

## INTERNATIONAL LEGAL BASES OF THE ACTIVITY OF TRADE UNIONS

Sitora Shoislomova

*Lecturer of Tashkent State University of Law, Tashkent, Uzbekistan*

[sitalaw22@gmail.com](mailto:sitalaw22@gmail.com)

**Abstract:** *The research focuses on the role of trade unions as a representative body of workers in the enterprise, the relevance of this topic, the legal framework for the activities of trade unions, including international acts on their activities, the activities of trade unions in the Republic of Uzbekistan, and analyzes international standards and norms in the sphere of rights and guarantees of the activities of trade unions at the enterprise, the issues of international cooperation, in particular the positive aspects of Uzbekistan's interaction with the ILO to protect the rights of workers to the right to freedom of association, were studied.*

**Key words:** *international act, representative body of workers, trade union, Declaration, Convention, International Labour Organization.*

Regulation of relations in the field of the exercise of freedom of association in trade unions is carried out both by international legal norms and norms within State law.

A number of international norms that consolidate the legal status of trade unions have direct effect in our country, and even the Law of the Republic of Uzbekistan "On Trade Unions" confirms the direct effect and priority of generally recognized principles and norms of international law and international treaties of the Republic of Uzbekistan.

Economic development always depends on the legal environment. A market regulated by a set of fair rules and regulations operates more efficiently and benefits everyone<sup>1</sup>. The labor market is no exception. Fair labor practices, enshrined in international labor standards and implemented through the national legal system, form an effective and stable labor market for both employees and employers.

Candidate of Legal Sciences Yu .Tursunov believes that it is unreasonable not to take into account other international legal acts in the field of labor, including regional ones, for example, the conventions of the Council of Europe. For, the international treaties of the Republic of Uzbekistan are an integral part of its legal system. The scientist also considers it expedient and justified to bring article 2 of the Law "On Trade Unions" primarily in line with article 17 of the Constitution of the Republic of Uzbekistan, which provides not only international treaties of the Republic of Uzbekistan, but also norms of international law. Obviously, they cannot be ignored, for example, the Universal Declaration of Human Rights, approved by the UN General Assembly on December 10, 1948 in the form of a

---

<sup>1</sup> Ю.Турсунов. Халқаро меҳнат ҳуқуқи. // Дарслик. – Тошкент: ТДЮИ. 2010 й. – 491 б.;



resolution that formulates fundamental human rights and freedoms, including the right to form and join trade unions.

The text of the Declaration is the first global definition of the rights that all people have. It consists of 30 articles and is part of the International Bill of Human Rights on a par with the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, two Optional Protocols<sup>2</sup>.

This naturally raises the question of the normativity of the resolutions of the UN General Assembly, a body whose participants are the absolute majority of existing states. The answer to this question will allow us to determine not only the place of resolutions in the system of sources of international law, but also the current state of the system of international law itself, its ability to respond promptly to emerging changes in public relations.

The textbook list of sources of international law leads to the conclusion that the resolutions of the General Assembly are also not sources of law. However, this conclusion is not so clear. The resolutions of the UN General Assembly can be divided into two groups: the first group includes acts affecting the internal issues of the functioning of the organization itself (conditionally – acts of a corporate, technical nature), the second group includes resolutions aimed at implementing the goals and powers enshrined in the UN Charter, that is, directly affecting the relations of subjects of international law<sup>3</sup>.

It is the question of the legal force of the latter category of acts that has been the subject of controversy throughout the existence of the UN. Thus, the dominant point of view of the Russian school of international law is the denial of the normative nature of General Assembly resolutions, their recognition as acts of a political nature that do not contain international legal norms and, consequently, do not have legal force. This position is justified, first of all, by the absence of norms in the UN Charter that indicate the opposite: there is no mention of the binding force of resolutions, nor of the powers of the General Assembly to adopt binding acts, there is no mention of any procedure for ensuring the execution of acts of the body, including enforcement measures.

One way or another, the resolutions of the General Assembly have an impact on the development of the norms of international law, despite the fact that in total they are advisory in nature and are often ignored, including due to the lack of enforcement methods to ensure their implementation. As a result, despite the obvious advisory nature, there is a need to recognize General Assembly resolutions as a source (or quasi-source) of international law and search for its place among other regulatory regulators.

---

<sup>2</sup> Всеобщая декларация прав человека, принята резолюцией 217 А (III) Генеральной Ассамблеи ООН от 10 декабря 1948 года. См.: [https://ru.wikipedia.org/wiki/Всеобщая\\_декларация\\_прав\\_человека](https://ru.wikipedia.org/wiki/Всеобщая_декларация_прав_человека)

<sup>3</sup> Прояева С. С. Резолюции Генеральной Ассамблеи ООН в системе нормативных регуляторов международного права // Аллея науки. – 2019. – Т. 3. – №. 6. – С. 544-548.



Paragraph 3 of article 23 of the above Declaration states that - "everyone has the right to form trade unions and join trade unions to protect their interests"<sup>4</sup>.

According to Yu .Tursunova, the Universal Declaration of Human Rights is an international legal document that plays an important role in determining the position of a person in society and in explaining the legal foundations of public-private relations<sup>5</sup>.

Consequently, it can be said that the Universal Declaration of Human Rights enshrines a person's right to form and join a trade union in order to protect their labor rights.

In general, many international legal acts are of great ideological and normative importance for the further development of legislation on trade unions, the development of charters and other constituent documents of trade unions, enriching the content of collective agreements and agreements.

For example, the International Covenant on Civil and Political Rights,<sup>6</sup> which was also adopted in the form of a resolution, established (Article 22) that - "1. Everyone has the right to freedom of association with others, including the right to form and join trade unions to protect their interests.

2. The exercise of this right is not subject to any restrictions other than those provided for by law and which are necessary in a democratic society in the interests of State or public security, public order, the protection of public health and morals or the protection of the rights and freedoms of others. This article does not prevent the introduction of legal restrictions on the use of this right for persons who are members of the armed forces and the police.

3. Nothing in this article shall entitle States Parties to the 1948 International Labour Organization Convention on Freedom of Association and Protection of the Right to Organize to adopt legislation to the detriment of the guarantees provided for in the said Convention, or to apply the law in such a way as to prejudice these guarantees."

Another fundamental document in the form of a resolution is the International Covenant on Economic, Social and Cultural rights<sup>7</sup>, which confirmed that - "1. The States Parties to the present Covenant undertake to ensure:

a) the right of every person to form trade unions for the exercise and protection of his economic and social interests and to join such unions of his choice, subject only to compliance with the rules of the relevant organization. The exercise of this right is not subject to any restrictions other than those provided for by law and which are necessary in

---

<sup>4</sup> Всеобщая декларация прав человека, принята резолюцией 217 А (III) Генеральной Ассамблеи ООН от 10 декабря 1948 года. См.: [https://www.un.org/ru/documents/decl\\_conv/declarations/declhr.shtml](https://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml)

<sup>5</sup> Турсунов Ю. Всеобщая декларация прав человека и право на свободный труд в Узбекистане. –Т.: Информационный бюллетень ТГЮУ. 2008, №5, - стр. 90

<sup>6</sup> Международный пакт «О гражданских и политических правах», принят резолюцией 2200 А(XXI) Генеральной Ассамблеи ООН от 16 декабря 1966г., См.: [https://www.un.org/ru/documents/decl\\_conv/conventions/pactpol.shtml](https://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml)

<sup>7</sup> