOOTH, Caroline/CLEMENCE, Michael/GARIBAN, Sara: Acas Collective Conciliation Evaluation, ACAS Research Paper, 2016, p.11. https://www.acas.org.uk/sites/default/files/inline-files/acas-collective-conciliation-evaluation-2016_0.pdf, (Accessed: 05.02.2024)
[71] MOLLOY, Donna/ LEGARD, Robin/ LEWIS, Jane: Resolving Collective Disputes at Work: User Perspectives of Acas Collective Conciliation Services, ACAS, London, 2003, p.8.

Moreover, since the Trade Union Act of 2016 amends the 1992 TULRCA, stipulated an increase in ballot threshold requirements for industrial action[72], unions have increasingly started to commence the ADR processes, particularly conciliation, at earlier stage of the conflict compared to the past[73]. It also might mean that there will be more demand for ADR methods in the future because such an increase in ballot threshold requirements can be regarded as 'channelling' into ADR methods. However, the UK employment law does not impose either conciliation, mediation, or arbitration on disputants before taking industrial action or bringing the claims to arbitration. Among these ADR methods, collective conciliation has been the main characteristic of UK industrial relations for more than a century[74]. Other ADR mechanisms are comparatively less used in the UK[75].

A. Collective Conciliation

Collective conciliation (CC) is an ADR method by which ACAS helps employers, employees, and their representatives to resolve CED.[76] It is also seen as a precursor to collective mediation and arbitration[77]. CC is regulated by section 210 of TULRCA which provides that: "where a trade dispute exists or is apprehended ACAS may, at the request of one or more parties to the dispute or otherwise, offer the parties to the dispute its assistance to bring about a settlement".

According to the latest official statistics in 2023, CEDs were brought to ACAS conciliation by employers (30,1%), trade unions (35,6%), or jointly (18,7%)[78]. Nonetheless, even where a claim is not brought to ACAS by employers or trade unions, ACAS can take the initiative to involve itself in the resolution of disputes. The official statistics also demonstrate that ACAS has taken the initiative in 15,6% of the CC cases it has dealt with[79]. Therefore, it can be said that ACAS may take the initiative to intervene in disputes because of the well-being of the public[80].

There has been a fluctuation in the number of conciliation requests in the last 10 years. To illustrate, the number of requests for CC was 1,371 between April 2014 and March 2015[81]. In 2020-2021(between April 2020 and March 2021), when severely affected by COVID-19, ACAS received 504 CC notifications[82] and in April 2022- March 2023, ACAS received only 621 requests for CC[83]. There might be several reasons for this such as the existence of well-functioning internal dispute resolution mechanisms within a particular industry, or the availability of industrial action ballots as an alternative to CC. In addition, when COVID-19 restrictions eased, there was a slight increase in the number of requests for CC. This was both because some employees were coming off UK Government's COVID-19 Job Retention Schemes and because some issues which had been simmering for months such as the use of so-called "fire and re-hire" practices of certain employers[84].

ACAS has succeeded in reaching positive results in resolving CEDs through conciliation. For example, in 2020, 92% of CEDs brought to conciliation were successfully resolved[85]. Additionally, conciliators were appreciated by almost all participants since they found them trustworthy (96%), proactive in seeking an agreement (84%), impartial (92%), and good at establishing rapport and overall satisfaction with CC was, thus, quite high (89%)[86]. In another research, ACAS emerges as a trusted "brand" amongst a large segment of the union workforce[87]. The 2021 ACAS annual report says that the underlying reasons for the success were that ACAS worked cooperatively with both employers and trade unions to develop positions and intentions of disputants regarding the conflicts to find some mutual points and enhance the relationship

[72] Section 226 of the Trade Union Act 1992 Act was requiring a simple majority for a ballot conducted by a trade union for industrial action to be successful. There were no requirements for any level of turnout. However, the 2016 Act introduced a new requirement that in all ballots for industrial action, at least 50% of the trade union members entitled to vote must do so in order for the ballot to be valid.

