

## Legislative Provisions Underlying Trade Unions' Right to Define Their Organizational Structure

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### ABSTRACT

The article contains a comparative analysis of constitutional and other legislative provisions that ensure a trade union's right to define its own administrative structure in European states. The aim of the study is to reveal the management's problems of European trade unions, declarative and empirical mass-character legislative provisions, which allow to structure trade unions by themselves. The result is that the state should not set forth an exhaustive list of various types of trade unions. The article also examines the authority of trade union associations to define the requirements imposed on their members' charters. These requirements are argued to comply with the principle of the freedom of association. Moreover, the work reveals that many European legislative provisions are declared but rarely realized in sphere of inner management. The novelty of the research is the comparative analytic review, basing on the modern local and collective European laws.

### KEYWORDS

Trade union, freedom of association, trade union associations, trade union charter

### ARTICLE HISTORY

Received 18 March 2016  
Revised 03 May 2016  
Accepted 22 May 2016

## Introduction

The right to freedom of association is an integral part of a person's constitutional rights. In labour sphere, workers exercise it and employees either form or join trade unions that serve to protect their rights and interests.

According to International Labour Organization's (ILO) Declaration on Fundamental Principles and Rights at Work, the freedom of association and effective recognition of the right to collective bargaining belong to the major principles of the labour sphere. These enjoy state protection by mere virtue of the states' membership in ILO, whether or not they ratified the relevant conventions.

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We should note that in 1970 ILO adopted Resolution concerning Trade Union Rights and Their Relation to Civil Liberties. This Resolution regards the following rights of trade unions as fundamental:

- right of trade unions to exercise their activities in the undertaking and other workplaces;
- right of trade unions to negotiate wages and all other conditions of work;
- right of participation of trade unions in undertakings and in the general economy;
- right to strike;
- right to participate fully in national and international trade union activities;
- right to inviolability of trade union premises as well as of correspondence and telephonic conversations;
- right to protection of trade union funds and assets against intervention by the public authorities;
- right of trade unions to have access to media of mass communication;
- right to protection against any discrimination in matters of affiliation and trade union activities;
- right of access to voluntary conciliation and arbitration procedures;
- right to workers' education and further training.

Consequently, the states are faced with the task of ensuring such legislative regulation of trade union activities that:

- conforms with the standards of human rights mentioned above;
- empowers trade unions to effectively enjoy their rights through the administrative structures required by them to perform their activity;
- does not impede the business activity of employers.

The tendencies of the discussing theme are complex in case of multiordinary documents declarating freedom of trade unions' organization. On the other hand, government's unlimited interference does not decide this problem.

Importantly, the definitions included into legal rules have been traditionally considered as a means to arrive at a common understanding of the respective concepts. Their use does not render any other concepts impossible. In terms of the issue in question, the legal definitions of particular organisational structures do not disallow any other types of structures unmentioned by legislation.

Regrettably, the state often ignores this fact, however obvious it might appear. Moreover, certain parts of such definitions do not pay due attention to the specific features of trade union functioning and may even infringe constitutional rights of citizens.

The main problem of the study is unrealized potential of trade union's self-management.

The potential of this scientific work is determined by the globalizing tendencies, where the workers are interested in uniting the trade unions. The current study refills the global science in case of the material's actuality and specification the trends, which are determining the nearest future.

### ***Aim of the Study***

This scientific work is aimed on revealing the management's problems of European trade unions, such as self-organisation, complexity of structure and main responsibilities, which obtains lack of legislative base. Moreover, the study consists on legal necessity to form the trade unions as much as it consists on legal construction of their management.

### ***Research questions***

The study is interested in obtaining the answers on the following questions, such as 'why the declaration of the trade union's freedom is not enough to effective self-management', 'what the government can do for the trade unions' freedom' and 'which union trade in EU has the most effective management'.

### ***Methods***

This research appeals the comparative analysis and the monitoring of the legal acts, widening on European countries. Also, the research includes the review of the local legal acts, such as Slovenian, Portuguese, Ukrainian, Irish, Bulgarian, Austrian, Estonian, British, Spanish, Italian, Russian, Lithuanian, Polish, Serbian, Slovenian, Belgian, Luxemburgian, Moldovian, German, French and other laws. Moreover, this work partly based on scientific works of European authors that have a deep acknowledgement in the trade unions' activities.

### ***Results***

The research means a lot by contemporary science because of modern social tendencies including co-working and co-adaptation. The complexity of it becomes too hard to overcome, and then trade unions help workers to socialize.

The review of European experience demonstrates that only in Hungary and Moldova the types of trade unions and their administrative structure are directly specified. Although, the government may assign public functions only to certain trade union organizations.

Although, the declaration of the trade union's freedom is not enough to effective self-management because of freedom's realization demands long and conscious empiric labour. It means forming of personal work culture, where the uniting of the trade union is a natural self-organizing activity. Moreover, the government can do for the trade unions' freedom more than declarative law but there is no way where trade unions are universally thematically diversified (because of different ways of regional professional activity). The question 'which union trade in EU has the most effective management?' is sort of provoking, but we suppose that there is Ireland.

The main concept, actualizing this theme, is globalization in case of European economy specification. This region attracts many immigrants and it means many problems binding with their socialization. This is the one of the reasons why trade unions need to effective inner management.

### ***Discussion***

The EU has become a significant political and policy unit, creating a new context for mobility and migration in Europe, particularly since the 1997 Treaty



of Amsterdam. EU member states, particularly the 'old' ones, have promoted common restrictive and defensive admission policies in relation to potential immigrants from non-EU countries. Furthermore, new member states are required to enact legislation and establish institutions in conformity with established EU policies in this domain. This strand of EU policies has been derided by critics as building 'Fortress Europe' (Marino, Penninx & Roosblad, 2015).

According to A. Dufresne (2015), since 2010 European economic governance has not only had an impact on the framework for collective bargaining but also, subsequently, on the power and legitimacy of the unions. European unions, under attack, are seeking to react through a relaunch of their earlier European initiatives in favour of a European coordination of national collective bargaining. They are also formulating a new demand for a European minimum wage. This article argues with necessity of transnational social mobilization. Both constitute the first steps in the process of Euro-unionism representative functions on the road towards a genuine European collective bargaining system, refunded above the institutionalized social dialogue process.

So, measures have been introduced to regulate access to the labour market and other institutional domains of welfare states. These regulations, and the associated controls on both workers and employers, function as a second 'border', rendering the welfare state inaccessible to illegally residing immigrants.

To explain differences between trade unions' attitudes and actions, R. Penninx and J. Roosblad (2000) propose four sets of factors.

The first is the power that trade unions have in society and in national socio-economic decision-making. The more powerful a trade union is, the more effective it will be in influencing the policies of government and employers' associations in union-advocated directions.

The second set of factors involves the economy and labour market conditions. In times of ample national supply of labour, trade unions are likely to oppose recruitment of immigrant workers; while in times of labour shortages, unions will probably be more willing to cooperate. The state of the economy and labour market might also influence trade unions' responses to the second and third dilemmas. In times of widespread unemployment, competition (actual or presumed) between indigenous and immigrant workers might increase, making inclusive union policies difficult to maintain.

The third set of factors relates to social trends. Trade union policies towards immigration and immigrants are influenced by contextual aspects such as public discourse, institutional arrangements, legislation, and institutional actors like national authorities, civil society organizations, and political parties.

The final set of factors concerns the characteristics of immigrants and public perceptions thereof. Unions may be more sympathetic to immigrants from former colonies, to those from countries where unions hold similar ideologies, and to those perceived as culturally similar to the indigenous population. Immigrants may also themselves have characteristics that influence their ability or willingness to unionize. These include experiences with trade unions in the country of origin and their educational level, legal status, and duration of stay.

Moreover, I. Awad (2008) notes that Central and Eastern Europe (non-EU) is a sub-region of sizeable intra-regional migration. That logically leads a necessity in a qualificative trade unions.

Thus, B. Galgóczi & J. Leschke (2016) highlight the immigrant's problems in trade unions and propose to create special trade union for them.

But not regional minority only was in the center of attention. S. Boston & F. O'Grady (2015) argues that male trade unionists' exclusionary treatment of women workers contradicted, not only the socialist aims of most trade unions, but also the very logic of trade unionism itself.

The regional factor was included in context of study too. J. Geary (2016) explains that the 'Irish story' is primarily one of union accommodation and cooperation. Conflict was generally sectional in nature, and did not reach the scale of mass mobilization witnessed in the other European countries that received financial aid from the Troika. The reason why was Ireland different is because of the nature of the contextual challenge, unions' ideological inheritance, their organizational capacity and the opportunity structures available.

M. Keune (2015) assures that young people do not have negative basic attitudes towards unions, second that they often know little about unions, third that they are critical towards the way trade unions operate, and fourth that instrumental motives are important in membership decisions. This points to union actions and strategies as key factors determining their view of unions and their inclinations to participate in their activities and join them as members. General union strategies show that there is a growing awareness among unions of the importance of addressing young workers. However, they still dedicate limited resources to them.

At the same time, unions do represent (Berg, 2015) the interests of young workers in a number of ways, for example through collective agreements they negotiate, but these achievements remain invisible and should be made more transparent. It also shows that successful strategies differentiate between different groups of young workers that have different types of labour market positions and trajectories. Also, face-to-face contacts are crucial to reach out effectively to young workers. Finally, it discusses the need for inclusive union strategies in which young members can effectively influence union policy and activities, and which offer career prospects within unions to young activists.

Building labour-conscious societies means designing institutions that support the creation of quality jobs with decent wages and working conditions, as well as enacting policies to support those who cannot work or who are unable to find work (Berg, 2015).

Thus, the legal capacity of a trade union is underlain by a trade union's ability to represent and protect the interest of its members. To perform its functions, a trade union must have an organizational structure. The academic literature specifies two dimensions of that structure. The first includes internal hierarchy, the links between separate units, and authority of a trade union's bodies. The second one is the established way of functioning – that is, the procedure of developing, adopting and implementing decisions.

At present, trade unions experience a change of attitude from the side of the employees. To some extent, this is the consequence of transformation of trade



unions' functions, especially compared to the socialist period in the history of some states. As a result, the role trade unions play in advancing the rights and interests of their members also changed. However, trade unions remain the most prominent mass organizations acknowledged by the state as representatives of workers at all levels of social dialogue.

A considerable number of European states proclaim the right to organize, including the right to form trade unions, at the constitutional level.

In some European countries, constitutions only refer to the freedom of association and do not single out the right to form trade unions: e.g., The Austrian Federal Constitution (Art. 12, 1920), The Constitution of Belgium (MacLean, 2007), The Constitution of Liechtenstein (Nohlen & Stöver, 1921), The Constitution of Luxembourg (Art. 26, 1868). Nonetheless, these constitutions acknowledge, by implication, that the freedom of association shall include the right to form trade unions.

However, most of states specifically enshrines the right to form trade unions to protect one's interests in their constitutions. Such are the constitutions of the Hungary (Art. VIII), the Italian Republic (Art. 39), the Republic of Lithuania (Art. 50), the Republic of Moldova (Art. 42), the Republic of Poland (Art. 59), the Portuguese Republic (Art. 55), the Russian Federation (Art. 30), the Republic of Serbia (Art. 55), the Republic of Slovenia (Art. 76), Ukraine (Art. 36), and the French Republic (Preamble). Interestingly, Art. 28 of The Federal Constitution of the Swiss Confederation (1999) provides that it is only male and female employees who have the right to join together in order to protect their interests, to form associations and to join or not to join such associations. An essentially similar provision is contained in Art. 29 of the Constitution of the Republic of Estonia.

Some constitutions can explicitly specify particular interests protected exactly by trade unions. These might include economic and social interests (Art. 41 of Constitution of the Republic of Belarus; Sec. 7 of the Spanish Constitution, Art. 31 of Constitution of the Slovak Republic, Art. 59 of Constitution of Republic of Croatia, Art. 27 of Charter of Fundamental Rights and Basic Freedoms of the Czech Republic), interests related to work and social security (Art. 49 of Constitution of the Republic of Bulgaria), and interests related to safeguarding and improving working and economic conditions (Basic Law for the Federal Republic of Germany, 1949).

There are also constitutions that include rules on the principles of trade unions' organizational structure. By way of illustration, Sec. 7 of the Spanish Constitution sets forth that trade unions' internal structure and their functioning must be democratic. Art. 39 of Constitution of the Italian Republic reads that a legal condition for registration of trade unions is that their statutes establish their internal organisation on a democratic basis. Similarly, Art. 55 of Constitution of the Portuguese Republic provides for the workers' freedom to determine the organisation and internal regulations of trade unions.

Compared to constitutions, statutes and laws regulating trade union activity are much more versatile, though in some countries, mostly in stable market economies, they are entirely lacking (Austria, Belgium, Germany, Switzerland). In some of these countries, rules on trade unions' organisation are set out in collective bargaining agreements executed by workers and employers without any interference of the state.

The legislation specifically governing trade unions' activity in Europe can either be part of labour legislation or take form of separate laws on trade unions. Naturally, the internal structure of trade unions is specified in more detail where the sphere is governed by separate laws. Importantly, all the legislation we have studied includes rules on trade unions' freedom to define the organizational structure.

The examples are plentiful. According to Art. 33 of Labour Code of the Republic of Bulgaria (Beloko, 2006), trade union organizations may independently draw up and adopt their charters and regulations, freely elect their bodies and representatives, perform management, and develop their programmes. In Spain, Organic Law No. 11/1985 On Trade Union Freedom of 2 August 1985 sets forth that trade unions enjoy the right to organize their administration, which right is a part of trade union freedom. Workers, being members of a trade union, can establish trade union branches in the workplace according to the trade union's charter (Art. 2, Art. 8). According to Art. 167 of the Law On Labour of the Republic of Croatia of 21 September 2004 workers are entitled to form and to join trade unions of their choice without any discrimination, subject only to legislative provisions or trade unions' by-laws. The Law On Trade Unions of the Republic of Lithuania (1990) provides that it is the charter of a trade union that specifies the types (forms) of its activities, its administrative structure, and formation thereof.

There are only a small number of states that directly specify the types of trade unions and their administrative structure. The examples are as follows.

The Labour Code of Hungary of 13 December 2011 uses both the general term 'trade union' and a more specific term 'local trade union branch represented at an employer'.

Law of the Republic of Moldova No. 1129-XIV On Trade Unions of 7 July 2000 (Law of the Republic of Moldova, 1129-XIV, 2000) also employs six concepts: 'trade unions', 'primary trade union organization', 'local industrial union center', 'local general union center', 'national industrial union center', 'national general union center'.

We can see that legislation enumerating major types of trade union organizations is characteristic of states in transition, where trade unions used to play a prominent role as part of state management of employment. These states also tend to have separate legislation on trade unions. This legislation indicates that the state acknowledges the role of trade unions at the current stage of history and aims to preserve this institution, regardless of how distorted its representative functions were in the socialistic period.

The Portuguese Republic is the only country that lacks a 'socialist' record and still defines various types of trade unions in its legislation. The Labour Code of the Portuguese Republic of 12 February 2009 employs the following concepts: 'syndicate', 'federation', 'confederation', and 'union section'.

Negotiation of a collective agreement is a basic task of a trade union. It often implies the necessity of representing not only members of a trade union but also non-members who will be bound by the future collective agreement. That is, we deal with a special, public type of representation based not only on trade union-employee legal relations, but also on government authorization. Under this paradigm, the government may only give special authority to certain



trade unions. These must be recognized to be capable of exercising this authority effectively and responsibly. Importantly, giving such authority only to certain trade unions does not invalidate the right to form other types of trade union organizations, without the authority mentioned.

Let us consider how the issue of trade unions was resolved in Ukraine and the Russian Federation. Both these countries took the matter to constitutional courts in order to obtain a correct understanding of legal definitions related to trade unions and amend their content.

The Constitutional Court of Ukraine made a judicial review of the provisions connected with the freedom to organize trade unions and their status. The results were formulated in Decision No 11-rp/2000 of 18 October 2000 'Concerning the petition of the People's Deputies of Ukraine and the Human Rights Commissioner of the Verkhovna Rada of Ukraine for reviewing the constitutionality of Articles 8, 11, and 16 of the law of Ukraine "On Trade Unions, their Rights and Guarantees of Their Activities" (1999).

Pursuant to Part 2 of Art. 11 of Law of Ukraine on Trade Unions, a local trade union shall consist of (1) at least three structural units (primary organizations) acting within an enterprise, institution or organization of one administrative division in a village, city or region; or (2) at least nine trade union members working in different (several) enterprises, institutions or organizations. The Constitutional Court of Ukraine noted that each of the requirements infringes the right to join a trade union. This is because a place may fail to have several enterprises, institutions or organizations, while an enterprise, institution or organization may have fewer than three structural units (primary organizations). Moreover, Part 3 of Art. 36 of the Constitution of Ukraine provides that a trade union shall be formed 'based on free will of its members' united by common professional interests. This may also violate the right to join a trade union if, for example, representatives of the defined profession are found only in one enterprise, institution or organization within a village, city or region.

When making a judicial review, the Constitutional Court of Ukraine relied on the following. Art. 36 of the Constitution of Ukraine postulates that neither law nor its practical application can limit the Ukrainian citizens' freedom of association. This particularly refers to the constitutional right to form trade unions. However, the legal requirements for exercising the freedom of association are virtually impossible to fulfill and thus rule out the possibility of forming a trade union as such. For this reason, these requirements must be invalidated, or otherwise they will result in a partial denial of the right to form trade unions. That is, this right was admitted to be unconstitutionally restricted, because it was impossible to implement. That is, Ukrainian citizens could not voluntarily establish another trade union of an equal status comprising the employees of one profession within a region or city, if such a trade union already existed and embraced the majority of trade union members representing this profession in the given region or city.

The Russian Government, acting in the public interest, established the basic principles of forming trade unions. It also provided the definitions of some structural types of trade unions. These included the following: 'primary trade union organization'; 'national trade union'; 'national association of trade unions'; 'interregional trade union'; 'interregional association of trade union

organizations'; 'regional association of trade union organizations'; and 'regional trade union organization'.

The definitions were only intended to provide a conceptual framework for the Law of Russian on Trade Unions. In practice, however, they were, though rarely, interpreted as an exhaustive list of the types of trade union organizations. For this reason, these definitions were considered to exclude the possibility of forming other types of trade unions, as well as the possibility of creating trade unions' structural units unspecified in the text of the law.

The issue of trade unions was also resolved by the Constitutional Court of the Russian Federation. In its Resolution No 22-P of October 24, 2013, the Court held that Paragraphs 1-8 of Art. 3 of the Law of Russia on Trade Unions violated Part 4 of Art. 15, Part 1 of Art. 30, and Part 3 of Art. 55 of the Constitution of the Russian Federation. The paragraphs infringed the law to the extent to which they, as was interpreted in practice, were considered (1) to provide a complete (exhaustive) list of types of trade union organizations and their structural units; and (2) to forbid trade unions to independently devise their internal (organizational) structure according to their own aims and, in particular, to create trade union organizations and structural units which were not specified in the law of Russia on trade unions.

Relying on:

1. the right to freedom of association, including the right to form trade unions for the protection of one's interests, and

2. the freedom of activity of public associations which (1) and (2) are guaranteed by the Constitution of the Russian Federation (Part 1 of Art. 30);

3. international legal acts on freedom of association, including the right to join a trade union:

(a) Clause 4 of Art. 23 of the Universal Declaration of Human Rights (1948);

(b) Art. 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

(c) Clauses 1 and 2 of Art. 22 of the International Covenant on Civil and Political Rights;

(d) Sub-paragraph (a) of Para. 1 of Art. 8 of the International Covenant on Economic, Social and Cultural Rights; and

(e) Articles 2 and 3 of ILO Convention No 87; and

4. the practice of the European Court of Human Rights which defines the right to form and join trade unions as 'one form or a special aspect of freedom of association', the Constitutional Court of the Russian Federation stated that the right of trade unions to independently devise their organizational structure is preconditioned by their legal nature and status as non-governmental organizations. According to the Constitutional Court of the Russian Federation, formation of structural units within a trade union (1) is considerably determined by the structure of an employer organization; (2) seeks to optimize social partners' cooperation in general; and (3) is connected with a trade union's tasks of representing its members' interests as well as social and labour rights in the system of social partnership.

However, the freedom to join a trade union does not mean granting all trade unions equal authority. This is particularly demonstrated by Art. 370 of the



Labour Code of the Russian Federation (2006) providing that only certain trade union organizations are authorized to establish labour inspections. This is why the freedom to join trade unions does not result in the lack of control over them. Furthermore, the government is inclined to assume new forms of its own organization and management. Those forms entail organizational changes in budget financing of labour sphere and labour management. They also require introducing prompt adjustments to the system of social partnership as well as changing the organizational structure of trade unions. To that end, the law should create the necessary conditions: that is, it should not severely limit the types of trade union organizations.

Thus, the limits of government interference in forming trade unions' internal structure are now clearly defined.

Forming the internal structure of trade unions has been analyzed within government-trade union relations. However, this issue can also be examined with regard to a trade union's internal relations. Specifically, this refers to the authority exercised by an association of trade unions: that is, an association's right to set out the requirements for the charters and organizational structure of trade unions forming part of the association.

For example, the Federation of Independent Trade Unions of Russia (the FNPR), a national non-governmental association, held its 8th (Extraordinary) Congress on 29 October 2013 to adopt The Fundamentals of the Statutes of a National Interregional Trade Union (the Fundamentals). Along with other issues, the Fundamentals specified a trade union's organizational structure, membership of management and executive bodies, property rights, etc. At the same time, the Fundamentals allowed forming primary trade union organizations as well as regional, interregional and other trade union organizations.

Besides, trade unions were given the right to independently devise and approve their structure. The point is that defining the general requirements ensures uniformity of the legal framework for trade unions and regulates their activity. Besides, this fact alone does not infringe the key point of the freedom of association. Finally, representatives of trade unions themselves make this decision at the congress of their association. Therefore, such a decision can be interpreted as their free will.

Thus, the government should not provide an exhaustive list of types of organizations formed by trade unions. At the same time, the government may assign public functions only to the defined trade unions, trade union organizations, and associations of trade unions. These must be capable of exercising these functions and meet organizational, proprietary and other criteria.

Finally, the key principle of freedom of association is not violated when an association of trade unions lays down the requirements for their charters.

## Conclusions

The constitutions and laws of European countries have been exposed to a comparative legal analysis to see whether or not they ensure the right of trade unions to lay down their internal structure.

This article critically re-examined the descriptive and explanatory framework used in an earlier comparative exercise in light of contextual changes and recent empirical research. Beyond representing the interest of workers, trade unions must also consider their role as social and political actors. Their attempts to promote inclusion of migrants in a context of increasing institutional indifference and social hostility warrants more systematic study.

The conclusion is that the government should not provide an exhaustive list of the types of trade union organizations. At the same time, the government may assign public functions only to certain trade union organizations. These must be capable of implementing those functions effectively and meet organizational, proprietary and other criteria. The article also considers the right of an association of trade unions to set forth the requirements for their charters and, in particular, their organizational structure. It is noted that the key principle of freedom of association is not violated where an association of trade unions defines the requirements for their charters.

### Implications and Recommendations

The scientific paper's value is in the review's unification the European laws in the sphere of union trades.

This searching is able to reassume the abilities of the European union trades and to indicate the real value of the union trade in modern European society. The sphere of application is wide, although including jurisprudence, civil law.

In the result of the study it was determined that the state should not set forth an exhaustive list of various types of trade unions.

The study's advantages contain the most contemporary searches and law's review, basing on the regional context of the union trades.

The theme of searching may be widening in discourse of global trade union.

### Disclosure statement

No potential conflict of interest was reported by the authors.

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