

**FEATURES OF THE LEGAL STATUS OF TRADE UNIONS
AS SUBJECTS OF SUPERVISION AND CONTROL
OVER COMPLIANCE WITH LABOR LEGISLATION**

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ABSTRACT

The right to ensure an adequate level of work is guaranteed to every person and is controlled both by the state and other entities, in particular trade unions, which have a special legal status, which significantly distinguishes them from other entities authorized to supervise and control labor law compliance. Trade unions actually carry out continuous supervision of compliance with the norms of current legislation at each individual enterprise, institution of the organization, as they are independent from employers, which gives them more opportunities to carry out effective and efficient control over compliance with the norms of current legislation by the later. Trade unions are organizations that are formed on a voluntary basis and are non-profitable, because the purpose of their activity is to protect the rights, freedoms and interests of employees. Based on the analysis of scientific views of scholars, the author's definition of the concept of "trade union" is proposed in the article. The role and purpose of trade unions as

subjects of supervision and control are revealed. The analysis of the current legislation is carried out, the norms of which fix the legal status of trade unions as subjects of supervision and control over compliance with labor legislation. The key features of the legal status of trade unions are highlighted, which distinguish them from other subjects of supervision and control over compliance with labor legislation.

Keywords: legal status; trade unions; supervision; control; labor legislation.

CARACTERÍSTICAS DA SITUAÇÃO JURÍDICA DOS SINDICATOS COMO SUJEITOS DE SUPERVISÃO E CONTROLE DO CUMPRIMENTO DA LEGISLAÇÃO DO TRABALHO

RESUMO

O direito a um nível adequado de trabalho é garantido a todas as pessoas e é controlado tanto pelo Estado como por outras entidades, nomeadamente os sindicatos, que têm um estatuto jurídico especial, que os distingue significativamente de outras entidades autorizadas a fiscalizar e controlar o trabalho cumprimento da lei. Os sindicatos realizam, efetivamente, a fiscalização contínua do cumprimento das normas da legislação vigente em cada empresa individual, instituição da organização, pois são independentes dos empregadores, o que lhes dá mais oportunidades de realizar um controle eficaz e eficiente sobre o cumprimento das normas da legislação atual pela posterior. Os sindicatos são organizações constituídas de forma voluntária e sem fins lucrativos, porque o objetivo da sua atividade é proteger os direitos, liberdades e interesses dos trabalhadores. Com base na análise de visões científicas de estudiosos, a definição do autor do conceito de "sindicato" é proposta no artigo. O papel e o propósito dos sindicatos como sujeitos de supervisão e controle são revelados. É realizada a análise da legislação vigente, cujas normas fixam a personalidade jurídica dos sindicatos como sujeitos de fiscalização e controle do cumprimento da legislação trabalhista. São destacadas as principais características do estatuto jurídico dos sindicatos, que os distinguem de outros sujeitos de supervisão e controle sobre o cumprimento da legislação trabalhista.

Palavras-chave: personalidade jurídica; sindicatos; fiscalização; controle; legislação trabalhista.

1 INTRODUCTION

Trade unions are one of the important subjects of supervision and control over compliance with labor legislation. Modern trade unions are an association of employees created by them to protect before employers, entrepreneurs-owners, unions of entrepreneurs, the state - not only the interests of their members, but also those representatives of wage labor who are not members of trade unions (TSVIH, 2002). Trade unions, being organizations for the protection of the economic and social interests of employees, are at the same time an important

institution of civil society, designed to represent, express and protect the interests of employees as citizens. Their role in civil society is determined by the degree of empowerment and expansion due to their actions and the struggle of civil rights and freedoms of employees, the approval and development of the practice of social partnership in it and the stimulation of trade union self-government. Since at different times trade unions contributed to this in one way or another, it can be argued that they have always participated in the development of civil society, playing an important role in this process (TRETAK, 2006; BILOUS, 2020). The trade union in Ukraine has been and remains the key subject of supervision and control over compliance with labor legislation. Given the above, trade unions have their own, special legal status, the features of which will be addressed in the presented scientific research.

The activity of trade unions has repeatedly become the subject of scientific research. However, despite a considerable number of scientific achievements, there are no comprehensive scientific studies in the scientific literature devoted to the characteristics of the legal status of trade unions as subjects of supervision and control over compliance with labor legislation.