[73] POTOCNIK, Kristina/CHAUDHRY, Sara/BERNAL-VALENCIA, Marta: "Mediation and Conciliation in Collective Labor Conflicts in the United Kingdom", in EUWEMA, Martin: Mediation in Collective Labor Conflicts, Springer, London, 2019, p.223

[74] POTOCNIK, p.211.

[75] POTOCNIK, p.211.

[76] COLLINS, p.961.

[77] MOLLOY, p.10.

[78] ACAS: Acas Annual Report and Accounts 2022-2023, p.36. https://assets.publishing.service.gov.uk/media/64b009dffe36e000146fa912/advisory-conciliation-and-arbitration-service-acas-annual-report-and-accounts-2022-to-20223-accessible.pdf (Accessed: 06.05.2024)

[79] ACAS: Acas Annual Report and Accounts 2020-2021, p29.

[80] COLLINS, p.963.

[81] BOOTH, p.5.

[82] ACAS: Acas Annual Report and Accounts 2022-2023, p.23. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002534/acas-ara-2020-2021-accessible.pdf, (Accessed: 02.07.2023)

[83] ACAS: Acas Annual Report and Accounts 2022-2023, p.36. https://assets.publishing.service.gov.uk/media/64b009dffe36e000146fa912/advisory-conciliation-and-arbitration-service-acas-annual-report-and-accounts-2022-to-20223-accessible.pdf (Accessed: 06.05.2024)

[84] ACAS: Acas Annual Report and Accounts, 2020-2021, p.15. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002534/acas-ara-2020-2021-accessible.pdf, (Accessed: 08.07.2023)

[85] ACAS: Acas Annual Report and Accounts, 2020-2021, p.15. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002534/acas-ara-2020-2021-accessible.pdf, (Accessed: 08.07.2023)

[86] BOOTH, p.5.

[87] HEERY, Edmund/NASH, David: Trade Union Officers and Collective Conciliation a Secondary Analysis, ACAS, 2011, p.6.

of the parties in the long term[88]. An ILO assessment has emphasised the central importance of ACAS since it has a positive role in resolving CEDs by conducting joint working sessions with both managers and employee representatives[89].

The conciliation process involves three stages in the UK. Firstly, CC generally starts after a failure by the parties to agree in the internal bargaining process. ACAS can join the resolution procedure at different stages of a dispute. To illustrate, according to the 2016 ACAS Annual Report, in 31% of disputes, ACAS got involved in the resolution process after the parties had started negotiation for 1-3 months, 28% of those from 4-6 months. In only 8% of disputes, ACAS gets involved in the process after one year[90]. On this issue, it might be recommended to the parties not to go to CC too early; instead, they should internally resolve differences. At this stage, it is suggested that the ACAS conciliator should encourage the parties to communicate and then, carry on shifting focus from the dispute in the past to the future of the organization and its employees[91].

Secondly, the process continues with informal discussion, jointly or separately, so that both sides can understand the dispute. The role of the ACAS conciliator is to put key issues in words, to help the parties clarify the issues and loosen their adherence to unreasonable positions[92]. At the same time, the conciliator creates an environment for disputants to consider their options for finding a solution. By contrast, disputants should take ownership of disputes since the involvement of a lawyer might lengthen the process and make resolution more difficult[93]. Additionally, the direct involvement of parties can obviate difficulties because they are more familiar with the nuance of their disputes than the lawyers and hence, they can reply creatively and quickly to proposals raised by their counterparts.

Thirdly, the conciliator aims to build an agreement and write down the terms of the agreement that needs to be signed by both parties[94]. However, drawing up an agreement is not compulsory for conciliators. The relationship between the parties and the conciliator may continue after finding a solution. For instance, some repeat users, who use conciliation more than once, often build up a relationship with a particular conciliator as a result of the resolution of previous disputes. This might provide several advantages such as building trust with conciliator. In addition, conciliators might be more helpful for future disputes since they have more knowledge about the organization of the company. Additionally, conciliators might want to observe whether parties obey the previous agreement signed or even the conciliator may come into the company to give training on a new procedure that concerns one of the subject matters of past disputes[95]. Nonetheless, where there is a perception that unions are becoming more aggressive and where employers are seen as increasingly disregarding employees' rights, industrial action would ultimately be inevitable[96]. Moreover, where employers seek to bring legal actions against a trade union for an injunction to restrain the industrial action, CC may also not be helpful[97].

B. Collective Mediation

Collective mediation generally emerges when parties are unwilling to go to arbitration after an unsuccessful conciliation attempt[98]. However, officials of a trade union seem not very clear about the differences between CC and collective mediation[99]. In collective mediation, mediators play a more active role than conciliators by giving recommendations. Therefore, mediation is a more intrusive and active process[100]. By contrast, similar to CC, the parties are encouraged to resolve their disputes without coercive actions in collective mediation to resolve CEDs.

ACAS's mediation service constructively helps the group of employers and employees to find solutions for workplace disputes. These disputes generally include, inter alia, procedural deficiencies, misuse of the law, or dismissal of union representatives[101]. It is evaluated as healthy and generally cooperative by respondents who are the representatives of employees and employers[102]. However, mediation is seen as a "halfway house" by employers and trade unions and thus, is not frequently chosen by disputants[103]. For example, between April 2022 and March 2023, ACAS received only 4 mediation requests[104].

[88] ACAS, Acas Annual Report and Accounts 2020-2021, p.15.
[89] KOUKIADAKI, p.47.
[90] BOOTH, p.19.
[91] POTOCNIK, p.220.
[92] CLARK, Nick/CONTREPOIS, Sylvie/JEFFERYS, Steve: "Collective and Individual Alternative Dispute Resolution in France and Britain", The International Journal of Human Resource Management, 23(3), 2012, p.559.
[93] SMITH, Ian/BAKER, Aaron/WARNOCK, Owen: Employment Law,3. edn, Oxford University Press, Oxford, 2017, p.18.
[94] POTOCNIK, p.220.
[95] MOLLOY, p.27.
[96] MOLLOY, p.8.
[97] SMITH, p.18.
[98] BROWN, Henry/MARRIOTT, Arthur: ADR: Principals and Practice, 3. edn, Sweet & Maxwell, London 2011, p.347.
[99] POTOCNIK, p.214.
[100] BOWERS, John: A Practical Approach to Employment Law, Oxford Publishing, Oxford, 2009, p.520.
[101] POTOCNIK, p.214.
[102] ACAS, "Mediation: A Thematic Review of the Acas", ACAS, 2011, p.10.
[103] POTOCNIK, p.211.
[104] ACAS: Acas Annual Report and Accounts 2022-2023, p.36. https://assets.publishing.service.gov.uk/media/64b009dffe36e000146fa912/advisory-conciliation-and-arbitration-service-acas-annual-report-and-accounts-2022-to-20223-accessible.pdf (Accessed: 06.05.2024)

At the end of the resolution proceedings, the mediators generally make written recommendations that are not binding for the parties[105]. Since the settlement reached is binding in honour only, parties are expected to seriously consider recommendations given by the mediator and are encouraged to accept these offers, but they do not have to follow the recommendations[106]. However, if the recommendations turn into a written agreement, and if it is signed, it is binding for the disputants.

C. Collective Arbitration

Collective arbitration is regulated by section 212 of TULRCA stating that where "a trade dispute exists or is apprehended ACAS may, at the request of one or more of the parties to the dispute and with the consent of all the parties to the dispute, refer all or any of the matters to which the dispute relates for settlement to the arbitration of (a) one or more persons appointed by ACAS for that purpose (not being conciliators or employees of ACAS), or (b) the Central Arbitration Committee". On this basis, this section examines both ACAS's collective arbitration and the role of the Central Arbitration Committee (CAC) in the resolution of CEDs.

