

THE RIGHT TO FORM AND TO JOIN TRADE UNIONS AS DEFINED IN INTERNATIONAL LEGAL INSTRUMENTS

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Abstract: The right of workers to form and to join trade unions is one of the most important international labour standards. This means that employees, no matter where they are employed (public or private sector), have the right to form their own organizations (unions). Apart from the employees, employers also have the right to form and join in employers' associations. The right of employees and employers to organize is based on the following principles: voluntariness, autonomy and democracy. The general objective of the formation of unions and employers' associations is to protect the rights and interests of members of the union and the employers' association, as well as their promotion in an organized manner. The provision and guarantee of union and workers' rights are guaranteed by a number of international and regional legal instruments (conventions, recommendations, regulations), such as ILO, UN, Council of Europe and the European Union, which will be analysed further in this paper. The main objective arising from these documents is to improve the position of workers and their protection.

Within the paper, we will also analyse the most important legal acts of the Republic of Macedonia concerning the right to join unions. By analysing the content of the national labour legislation, we will determine the extent to which the international labour law is being implemented.

Moreover, the paper will analyse the basic principles underlying union organization and association.

Key words: *union organization, union, ILO, conventions, recommendations.*

1. Introduction

International legal instruments establish rights that need to be applied and respected worldwide, i.e. accomplishing of the overall international activity, because disregard of these rights prevents the exercise of labour rights, and it would also mean a denial of the purposes and tasks deriving from international legal instruments. Norms arising from these instruments cannot be limited to the position of workers only, but they inevitably refer to the protection of fundamental values of freedom and equality of people, and at the same time provide not only material well-being of workers, but also their human dignity.

One of the most important rights, as stipulated in the international acts, is the right of workers to form and join unions, in order to promote and protect their rights and interests. An inseparable part of human rights are the union rights and freedoms contained in international documents, conventions and recommendations, such as the Charter and the United Nations Universal Declaration of Human Rights (adopted in 1948) and the International Covenant on Economic, Social and Cultural Rights (adopted in 1966),

the fundamental conventions of the International Labour Organization (Convention No. 87 and Convention No. 98), as well as the acts of the Council of Europe - the European Convention on Human Rights (adopted in 1950) and the European Social Charter (adopted in 1961).

The Republic of Macedonia as a member state of the UN, ILO, Council of Europe, and as a candidate country for EU membership, is bound to implement the acts these organizations adopt in the national labour legislation.

2. Term, definition and principles of union work

In theory and in practice, there are a number of definitions for the term *union*. In addition, we will mention only two that have left a strong impression in the history and theory of syndicalism. **Karl Marx** defined *union* as a class organization and means of freeing workers from the capitalist mode of production.¹ In theory, however, the most accepted and most quoted definition of *union* is the one by **Sidney & Beatrice Webb** who see union as a "labour organization whose main goal is maintaining or improving the conditions of their employment."²

The basic principles of union organizing are: voluntariness, autonomy and democracy.

The **principle of voluntariness** means voluntary membership and free choice of workers in terms of the union

they want to join. Workers have the right to voluntarily decide which union would they become members of, without pressure from the employer, political parties and other centres of power.

The **principle of autonomy** implies that unions should have autonomy from the political parties, the government, the employers, religious organizations and others. The autonomy of the union in relation to the government is reflected in the organizational, financial and functional sense. Autonomy in the organization means independence in the establishment of its organizational structure, the establishment of union funds and independent election of the bodies of the union. When it comes to autonomy in financial terms, the union is often faced with a lack of funding, because it often stops to receive the financial support from the state and the employers through various forms of financing, and in this way it loses its independence to some extent. Autonomy of the union in functional terms means independence in its actions and operations.³

The **principle of democracy** involves application of democratic principles of deciding on the internal union issues associated with its functioning, internal democratic relations and a democratic election of union representatives, as well as of bodies of the union.

The basic principles of union organization and association are the basis for organization and association of workers with the purpose to exercise their rights and interests.

¹ Belovski V., Majhoshev A. (2017), *Trudovo pravo* (e-izdanje), Univerzitet "Goce Delchev"-Shtip, 269.

² Sidney & Beatrice Webb, (1920, 1956), *The history of Trade Unionism*, Longmans Green and Co London, 25.