2 RESEARCH METHODOLOGY

While writing the scientific research, a number of general scientific and special methods of scientific knowledge were used. Thus, with the help of the logic and semantic method, the essence and purpose of the activity of trade unions was clarified. The method of documentary analysis was used in order to carry out an analysis of the norms of the current legislation, which establishes the legal status of trade unions as subjects of supervision and control over compliance with labor legislation. The analytical method made it possible to distinguish the peculiarities of the legal status of the subjects studied in the article. The normative basis of the work is legislative and by-law normative legal acts, the norms of which establish the legal status of trade unions as subjects of supervision and control. The theoretical basis consists of the works of specialists in the field of labor and administrative law who dealt with the problems of trade unions.

3 RESULTS AND DISCUSSION

The development of trade unions in the public and political dimension associated with maintaining by them socio-political movements, which in different periods of political history had the status of social movements. The trade union movement at this stage has the ability to mobilize citizens to defend their labor rights that are under regulatory pressure correction and minimization by reviewing the priorities of the welfare state. Therefore, the organizational forms of trade unions as social movements have become more available and acceptable for contemporary citizens (TUPYTSIA, 2017).

In the scientific literature, as V. Kravchuk quite rightly notes, there are a large number of approaches to the definition of the concept of "trade union". In some, there is a noticeable desire to reduce trade unions to economic organizations, in others, to turn them into universal organizations capable of protecting all interests of employees without exception, including political and legal ones. Between these two positions there is a wide range of views, in which trade unions are considered more broadly than economic organizations but more narrowly than universal. They assume that trade unions represent and protect, in addition to economic, social, labor, and spiritual interests of employees, as well as a range of discrete interests - quality of life, consumer rights, environmental safety, etc. (TSVIH, 2004, p. 14-15).

Revealing the concept of trade unions, Ukrainian scientists H. S. Honcharova, V. V. Zhernakov, S. M. Prylypko (2001, p. 334) points out that trade unions are mass, voluntary non-profit public organizations that unite citizens connected by common interests by the nature of their professional activity. Such a definition, emphasizes N. A. Tsyhanchuk (2004), more broadly reveals the essence of trade unions, but it does not cover trade union members studying in educational institutions. The Law of Ukraine "On Trade Unions, Their Rights and Guarantees of Activity" eliminated this gap. In accordance with the first part of Article 1 of the said Law, a trade union is considered a voluntary non-profit public organization that unites citizens connected by common interests by the nature of their professional (labor) activity (education). But, according to the above-mentioned authors, the specified article should be supplemented with the words: "...and unemployed citizens who wish to be members of a trade union." Such an addition will make it possible not only to include non-working citizens with trade union membership, but also, if necessary, to represent and protect their interests in various institutions.

According to A. Volodin (1998, p. 105–106), a rather wide list of characteristic features of trade unions should include the following:

- 1) trade unions are organizations which main function is to ensure economic rights;

- 2) along with other organizations of civil society, trade unions rely on an "objective group" (that is, a group of people that is distinguished in society by the peculiarities of its existence), in this case - hired workers;
- 3) trade unions belong to the minority of institutions that make up civil society, which have rival partners in their environment. For trade unions, these are entrepreneurs, employers;
- 4) another feature of trade unions, like most large civil society associations, is their multifunctionality. The main and defining activity of trade unions is economic in nature; other, additional functions expand the range of influence of trade unions and their role in society;
- 5) like many structures of civil society, the trade union is part of politics, although it is not inherent to it. The trade unions of some countries use political means to solve their socio-economic tasks, but sometimes they intervene in the sphere of politics directly in order to solve some larger and general goals: national liberation, protection and establishment of democracy in the country, fight against the threat of war, etc., and also supporting this or that political party;
- 6) trade unions are usually organizations of a national scale (as well as their partners - associations of entrepreneurs, which also exist in almost all countries);
- 7) acting within civil society, trade unions enter into relations with other voluntary organizations – women's, anti-war, environmental, etc.

Therefore, trade unions, despite their rather long history of existence, continue to play an important role in modern civil society. As a non-profit organization created on a voluntary basis, its activity is aimed at protecting the economic, social and other rights of workers. And therefore, through trade unions, the latter have the opportunity to influence the employer, as a subject of labor law, to limit the possibility of arbitrariness on his part. In view of the above, it is quite logical to assume that one of the priority areas of activity is supervision and control over compliance with labor legislation. After all, it is the latter that is an extremely important tool for ensuring the rights and freedoms of all participants in labor and closely related legal relations.

Continuing consideration of the legal status of trade unions as subjects of supervision and control over compliance with labor legislation, it should be assumed that for the representation and protection of the rights and interests of trade union members at the

appropriate level of contractual regulation of labor and socio-economic relations of trade unions, trade union organizations can have the status of primary, local, regional, republican, All-Ukrainian. First of all, let's pay attention to the status of primary trade union organizations as subjects of supervision and control over compliance with labor legislation. Primary status is given to trade unions or trade union organizations that operate in an enterprise, institution, organization, educational institution or unite trade union members who provide themselves with work independently or work at different enterprises, institutions, organizations or individuals (On trade unions, their rights and guarantees of activity, 1999).

Trade union organizations at enterprises, institutions, organizations and their structural subdivisions represent the interests of their members and protect their labor, social and economic rights and interests. Primary trade union organizations exercise their powers through elected bodies formed in accordance with the statute (regulations), and in organizations where elected bodies are not established, through a trade union representative authorized by the statute to represent the interests of trade union members, who acts within the limits of the rights granted by this Law and the statute of the trade union (ZHERNAKOVA, 2012).

Thus, the elected body of the primary trade union organization at an enterprise, institution or organization (On trade unions, their rights and guarantees of activity, 1999):

- 1) concludes and controls the implementation of the collective agreement, reports on its implementation at the general meeting of the labor collective, requests the relevant authorities to hold officials accountable for failure to comply with the terms of the collective agreement;
- 2) together with the employer decides the issues of introducing, revising and changing labor standards;
- 3) together with the employer, decides on the issue of remuneration of employees of the enterprise, forms and systems of remuneration, rates, tariff scales, salary schemes, conditions for the introduction and amounts of allowances, additional payments, bonuses, remuneration and other incentive, compensation payments;
- 4) together with the employer, resolves the issue of working time and rest time, agrees on shift schedules and the granting of vacations, the introduction of a summary accounting of working hours, gives permission to carry out overtime work, work on weekends, etc., taking into account the peculiarities of the application of the

simplified labor regulation regime in this part relations in accordance with Chapter III-B of the Labor Code of Ukraine;

- 5) together with the employer, resolves the issue of social development of the enterprise, improvement of working conditions, material and household, medical care of employees;
 - 6) participates in the solution of socio-economic issues, determined and approved by the list and order of providing social benefits to employees;
 - 7) participates in the development of internal labor regulations of the enterprise, institution or organization;
 - 8) represents the interests of employees on their behalf in the consideration of individual labor disputes and in a collective labor dispute, thanks to its resolution;
- etc.

Members of elected bodies of trade unions, trade union associations, as well as authorized representatives of these bodies have the right to: freely visit and inspect workplaces at the enterprise, institution, organization where trade union members work; to demand and receive from the employer, another official, relevant documents, information and explanations related to working conditions, implementation of collective contracts and agreements, compliance with labor legislation and social and economic rights of employees; directly address trade union issues orally or in writing to the employer, officials; check the operation of trade, public catering, health care, children's institutions, hostels, transport enterprises, household service enterprises that belong to this enterprise, institution, organization or serve them; place own information in the premises and on the territory of the enterprise, institution or organization in places accessible to employees; check calculations of wages and state social insurance, use of funds for social and cultural events and housing construction (Zhernakova, 2012).

Based on the above, we can state that primary trade union organizations are endowed with a large number of powers, which are aimed at: first, ensuring the proper functioning of the enterprise, institution, organization, including by creating conditions for the rational and effective use of labor resources; secondly, to protect the legal rights, freedoms and interests of employees in the process of performing labor activities (for example: issues of protection, remuneration, etc.); thirdly, to ensure the (social, economic, material) interests of retired persons and persons with disabilities who previously worked at the relevant enterprise. In addition, the above list of powers makes it possible to state that a separate and important task of primary trade union organizations at enterprises is supervision and control. Moreover, the

latter is carried out in different directions. The latter are disclosed in more detail in the Model Regulation on the primary trade union organization - the organizational link of the member organization of the Federation of Trade Unions of Ukraine. Thus, in accordance with the above-mentioned normative legal act, the control and supervisory activity of trade unions consists of the following (Labor Code of Ukraine, 1971):

1) the body of the primary trade union organization:

a) organizes the conduct of collective negotiations, concludes a collective contract and monitors its implementation. For this purpose: together with the employer, on an equal basis, creates a commission for conducting collective negotiations, if necessary - a conciliation commission for settling disagreements during negotiations, provides expert, advisory and other assistance to its representatives at negotiations; together with the employer, organizes meetings (conferences) of employees of the enterprise, institution, organization for approval of the draft collective contract, concludes a collective contract on behalf of the meetings (conferences) and exercises control over its implementation; if the employer violates the terms of the collective contract, sends him a request to eliminate the violations. In case of refusal to eliminate these violations or failure to reach an agreement within the specified period, appeals to the court against illegal actions or inaction of officials;

b) participates in the development of measures to prevent unemployment among employees of the enterprise, institution, organization, stimulate the creation of new jobs, professional training, retraining and advanced training of employees; exercises control over the timely provision by the employer of information on the liquidation, reorganization of the enterprise, change in the form of ownership or partial suspension of production, entailing a reduction in the number or staff of employees, etc.;

c) exercises public control over the implementation by the employer of the legislation on labor and labor protection, the provision of safe and harmless working conditions, industrial sanitation at the enterprise, institution, organization, the correct application of the established conditions of remuneration, requires the elimination of identified shortcomings;

d) supervises the state social insurance of employees, the appointment of assistance at the expense of social insurance funds; on the terms stipulated by the collective contract, agreement, sends employees to sanatoriums, prophylactics and rest houses, tourist complexes, bases and health facilities, checks the organization of medical care for employees and their family members;

e) supervises the preparation and submission by the employer of the documents necessary for assigning pensions to employees and their family members; supervises the provision of pensioners and disabled persons who worked at the enterprise, institution, organization before retirement; etc.

2) The audit commission of the primary trade union organization carries out:

a) control over the formation and use of funds and property owned by the primary trade union organization;

b) control over the implementation of decisions of meetings (conferences), the state of trade union records, the efficiency of consideration of appeals, complaints and proposals of trade union members.

Thus, in view of the above, primary trade union organizations are an extremely important subject of supervision and control over compliance with labor legislation. The peculiarities of their legal status are due to the fact that: firstly, their competence extends exclusively to a specific economic entity, which in turn gives them more opportunities for high-quality, effective and efficient control and supervision activities; secondly, the object under control has minimal opportunities to "hide" shortcomings in its activity from the trade union; thirdly, the tasks and functions of the subjects under study are fixed exclusively in the norms of labor legislation.

Next, in the context of the issues presented, let's pay attention to (On trade unions, their rights and guarantees of activity, 1999):

a) the status of local trade unions have unions that unite at least two primary trade union organizations operating at different enterprises, institutions, organizations of one administrative-territorial unit (city, district in the city, district, village, settlement);

b) the status of regional trade unions have trade unions whose organizations are located in the majority of administrative-territorial units of one region, the cities of Kyiv and Sevastopol; in most administrative-territorial units of one region, the city of Kyiv and Sevastopol, where enterprises, institutions or organizations of a certain industry are located;

c) regional status is given to trade unions whose organizations are located in the majority of administrative-territorial units of two or more regions;

d) the status of all-Ukrainian trade unions is determined by one of the following features:

- the presence of trade union organizations in most of the administrative-territorial units of Ukraine, determined by the second part of Article 133 of the Constitution of Ukraine;

- the presence of trade union organizations in most of those administrative-territorial units of Ukraine where enterprises, institutions or organizations of a certain industry are located.

At the same time, it should be noted that their general status and the status of the subjects of supervision and control differ only in “scale”.

Trade unions act in accordance with the law and their charters, which must contain (On trade unions, their rights and guarantees of activity, 1999):

- 1) the status and full name of the trade union, its abbreviated name (if any), location of its elected bodies (legal address);*
- 2) the purpose and tasks of the trade union;*
- 3) the conditions and procedure for admission to membership in the trade union and leaving it;*
- 4) rights, obligations of trade union members, conditions, procedure and grounds for exclusion from trade union members;*
- 5) territorial, sectoral or professional field of activity;*
- 6) the organizational structure of the trade union, the possibilities of its organizations, elected bodies, the procedure for the formation of their composition;*
- 7) conditions, terms, procedure for convening congresses, conferences or a general meeting of trade union members and the procedure for making decisions by them;*
- 8) the procedure and terms of accountability of the elected bodies of the trade union to the members of the trade union; the procedure for exercising control over the activity of the elected bodies of the trade union;*
- 9) sources (formation) of funds of the trade union and directions of their use;*
- 10) the procedure for carrying out economic activities necessary to fulfill the statutory tasks of the trade union;*
- 11) the procedure for making changes to the trade union charter;*
- 12) conditions and procedure for termination of trade union activity and resolution of property issues.*

And therefore, the status of trade unions is somewhat similar among themselves, however, it may differ in some aspects depending on the sphere in which they carry out their activities.