While conciliation and mediation might be considered as a continuation of the bargaining process, arbitration is an acceptance that a further bargaining process is fruitless and hence, a resolution needs to be imposed from outside[107]. Thus, UK's arbitration might be labelled as a voluntary system, and trade unions and employers recognize it as a method of last resort to be used when all other methods, conciliation or mediation are exhausted[108]. Nonetheless, ACAS Arbitration is not popular in collective disputes. The reason for this situation is not only that the UK has maintained a voluntarist approach to arbitration but also "the reluctance of the parties to surrender control of their destinies to a third party"[109].

Firstly, ACAS Arbitration is a way parties can apply if there is no agreed procedure for the settlement of disputes or if the agreed procedure has been used but failed under section 212 (2) of TULRCA. Parties can only jointly agree to arbitrate. That is, a party cannot force the other party to arbitrate without a joint agreement. The arbitration is done by a single arbitrator, mutually selected by the parties, and sitting alone[110].

ACAS provides free arbitration services, and the process commences with the appointment of an arbitrator by the ACAS. To preserve neutrality, ACAS appoints an arbitrator from a panel of outside experts[111]. The arbitrator asks the parties to explain their cases from their perspectives without interruption and ensures that both parties understand all issues[112]. The arbitrator examines all documents concerning the case to present the key points of their case as well as answer any question raised by the opposing party[113]. During this examination process, reports or recommendations drawn up by the conciliator or mediator would be a reference point. Furthermore, while performing this function, ACAS arbitrators should consider the possibility of disputes being settled by conciliation under section 212(2) of TULRCA. Before deciding on the dispute, the arbitrator can give a chance to the parties to sum up fundamental points. When the arbitrator makes a decision, it is known as "award", and the written award is sent to ACAS[114].

Besides ACAS arbitration, there is a separate body, named the Central Arbitration Committee (CAC). The CAC also, like ACAS, is a body independent from the government but publicly funded[115]. It adopts a quasi-judicial approach referring to more adversarial and less flexible resolution methods compared to ACAS collective arbitration since they are usually dependent on a pre-determined set of guidelines or criteria to assess the disputes.[116] The CAC, like ACAS, initially attempts to conciliate disputes, then, makes a legally binding adjudication where no voluntary settlement can be agreed upon. In other words, the CAC encourages parties to reach their agreement by either providing direct assistance or signposting them to the offices of their colleagues in ACAS[117].

The role of the CAC involves the recognition of trade unions and the disclosure of information for collective bargaining[118]. However, it deals with a small number of cases each year like ACAS Arbitration. For instance, the CAC received 68 applications in 2021 and 57 applications in 2022. Out of the 68 applications received in 2021, 50 were about the recognition of trade disputes. Similarly, out of the 57 applications received in 2022, 46 were also about the same disputes. This indicates that the recognition of

[105] KOUKIADAKI, p.92.
[106] BROWN, p.347.
[107] GENNARD, John: "Voluntary Arbitration: The Unsung Hero", Industrial Relation Journal, 40(4), 2009, p.311.
[108] GENNARD, p.321.
[109] GENNARD, p.322.
[110] GENNARD, p.312.
[111] POTOCNIK, p.220.
[112] ACAS: "Arbitration", https://www.acas.org.uk/arbitration, (Accessed: 24.12.2023).
[113] ACAS: "Arbitration", https://www.acas.org.uk/arbitration, (Accessed: 24.12.2023).
[114] CORBY, Susan: Arbitration in Collective Disputes: A Useful Tool in the Toolbox, ACAS Publishing, London, 2015, p.24.
[114] ACAS, "Acas Annual Report and Accounts 2021-2022", p.30.
[115] TAYLOR, Stephan/EMIR, Astra: Employment Law: An Introduction, 5. edn, Oxford University Publishing, Oxford, 2019, p.500.
[116] TAYLOR, p.500.
[117] CAC, "Annual Report 2020-2021", p.3, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1000362/CAC_Annual_Report_2020-21.pdf, (Accessed: 24.12.2023).
[118] CLARK, p.103

trade disputes is the most conflicting issue brought to the CAC[119]. Although it is not frequently used, the users were mainly satisfied with the CAC's service. According to the 2021 CAC report, the majority of the users (85%) rated the CAC's services "good" or "very good"[120].