³ Majhoshev, A., Belovski V., (2012). *Trudovo pravo* (Avtoriziranje predavanja), Shtip, 69.

The principles of union organization are present both in our national legislation and in international legal documents, and they are the basis and guarantee of workers' rights.

3. The right to form and to join trade unions as represented in UN acts

The right to form and to join trade unions is stipulated in the following UN legal documents: the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the Copenhagen Declaration of UN.

3.1. Universal Declaration of Human Rights

The **Universal Declaration of Human Rights** is a fundamental basic document in the field of human rights. With its adoption on 10 December 1948, the General Assembly of the United Nations launched an ongoing process and aims at developing a comprehensive framework for the promotion and protection of human rights. The right to form and join trade unions is also regulated by the United Nations. The Universal Declaration of Human Rights explicitly stipulates the right to form and join trade unions - "Everyone has the right to form and to join trade unions for the protection of his interests."⁴ The right to collective bargaining derives from the right to form union.

⁴Article 23 paragraph 4 of the Universal Declaration of Human Rights

3.2. International Covenant on Economic, Social and Cultural Rights

The right to form and to join trade union is subject to the **International Covenant on Economic, Social and Cultural Rights of 1966** too. The contracting countries to the Covenant undertake to ensure "The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests." No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.⁵ The right of trade unions to function freely is subject to no limitations other than those prescribed bylaw and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.⁶

3.3. UN Copenhagen Declaration

The **UN Copenhagen Declaration** was adopted at the World Summit for Social Development that was organized by the United Nations in 1995 in Copenhagen.

⁵Article 8 of the International Covenant on Economic, Social and Cultural Rights of the UN

⁶Article 8 of the International Covenant on Economic, Social and Cultural Rights of the UN

This declaration is an important document which recommends that national governments should establish a mechanism for social partnership, and that true success in improving the economic and social development of the society at a national and global level will be achieved if there is a coalition of all social actors with the purpose to work towards achieving common goals.⁷ In order to achieve coalition, governments will need to work in partnership with experts, unions, business associations and other organizations to achieve better mutual future for everyone. The Programme of Action of the World Summit for Social Development stipulates that it is necessary for the governments to increase the quality of work and employment through promotion of stable labour relations, in accordance with national laws and regulations, based on tripartite cooperation and full respect for freedom of association and the right to organize and collective bargaining.⁸

4. Right to form and join trade unions in ILO's acts

The collective rights and freedoms that the ILO pays special attention to in its activities, include also the trade union freedoms. In 1919 the first acts for the establishment of the ILO, trade union freedoms and the right to form and join a trade union were included in the Constitution and the Treaty of Versailles, where the affirmation of the principle of

trade union freedoms is determined as one of the most important goals of the organization. The significance of trade union freedoms is not only due to the fact that they are part of the fundamental human rights, but also to the tripartite composition of the organization, which allows workers to express their opinions and take a stand on certain issues, equally as other representatives in its organs.

In the Constitution of the ILO and in the Philadelphia Declaration, social freedoms emerge as a powerful tool through which workers express their demands, as means of establishing a balance of power in collective bargaining, and the opportunity for workers to actively participate in the establishment and implementation of the development policy in the country, both in the economic and social fields. With all these references, social freedoms become a factor of enriching the content and organization of the production process and contribute to the establishment of social peace and social justice.⁹

Despite the great progress marked by the trade union freedoms during the existence of the ILO, the attention and activity of this organization is still retained in constant mobility, because it is not a small number of countries where restrictions on these freedoms, be it related to the organization of trade unions, or to their functioning, are still big. ILO has adopted several conventions and recommendations for ensuring trade union freedoms, and they are subject to a number of texts adopted by other organizations, especially the UN and the Council of Europe.

⁷Majhoshev A., Ulogata na socijalnite partneri vo kolektivnoto pregovaranje vo Republika Makedonija vo periodot 1990-2012, 98.

⁸Copenhagen Declaration, World Summit for Social Development, Programme of Action, Gorenjski tisk, Skopje, 1997

⁹ Stavrova G., (2003) Medjunarodno трудово право i zakonodavstvo, Djurdja, Skopje, 149.