In the context of the issues presented, attention should be paid to Article 21 of the Law of Ukraine "On trade unions, their rights and guarantees of activity", which enshrines the authority of trade unions to exercise public control over compliance with labor legislation. Thus, trade unions and their associations protect the right of citizens to work, participate in the development and implementation of state policy in the field of labor relations, wages, labor protection, and social protection. Draft laws on the formation and implementation of state social and economic policy, regulation of labor, social, and economic relations are submitted by the relevant bodies of the executive power, taking into account the proposals of all-Ukrainian trade unions and their associations. Trade unions exercise public control over the payment of wages, compliance with labor and occupational safety legislation, the creation of safe and harmless working conditions, proper industrial and sanitary conditions, provision of workers with overalls, special footwear, and other means of individual and collective protection. In the event of a threat to the life or health of employees, trade unions have the right to demand from the employer the immediate cessation of work at workplaces, production sites, workshops and other structural units or at the enterprise as a whole for the time necessary to eliminate the threat to the life or health of employees. Trade unions have the right to conduct an independent examination of working conditions, as well as designed, constructed or operated industrial facilities for compliance with their regulatory legal acts on labor protection, participate in the investigation of the causes of accidents and occupational diseases at work and give their conclusions about them. In order to carry out these functions, trade unions and their associations may create legal assistance services and appropriate inspections, commissions, and approve regulations on them. Authorized representatives of trade unions have the right to submit to employers, executive authorities and local self-government bodies submissions on the elimination of violations of labor legislation, which are mandatory for consideration, and receive reasoned answers from them within a month (On trade unions, their rights and guarantees of activity, 1999).

In addition, it should be noted Article 20 of the above-mentioned Law, according to which trade unions and their associations exercise control over the implementation of collective contracts and agreements. In case of violation by employers, their associations, bodies of

executive power, bodies of local self-government of the terms of the collective contract, trade union agreement, their associations have the right to send them a submission on the elimination of these violations, which is considered within a week. In case of refusal to eliminate these violations or failure to reach an agreement within the specified period, trade unions have the right to appeal to the local court against illegal actions or inaction of official (On trade unions, their rights and guarantees of activity, 1999).

The possibility of effective implementation of the tasks and functions of supervision and control in the sphere of labor is supported by the existence of guarantees for the activities of trade unions, which are enshrined in Article 248 of the Labor Code of Ukraine. Thus, in order to exercise the powers of trade unions provided for by the Law of Ukraine "On trade unions, their rights and guarantees of activity", members of the elected bodies of trade union organizations of enterprises, institutions and organizations that have the highest status of trade union bodies, as well as authorized representatives of these bodies have the right to (Labor Code of Ukraine, 1971):

- 1) *freely visit and inspect places of work at the enterprise, in the institution, in the organization where members of trade unions work;*
- 2) *demand and receive from the employer, another official, relevant documents, information and explanations regarding working conditions, implementation of collective contracts, compliance with labor legislation and social and economic rights of employees;*
- 3) *directly address orally or in writing to the employer, trade union officials;*
- 4) *inspect the operation of trade, public catering, health care, children's institutions, dormitories, transport enterprises and household service enterprises that belong to or provide services to the enterprise, institution, organization in which trade union members work;*
- 5) *post your own information in the premises and on the territory of the enterprise, institution, organization in places accessible to employees;* 6) *check calculations of wages and state social insurance, use of funds for social and cultural activities and housing construction.*

The corresponding list of guarantees is also reflected in Article 40 of the Law of Ukraine "On trade unions, their rights and guarantees of activity".

It should be noted that the fact that the Law of Ukraine "On Trade Unions, Their Rights and Guarantees of Activity" declares the independence of trade unions from state authorities and local self-government bodies, employers, other civil organizations, political parties. Having a theoretical basis - recognition by the state of the independence and non-control of trade unions by authorities, the practical actions of trade unions to protect the rights of citizens largely depend on the activity of trade union leaders and trade activists, their awareness of responsibility for socio-economic situation of citizens (Solominchuk).

4 CONCLUSIONS

Thus, the conducted scientific research makes it possible to state that today trade unions, regardless of the level at which they are created, have their own, special legal status, which significantly distinguishes them from other entities that are authorized to supervise and control compliance with labor legislation. The peculiarities of their legal status are related to the fact that: firstly, trade unions are the closest institutions to the key subjects of labor law, namely employees and employers; secondly, trade unions actually carry out continuous supervision of compliance with the norms of the current legislation at each individual enterprise, institution of the organization; thirdly, despite the peculiarities of their formation, trade unions are independent from employers, which gives them more opportunities to carry out effective and efficient control over the latter's compliance with the norms of current legislation; fourthly, compared to other subjects of supervision and control, trade unions are organizations that are formed on a voluntary basis and have a non-profit nature; fifth, the purpose of their activity, including control and supervision, is to protect the rights, freedoms and interests of employees.

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