The first stage is for the union to request an information from the employer about the dispute. Then, the employer should respond to the request within 10 days. At this stage, an employer can offer conciliation. However, if the employer is not successful in giving a response or refuses the request, the union is entitled to apply to the CAC[121]. After the application to the CAC, the CAC's chairman appoints a panel consisting of one member each from the employer's representatives, employee's representatives, and one independent person[122]. Engaging with a lawyer is not recommended not only because it increases the formality of the resolution process but also because no cost can be awarded against a losing party. It performs its function without being obligated to consider precedents set by the other previous panels of the CAC[123].

The CAC does not have the power to require any documents or to insist upon any witnesses attending and it does not have the power to punish a party or a witness for contempt.[124] It usually first considers written representations which are amplified at a formal hearing, normally held in public[125]. Ultimately, the CAC does not have to give reasons for its decisions[126]. Nevertheless, some CAC's features differ from ACAS Arbitration. Firstly, ADR meetings are normally held in a confidential environment, and ADR settlements are not publicly available. In contrast, CAC hearings are typically held in public, and their decisions are published on their website. Secondly, except for rare circumstances, ADR settlements are not subjected to an appeal. By contrast, CAC decisions are subjected to be reviewed by the Administrative Court of the Queen's Bench Division[127]. Therefore, the CAC can be named as a 'quasi-judicial' dispute resolution mechanism.

IV. COMPERATIVE DISCUSSION OF ADR IN COLLECTIVE EMPLOYMENT DISPUTES IN TÜRKİYE AND THE UNITED KINGDOM

International labour standards, aiming to harmonise domestic employment laws, are significant in labour dispute resolution because they are established by considering sui generis structure of employment relations. Therefore, the ILO is recognised as the foremost global institution for employment standards, and its instruments have become critically important.[128] Therefore, while codifying Law No. 6356, ILO standards have been taken into consideration in Türkiye[129]. When it comes to the UK, as one of the founding members of ILO, it becomes a valued partner by ratifying most ILO Conventions[130]. In this regard, this section analyses ADR in CEDs in both countries by considering relevant ILO criteria regarding effective dispute resolution[131].

The first criterion is "range of services" referring to the variety of ADR methods. In Türkiye, CEDs can be resolved through mediation and arbitration. The mediation process is categorized into ordinary and extraordinary mediation. Parties mainly can apply to ordinary mediation where collective bargaining proceedings are not successful. Extra-ordinary mediation happens either during a strike or the strike is postponed by the President if it has the potential to disrupt the general health or national security. Additionally, the Turkish system yields mandatory arbitration (carried out by the HAB) in case of the impossibility of taking industrial action and offers private arbitration when an arbitration clause is inserted into the CBAs or a separate arbitration agreement is signed.

In contrast, the UK system has the three ADR methods (conciliation, mediation, arbitration) for the resolution of CEDs and these services are predominantly provided by ACAS. In addition to ACAS, the CAC also has a fundamental role in resolving CEDs, particularly in the recognition of trade unions. HAB in Türkiye and the CAC in the UK emerge as quasi-judicial methods. However, both countries fail to offer

