

Implementation of the International Labour Standards in the Russian Labour Law (By the Example of the Right to Association)

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Abstract: This study focuses on the implementation of international labour standards in the field of freedom of association in the Russian labour legislation. The basic international labour standards and the corresponding legal provisions of the Russian labour legislation are analyzed. Special attention is paid to such labour standards as the prohibition of forced unionism, the right of employees to associate in other representative organizations, the right of employers to association. On the basis of comparative legal studies, we can make a conclusion that the freedom of association in the Russian labour legislation is implemented in accordance with the international labour standards which are fixed on the worldwide and regional levels.

Key words: Freedom of association, international labour standards, forced unionism, labour, Russia

INTRODUCTION

The right to association is one of the basic and inalienable rights of the person. According to the Universal Declaration of Human Rights of December 10, 1948 “everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association” (UN, 1948). Along with the term “right to association” other concepts such as “the right to freedom of peaceful assembly and to freedom of association with others”, “the right to organize” are used in international law.

The right to association in international law is regulated at several levels: universal level, regional level and bilateral level (Krylov, 2000).

UNIVERSAL LEVEL

At the universal level, the right to association is stated in such universal international legal instruments as: the Universal Declaration of Human Rights (Article 20) (UN, 1948). The International Covenant on Civil and Political Rights of December 16, 1966 (Article 22), the International Covenant on Economic, Social and Cultural Rights of December 16, 1966 (Article 8) (International Covenant on Civil and Political Rights, 1966).

Under Article 22 of the International Covenant on Civil and Political Rights of December 16, 1966 “everyone shall have the right to freedom of association with others including the right to form and join trade unions for the protection of his interests”. Thus, this study proclaims protection of interests as the main objective of realization of the right to freedom of association.

The International Covenant on Economic, Social and Cultural Rights of December 16, 1966 specifies in Article 8 that “The States Parties to the present 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” (International Covenant on Civil and Political Rights, 1966). In this case, the aim of creation and participation in trade unions is not only protection but also promotion of economic and social interests of each person.

It is also important to mention declarations, conventions, recommendations and resolutions adopted within the International Labour Organization (ILO) which is a specialized institution of the United Nations. The following documents of the ILO are fundamental in the field of freedom to association:

- ILO Declaration on Fundamental Principles and Rights at Work of 1998
- Convention concerning Freedom of Association and Protection of the Right to Organise of 1948 (No. 87) and Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (No. 98) of 1949
- Convention concerning the Rights of Association and Combination of Agricultural Workers (No. 11) of 1921
- Convention concerning Protection and Facilities to be Afforded to Workers’ Representatives in the Undertaking (No. 135) of 1971

- Convention concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service (No. 151) of 1978
- Resolution concerning the Independence of the Trade Union Movement of 1952
- Resolution concerning Trade Union Rights and Their Relation to Civil Liberties of 1970

REGIONAL LEVEL

The level of regional legal instruments is also very significant for regulation of the freedom of association. Regional legal instruments supplement, concretize the corresponding rules accepted at the universal level. One of the most important regional acts is the European Convention for the Protection of Human Rights and Fundamental Freedoms that was adopted on November 4, 1950 and ratified by the Russian Federation in 1998. According to Article 11 of this convention: 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.

No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety for the prevention of disorder or crime for the protection of health or morals or for the protection of the rights and freedoms of others. This study shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces of the police or of the administration of the State.

Besides, the European Social Charter of 1961 is of great importance for the European countries. The Russian Federation ratified this Convention in 2009. In accordance with Article 5 of the European Social Charter:

“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. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations”.

The CIS Convention on Human Rights and Fundamental Freedoms of 1995 (Article 12), the American Convention on Human Rights of 1969 (Article 16) (American Convention on Human Rights, 1969), the African Charter on Human and Peoples’ Rights of 1981 (Article 10) and the Arab Charter of Human Rights of 1994 (Articles 28, 29) are also regional legal instruments stipulating the right to association.

BILATERAL LEVEL

The third level of regulation of the right to association in international law is the level of bilateral cooperation of states. Although, the Russian Federation has not signed any bilateral agreements with other states regarding the right to association but the Russian Federation has a number of bilateral agreements connected with labour.

NATIONAL LAW

The above mentioned international labour standards regarding the right to association are implemented into the Russian labour law by adoption of Federal laws.

The right to association in Russia is a constitutional right. According to Article 30 of the constitution of the Russian Federation: everyone has the right to association, including the right to form trade unions for the protection of his interests. Freedom of activity of public associations is guaranteed. No one may be compelled to belong to an association.

Article 2 of the Labour Code of the Russian Federation establishes that one of the principles of legal regulation of the labour relations is ensuring the right of employees and employers to association for protection of their rights and interests including the right of employees to create and to join labour unions.

This provision is specified in the Federal law “On Trade Unions, their rights and guarantees of their activity” of January 12, 1996 No. 10-FZ. and in the Federal law “On associations of employers” of November 27, 2002 No. 156-FZ.

In other words, the right to association stipulated at the international level is implemented at the national level and the modern Russian legislation completely conforms to the international labour standards in this sphere.

While analyzing the right to association both in international law and in the Russian labour law, the following issues should be taken into account.

Firstly, the modern Russian legislation directly forbids forced unionism, i.e., it provides a ban on coercion to joining any association. Such provision can be found

in Article 30 (2) of the Russian Constitution. It corresponds to Article 20 of the Universal Declaration of Human Rights of 1948 according to which “No one may be compelled to belong to an association” (UN, 1948). In other words, the ban on forced unionism has the general character and applies to all associations including trade unions.

Secondly, the right of employees to association means not only creation of trade unions but also the possibility of creation of other representative organizations of employees. The convention concerning Freedom of Association and Protection of the Right to Organise of 1948 (No. 87) and the Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (No. 98) of 194 refer to the right to association in general, without mentioning trade unions. The Labour Code of the Russian Federation mentions repeatedly other associations of employees (representative bodies) (Articles 29, 31, 35.1, 37, 210, 216.1, 218, 221 of the Russian Labour Code, etc.). At the same time, it follows from content of Articles 29 and 30 of the Labour Code of the Russian Federation that the priority in representation of employees is given to trade unions in particular trade unions are specified as the main representatives of employees. At the international level, the Convention concerning Protection and Facilities to be Afforded to Workers’ Representatives in the Undertaking (No. 135) of 1971 also assigns priority to trade unions. As a whole trade unions continue to be the main representatives of employees that is in full conformity with international legal norms.

Thirdly, the right to association is granted not only to employees but also to employers. Article 2 of the Federal law “On associations of employers” of November 27, 2002 No. 156-FZ grants to employers the right to association.

“Employers have the right to create associations of employers on a voluntary basis without preliminary

permission of public authorities, local governments, other bodies for representation of legitimate interests and protection of rights of the members in the sphere of social and labour relations and related economic relations with trade unions and their associations, public authorities, local governments” (Federal law, 2002).

At the international level the right of employers to association is provided in Article 2 of the Convention concerning Freedom of Association and Protection of the Right to Organise of 1948 (No. 87) and in Article 2 of the Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively of 1949 (No. 98).

CONCLUSION

In conclusion, it should be noted that the right to association in the Russian labour law is exercised in full accordance with the international labour standards.

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