The International Convention No. 87 on Freedom of Association and Protection of the Right to Organise, the International Convention 98 on the Right to Organize and Collective Bargaining, International Convention No. 100 on Equal Remuneration for Men and Women, the International Convention no.154 on Collective Bargaining, the International Convention No.131 on Minimum wage Fixing - represent the most significant international legal ILO instruments which protect the right to form and join trade unions.

Basic international legal instruments by ILO ensuring trade union freedom and the right of workers to form and to join trade unions are the following: Convention no. 87 on Freedom of Association and Protection of the Right to Organize, adopted in 1948 and the Convention 98 on the Right to Organize and Collective Bargaining adopted in 1949. The Workers' Representatives Convention, No. 135 adopted in 1971, has an important role in the exercise of the fundamental trade union freedoms and rights. The Convention no. 87 on Freedom of Association and Protection of the Rights to Organize and the Convention no. 98 on Collective Bargaining, are fundamental norms for international protection of trade union freedoms in general.

4.1. Convention no. 87 on Freedom of Association and Protection of the Rights to Organize

The Convention no. 87 on Freedom of Association and Protection of the Rights to Organize – adopted in 1948 is a fundamental norm for international protection of trade union freedoms. Its main objective is to determine free

exercise of workers' and employers' rights to organize, regardless of the differences in the manner of their organization so they can implement and ask for their rights and interest as better as possible. This Convention determines also their right to form trade unions as their organizations and the freedom of action. "Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation."¹⁰ Also "workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers."¹¹

The Convention no. 87 despite referring to the rights of trade union freedoms and the protection of trade union rights, has a very wide range of application. Although it refers to the right to trade union organization and association and protection of trade union rights, it also applies to other rights, very important for the realization of this right. From the content of the Convention it has been noted that workers and employers form trade unions and their associations without any distinction, it excludes in advance all possibilities of discrimination which could be based on the type of profession or work performed, the national, racial, religious and gender basis and the political commitment of each individual.

¹⁰Article 2 of the Convention no. 87 on the Freedom of Association and Protection of the Rights to Organize

¹¹Article 5 of the Convention no. 87 on the Freedom of Association and Protection of the Rights to Organize

According to the Convention, the right to join trade unions can be enjoyed by nationals and foreigners, and the only exception applies to members of the army and police, because each state decides whether to allow the establishment of unions or not.

Convention No. 87 provides for the formation of trade unions to be carried out without prior authorization. The prohibition of prior authorization applies to all other activities related to the functioning of trade unions, such as the enactment of the Statute or during a session of the union. The Convention establishes the right to free choice of collaborators in the establishment of the organization or in the organization workers want to join.

4.2. Convention no. 98 on the Right to Organize and Collective Bargaining

The Convention 98 on the Right to Organize and Collective Bargaining - was adopted in 1949 in order to create conditions for the preservation of trade union freedoms in terms of social partners, specifically in relation to employers and their organizations. Convention No. 98 is about the Right to Organize and Collective Bargaining. Under the provisions of this Convention, any member of the ILO must provide protection for workers from discrimination in employment and disables the employer to make the employee to choose between his union needs and his employment. The Convention provides for the protection of workers against all acts of discrimination that might bring into question the exercise of trade union freedoms.

Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. Such protection shall apply more particularly in respect of acts calculated to:

- make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

- cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.¹²

Convention no. 98 provides protection of workers - union members from discrimination in employment, i.e. make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership, or against dismissal by reason of union membership or because of participation in union activities within or outside working hours.

To achieve protection of trade union rights, Convention No. 98 provides protection of workers and employers from any interference in the organization, operation and management of one on the expense of others. An adequate protection in this direction or an adequate financial support can disable subordination in their formation and operation. The Convention encourages the development of voluntary collective bargaining between workers' organizations and those of employers in the labour market.

¹²Article 1 of the Convention no. 98 on the Right to Organize and Collective Bargaining

For the full realization of the protection of trade union freedoms and rights, in 1971, ILO adopted Convention no.135 and Recommendation no.143 concerning protection of workers' representatives in enterprises. Convention no. 135 defined the term workers' representatives as persons who are recognized as such by law, whether designated or elected by trade unions or by the members of such unions under positive legal norms. With them, workers' representatives in enterprises have protection against actions taken by employers, including dismissal by reason of union membership.¹³

5. Right to form and join trade unions in the acts of the Council of Europe

In the second half of the XX century, the integration processes taking place at European level, imposed the need to consider the issue of trade union freedoms in the acts that are adopted within European organizational forms. In this context, the Council of Europe as a regional organization have adopted several regional laws governing the issue of trade union rights and freedoms. The provisions on these issues are contained in the European Convention on Human Rights and Freedoms from 1951 and the European Social Charter from 1961.