[119] CAC, "Annual Report 2020-2021", p.2, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1000362/CAC_Annual_Report_2020-_21.pdf, (Accessed: 24.12.2023).
[120] CAC, "Annual Report 2020-2021", p.6, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1000362/CAC_Annual_Report_2020-_21.pdf, (Accessed: 24.12.2023).
[121] "Guidance Trade Union Recognition: How to Apply to the CAC" https://www.gov.uk/guidance/trade-union-recognition-how-to-apply-to-the-cac, (Accessed: 24.12.2023)
[122] BOWERS, p.522.
[123] TAYLOR, p.500.
[124] TAYLOR, p.500.
[125] TAYLOR, p.500.
[126] BOWERS, p.522.
[127] BOWERS, p.522. CAC, "Annual Report 2021-2022", p.3. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1090643/CAC_Annual_Report_21-22.pdf. (Accessed: 03.07.2023)
[128] ILO, Social and Labour Aspects of Economic Development: the ILO's Approach, International Labour Office, Urbana, 1963, p.3.
[129] SUR, Melda: Uluslararası Normlar ve 6356 Sayılı Kanun'un Toplu İş Sözleşmeleri ve Grev Hakkındaki Hükümleri, 15, 2013, p.255.
[130] ILO: "United Kingdom ILO Cooperation" 2018, p.1. https://webapps.ilo.org/wcmsp5/groups/public/---dgreports/---exrel/documents/genericdocument/wcms_344228.pdf (Accessed: 03.05.2024)
[131] ILO, Labour Disputes Systems: Guidelines for Improved Performance, International Training Centre of the International Labour Organization, Turin, 2013, p.30-34.

con-arb[132] or arb-con[133] sequences. The introduction of such mechanisms would be wise, particularly as disputants are facing intense pressure to resolve by a deadline, as in CEDs. It should be added that since mediation might be considered the functional equivalent of conciliation, a lack of conciliation would not constitute a breach of the criterion for Turkish system.

This criterion also requires that ADR services should be simultaneously available that might link to each other. However, mediation and arbitration in Türkiye are not simultaneously available. On the contrary, Türkiye regulates mediation as a pre-condition to apply to the HAB. Conversely, in the UK, parties have the freedom to bypass conciliation and mediation and directly apply to ACAS Arbitration and the CAC, but in practice, arbitration is considered a last resort. Indeed, conciliation is seen as precursor of mediation and arbitration. However, where mediation and conciliation are unsuccessful, the reports drawn by neutral third parties are of still importance in both countries since arbitrators in HAB and ACAS can refer to them in their decisions. Consequently, while the Turkish system critically violates the requirements of the criterion, the UK system partly breaches it.

The second relevant ILO criterion is "voluntarism" requiring the State to establish a system in which parties have the freedom to choose ADR methods. On this issue, the ILO held that compulsory and binding arbitration cannot be imposed by legislation as a replacement for strike action[134]. Nonetheless, where the service is essential, or non-essential but its long interruption might endanger the life, safety or health of the whole or part of the population, some compulsions might be accepted but, even in these scenarios, it must be guided by the values of democratic participation and joint regulation[135].

Under these explanations, the Turkish legislative framework forces stakeholders to resort their disputes to mediation where parties are unable to reach an agreement in bargaining negotiations, take industrial action or apply to the HAB. Furthermore, the Turkish system has HAB, which comes into stage when it becomes impossible to engage in industrial action. Nonetheless, where parties agree on bringing disputes to private arbitration, they can freely choose a person who acts as arbitrator. Hence, private arbitration would not conflict with voluntarism criteria, unlike mediation and mandatory arbitration.

By contrast, in the UK, ADR methods are freely chosen by disputants, and they are not mandatory steps before taking industrial action or applying the HAB. Due to this difference, while in the arbitration procedures held by ACAS and CAC, arbitrators take into consideration the potential resolution of CEDs through conciliation or mediation, in the HAB's arbitration, there is no such consideration because mediation must have already been attempted. In UK law, if the issue in dispute falls within the scope of the CAC's jurisdiction, like other UK's ADR methods, parties are not forced to bring disputes to the CAC. Hence, while the UK system satisfies the ILO's voluntarism criterion, the Turkish system is in critical breach of the criterion except for private arbitration.

The last criterion is "professionalism" which prohibits the governments from intervening in resolving CEDs and requires equal representation of parties in the dispute resolution system under the management of a non-governmental body having expertise in the resolution of employment disputes. In Turkish extraordinary mediation, the Minister can either act as a mediator or assign a mediator. Thus, such a system is known as "political mediation". Furthermore, in Türkiye, one of the circumstances to apply to the HAB is the impossibility of taking industrial action in case of the postponement of the industrial action by the decision of the President. It means that the power of the President may not have a direct role in managing ADR systems but an indirect role in the commencement of ADR methods. Consequently, there is a role of the State in applying to HAB for the resolution of CEDs. Conversely, no such governmental intervention has been found for the UK system.

When it is looked at the structure of the HAB, it consists of members of employers' and employees' confederations and academicians, and hence, it can be labelled as a "mixed structure", aligning with the ILO criteria. However, in Türkiye, the lack of an expert institution in mediation like UK's ACAS, aiming to strengthen workplace dialogues, consultation, and improved labour management, is the weakness of the system regarding the professionalism criterion. On the other hand, in the UK system, the ACAS and CAC are expert, independent bodies from the government but publicly funded, and play a fundamental role in the resolution of the CEDs without the intervention of the governments. ACAS employs its conciliator for CC, and it appoints arbitrators from a panel of outside experts. Conversely, the CAC's chairman can assign a panel consisting of one member each from employers' and employees' representatives, and one neutral person, similar to Türkiye's HAB. In addition, the ACAS Council involves the representatives of employees' and employers' institutions. Consequently, whereas the Turkish system partly breaches the criterion of 'professionalism', UK system satisfies its requirements.

V. CONCLUSION

CEDs can simply be defined as disputes relating to CBAs between employers and employee institutions and these disputes can be resolved through peaceful means. These peaceful methods, is also known ADR methods, might be more advantageous for both parties and industrial relations compared to

[132] It is a hybrid process providing that where parties unable to reach an agreement at the end of the conciliation meetings, parties can invite the mediator to act as arbitrator to make an award that is binding, or non-binding as agreed by the parties.
[133] It is a hybrid process and refers to a process that a neutral third-party make an arbitral award, sealed, and not revealed to the parties unless they cannot reach a settlement at the conciliation.
[134] GERNIGON, p.27.
[135] GERNIGON, p.27.

adversarial methods, having possibility to decrease the productivity of the business and to constitute a threat of losing jobs for employees. This is because peaceful resolution methods have ability to eliminate these unwanted consequences.

The ILO might be more functional in norm-creating and rulemaking than nations because it brings together countries with different political, social, and economic systems, and is non-partisan. Therefore, this research takes ILO criteria as a benchmark while assessing ADR systems. On this basis, in the realm of voluntarism, the most notable difference is the levels of compulsory elements in normative ADR provisions. While the Turkish system compels stakeholders to resort their disputes to mediation and arbitration, ADR methods are not mandatory steps to apply the CAC or to take industrial action in the UK.

As for professionalism, the government has roles in extraordinary mediation and the postponement of industrial action, leading to the application of HAB in Türkiye. By contrast, there is no government intervention in resolving CEDs in UK. Nevertheless, HAB, CAC and ACAS align with the professionalism criterion since employee and employer institutions are represented on boards. When it comes to the range of services, both countries provide main ADR methods, but they are not simultaneously available in Turkey, unlike UK. Furthermore, both countries failed to provide hybrid ADR methods. Hence, although the UK is in a relatively better position, both countries are in partial breach.

Ultimately, to align national systems with ILO criteria, Türkiye should eliminate compulsory elements in ADR provisions and ensure that there is no government intervention during dispute resolution. Türkiye should simultaneously offer ADR methods for the resolution of CEDs and start to consider introducing hybrid ADR methods. For these purposes, the UK system might, except for hybrid methods, be an optimum example to consider.

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