

# Freedom of Association as a Fundamental Principle in the Sphere of Labor

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**Abstract:** In the article, the author analyzed the content of the principle of freedom of association and collective bargaining, which are considered fundamental rights in the field of labor. The author highlights the main features of international treaties adopted at the universal and regional levels, in particular, two fundamental ILO conventions - Convention No. 87 on Freedom of Association and Protection of the Right to Organize and Convention No. 98 on the Right to Organize and Collective Bargaining. The author concludes that the freedom of association and the right to conduct collective negotiations are the most important values throughout the entire activity of the ILO, and to date, a set of international legal documents has been formed within the framework of the ILO on the issues of freedom of association and conducting collective negotiations.

**Keywords:** freedom of association and the right to collective bargaining, ILO, trade unions, employers' associations, "positive" and "negative" right to associate.



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## Introduction

The Declaration of Fundamental Principles and Rights in the Field of Labor of the International Labour Organization (ILO) states that all member states, even if they have not ratified the relevant ILO conventions, are obliged, due to their membership in this organization, to respect the principles relating to the fundamental rights that are the subject of such conventions, and to promote their application in accordance with the organization's Charter[1]. According to it, the following are recognized as fundamental rights: a) full recognition of the right to freedom of association and collective bargaining; b) elimination of all forms of forced or compulsory labor; c) strict prohibition of child labor and; d) prevention of discrimination in the sphere of labor and types of work.

The freedom of association and the right to conduct collective bargaining are enshrined in fundamental universal international human rights documents. Paragraph 4 of Article 23 of the 1948 Universal Declaration of Human Rights provides for everyone's right to join trade unions to protect their interests, while Article 20 prohibits forcing anyone to join any association[2]. The provisions regarding every individual's right to form associations with others, including the freedom to establish trade unions and join such associations to protect their interests, are

enshrined in Article 22 of the 1966 International Covenant on Civil and Political Rights[3]. The content of this right is further elaborated in Article 8 of the 1966 International Covenant on Economic, Social and Cultural Rights[4]. This document incorporates the key provisions of the ILO's fundamental conventions pertaining to this issue.

### **ILO Standards**

Freedom of association and the right to collective bargaining are the most fundamental values underpinning the entire philosophy of the ILO. Membership in the organization implies adherence to this right based on accession to the ILO Constitution, regardless of whether a country has ratified any specific conventions on this matter. The 1944 Philadelphia Declaration, which is an annex to the ILO Constitution, states in the first paragraph of clause 6 that “freedom of expression and association are essential to sustained progress”[5]. Clause 3 of the Declaration outlines the ILO's commitment to assist in the adoption of programs by countries worldwide aimed at “the effective recognition of the right of collective bargaining, cooperation between management and labor in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures”[5]. Thus, a country that accedes to the ILO Constitution assumes these aforementioned obligations as an international treaty.]

### **Methodology**

The first convention dedicated to freedom of association was adopted in 1921. This refers to the Convention on the Right of Agricultural Workers to Associate and Organize [6, P.170]. Its essence is that workers in agriculture should have the same rights as industrial workers regarding freedom of association. The difficulty in implementing the provisions of this Convention in the early period of ILO activity is explained by the fact that at that time there was still no universal ILO document granting the right of association to workers, including those in the industrial sector. The first attempt to adopt a universal convention on freedom of association within the framework of the ILO occurred in 1927. However, at that time, representatives of workers' and employers' associations could not reach a mutual agreement on the content of the convention [7, P.281]. Representatives of employers adamantly demanded that the content of the right to association should include “negative” freedom of association, that is, the right not to participate in trade union activities. This could have dealt a severe blow to the trade union movement of that era, which heavily relied on “closed shop” agreements. According to the “closed shop” agreements concluded between employers and trade unions, employers were not entitled to hire employees who were not members of the respective trade union. This condition was so crucial for trade unions that they preferred not to adopt a convention at all rather than accept one that prohibited the conclusion of “closed shop” agreements or included provisions for such regulations [8, B.202]. ILO revisited the issue of adopting documents related to the right of association in the second half of the 1940s. The most important international legal documents were adopted, establishing the principle of freedom of association and the right to collective bargaining - these were, primarily, two fundamental ILO conventions: Convention No. 87 of 1948 on Freedom of Association and Protection of the Right to Organise, and Convention No. 98 of 1949 on the Right to Organise and Collective Bargaining. These two Conventions serve as the foundation for the ILO's Committee on Freedom of Association to establish numerous principles regarding freedom of association and the right to collective bargaining. The principles of freedom of association developed by the Committee have become a unique precedent in international labor law. M. Makhamatov notes that the significance of this right was further strengthened after the adoption of the 1998 ILO Declaration of Basic Principles and Rights in the Field of Labor [9, p.86] [10, p.17].

## Regional documents

The most important regional international human rights instruments have a significant impact on the development of the right to association. Articles 5 and 6 of the 1996 European Social Charter pertain to the collective labor rights of employees and employers[14]. The right to form and join trade unions, as provided for in Article 11 of the Council of Europe's 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the exercise of this right, should not be restricted in any way except for the limitations prescribed by law and 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[15]. Freedom of association within the European Union is enshrined in the Community Charter of the Fundamental Social Rights of Workers of December 9, 1989, as well as the Charter of Fundamental Rights of the European Union of December 7, 2000.

At the regional level, the right to unite was enshrined in the 1948 American Declaration on Human Rights and Obligations, the 1948 Charter of the Organization of American States, the 1969 American Convention on Human Rights, and the 1966 League of Arab States Convention on Labor Standards. Within the framework of the Organization of African Unity, the 1981 African Charter on Human and Peoples' Rights, the 1993 North American Treaty on Cooperation in the Field of Labor, the Social and Labor Declaration of MERCOSUR, and a number of other regional international legal documents were adopted.

**Elements of the right to association and collective bargaining.** The effective recognition of freedom of association and the right to conduct collective bargaining is not accidentally placed first among the fundamental principles in the field of work by ILO. The point is that the implementation of this principle serves as both a goal and a means: if employees can fully exercise their right to form trade unions and conclude collective agreements, they will be able to obtain any other social rights on a contractual basis.

## Results

In British legal thought of the mid-20th century, there was even an influential view that the rights achieved by employees through collective agreements were more significant than those granted to them by law [8, p.208]. Freedom of association serves as the foundation for safeguarding all other social human rights, provided that the state proceeds from the principle of tripartism. To truly ensure freedom of association effectively, it is not sufficient to merely enshrine certain rights in legislation; it is crucial that a robust system of independent trade unions and employers' associations emerges within society itself as an institution of civil society. As evident from the incomplete list of legal documents mentioned above, the issue of freedom of association and the right to conduct collective negotiations is indeed substantially comprehensive. The entire set of questions related to this matter can be divided into the following components: a) the right of association itself, that is, the right to form and participate in the activities of trade unions and employers' associations; b) conducting collective negotiations and concluding collective agreements; c) procedures for informing and consulting with employee representatives; and d) resolving labor disputes of an economic nature (disputes concerning interests).

The right to form and participate in organizations of workers and employers is often assumed to belong exclusively to trade unions, but most of its elements apply equally to organizations of workers and employers. It should be noted that, based on the content of ILO Conventions No. 87 and 98, the right of association is not a single right, but rather a comprehensive set of rights enumerated in these two Conventions. According to Articles 2-8 of Convention No. 87, workers and employers have the right, without any restrictions, to establish organizations and to join organizations of their choice without prior authorization, subject only to the rules of the organization in question. Organizations of workers and employers have the right to draw up their

own constitutions and rules, to freely elect their representatives, to organize their administration and activities, and to formulate their programs[16]. State authorities must refrain from any interference that would restrict this right or impede its lawful exercise. The arbitrary dissolution or temporary suspension of workers' and employers' organizations by administrative authorities is not permitted. Furthermore, states that have ratified Convention No. 87 are obligated under Article 11 "to take all necessary and appropriate measures to ensure that workers and employers may freely exercise the right to organize"[16].

*The right to "positive" and "negative" association.* First of all, it is necessary to pay attention to the word "right" itself in the wording of Article 2 of Convention No. 87. As mentioned above, in 1927, the ILO did not adopt the Convention on Freedom of Association because representatives of employers demanded the inclusion in the draft convention of a provision on workers' right not to participate in trade unions, i.e., the so-called "negative" freedom of association. Conventions No. 87 and No. 98 do not directly address these issues.