5.1. European Convention on Human Rights and Freedoms

In the European Convention on Human Rights and Freedoms this right arises from the fundamental right of people to association, including the right to form

and join unions in order to protect their interests. "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."¹⁴ The exercise of these rights could be limited only by legal measures which in a democratic society are necessary for national security, public safety, order and prevention of crime, protection of health or morals or protection of the rights and freedoms of others.

5.2. European Social Charter

The European Social Charter was adopted in 1961 by the Council of Europe and entered into force in 1965. Basically, the Charter elaborates the right to form union, i.e. the things not provided by the European Convention on Human Rights and Freedoms. With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom.¹⁵ The Charter establishes the right to collective bargaining and the right to strike. In terms of collective bargaining, the Charter provides for and encourages consultation and voluntary negotiation between workers in determining the conditions of employment by collective agreements.¹⁶

¹³ Majhoshev, A., Belovski V., (2012). *Trudovo pravo* (Avtoriziranje predavanja), Shtip, 66.

¹⁴Article 11 paragraph 1 of the European Convention on Human Rights and Freedoms

¹⁵Article 5 of the European Social Charter

¹⁶ Stavrova G., (2003). *Medjunarodno trudovo pravo i zakonodavstvo*, Djurdja, Skopje, 155.

The contracting parties also recognise "the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into."¹⁷

6. Conclusion

The right to assembly and organization is one of the most important international labour standards and principle of employment. This right guarantees the freedom and the right to organization and association of employees and employers. Workers have the freedom and the right to form and join trade unions, while employers have the right to join employers' associations. This right is guaranteed by the acts of the most important international organizations: ILO, UN, Council of Europe and the European Union. The main objective of the right to form and join unions is the protection and promotion of the rights of union members that arise from employment.

The Republic of Macedonia as a member of the UN, ILO, Council of Europe, and as a candidate country for EU membership, is obliged to implement all international legal instruments into the national labour legislation, by the act of ratification of the acts of the mentioned international organizations.

Based on the analysis of the legislation on the right of trade unions in the country, we can conclude that this right is implemented in the Constitution and in the labour legislation. The Constitution guarantees the right to form and join

unions, while the Labour Law devoted a whole chapter (XVIII) to the issue.

However, a major problem in exercising the right to form and join trade unions in Macedonia is the restriction of this right by employers in the private sector. The restriction manifests pressure by employers to employees such as intimidation, mobbing, threats and other types.

References:

- [1] Belovski V., Majhoshev A. (2017), *Trudovo pravo (e-izdanje)*, Univerzitet "Goce Delchev"- Shtip; Deklaracija od Kopenhagen Svetski saem za socijalen razvoj, Programa za akcija, Gorenjski tisk, Skopje, 1997.
- [2] European Convention on Human Rights and Freedoms, 1950;
- [3] European Social Charter, Council of Europe, Council of Europe, 1961;
- [4] Convention no. 87 on Freedom of Association and Protection of the Right to Organize, ILO, 1948;
- [5] Convention no. 98 on the Right to Organize and Collective Bargaining, ILO, 1949;
- [6] Majhoshev, A., Belovski V., (2012). *Trudovo pravo (Avtoriziranje predavanja)*, Shtip.
- [7] Majhoshev, A., Ulogata na socijalnite partneri vo kolektivnoto pregovarnje vo Republika Makedonija vo periodot 1990-2012 godina ;
- [8] Sidney&Beatrice Webb, (1920, 1956), *The history of Trade Unionism*, Longmans Green and Co London, 25.
- [9] International Covenant on Economic, Social and Cultural Rights, UN, 1966;
- [10] Stavrova G., (2003) *Medjunarodno trudovo pravo i zakonodavstvo*, Djurdja , Skopje.
- [11] Universal Declaration on Human Rights, UN, 1948.

¹⁷Article 6 paragraph 4 of the European Social Charter