## Discussion

ILO supervisory committees take a broader approach to the issue of compelling workers to participate in trade unions as "trade union security measures". From the perspective of ILO supervisory bodies, if trade union security measures are adopted as a result of free negotiations between workers' and employers' organizations, then they are consistent with Convention No. 87. At the same time, if the requirement for mandatory membership is established by law itself, then, according to ILO Committee of Experts, it may become more difficult for workers to exercise their right to form organizations of their choice and become members of them. *Creation of associations "without any distinctions"*. This element ensures non-discrimination against workers and employers in matters related to their association in unions. In this context, the prohibition of discrimination has three aspects: firstly, it protects workers and employers from discrimination based on their membership in associations; secondly, it provides workers and employers with equal opportunities to exercise their right to association; and finally, it ensures equality between workers' and employers' associations.

*The first aspect* of trade union equality is the inadmissibility of discrimination based on workers' membership in trade unions and employers' membership in associations. The prevention of discrimination against trade union activists involves providing special legal guarantees for them. This includes protecting such employees from disciplinary actions and ensuring they have the opportunity to carry out trade union activities. Such guarantees are stipulated in Article 15 of the Law of the Republic of Uzbekistan "On Trade Unions"[17].

*In the second case*, issues arise related to discrimination in providing opportunities to participate in associations. Restrictions of this nature may be linked to traditional discrimination criteria (such as citizenship, gender affiliation, or race). Regarding discrimination based on citizenship, ILO Committee of Experts emphasizes the following: the legislation of many countries imposes varying degrees of restrictions on the formation of associations based on citizenship. In some countries, citizenship serves as a prerequisite for establishing a trade union, while in others, citizens of the country must constitute a certain proportion of the trade union members[18]. As the sole exception to the principle of equal opportunities for participation in trade unions, ILO Committee on Freedom of Association recognizes the restriction of management personnel's right to participate in general trade unions alongside other workers. This is connected with another principle of freedom of association - the inadmissibility of employer interference in trade union activities and the need to avoid conflicts of interest between different categories of workers. However, this does not deprive managerial staff of the right to form their own separate trade unions.

*The third aspect* of equality in the realm of freedom of association entails non-discrimination of one association's rights in relation to other associations and the prevention of "trade union favoritism". However, this does not imply that all workers' and employers' associations must possess an identical set of rights. According to the perspectives of both ILO Committee of Experts and the Committee on Freedom of Association, trade unions with a relatively large membership may exercise additional rights.

*Establishment of organizations "without prior authorization".* This right implies that workers and employers who form associations to protect their interests should not be dependent on any decision by state bodies in this matter, and the registration procedure should be of a notifying nature. According to the ILO Committee on Freedom of Association, the right to establish trade unions or employers' associations should not be subject to any conditions, neither in terms of the fact of establishing the organization nor in terms of approving its charter or regulations[18]. This, of course, does not mean that the founders of associations are exempt from the usual formalities required for registering a public organization. However, such formalities should not be applied in a way that suspends the organization's registration[6, p.181].

### Conclusion.

1. Freedom of association and the right to conduct collective bargaining are fundamental rights that have been among the most important values of the ILO throughout its entire existence. The accession of states to the ILO Constitution implies compliance with these rights, regardless of whether they have ratified any specific conventions on this issue.
2. The most important international legal instruments reinforcing the principle of freedom of association and the right to conduct collective bargaining are, first and foremost, two fundamental ILO conventions - Convention No. 87 of 1948 on Freedom of Association and Protection of the Right to Organise, and Convention No. 98 of 1949 on the Right to Organise and Collective Bargaining.
3. Currently, within the framework of the ILO, a comprehensive set of international legal documents on freedom of association and collective bargaining has been established.
4. Non-discrimination against workers and employers in connection with their membership in associations has three aspects: firstly, it protects workers and employers from discrimination related to their membership in associations; secondly, it ensures that workers and employers are provided with equal opportunities to exercise their right to associate; thirdly, this right guarantees equality between workers' and employers' associations.

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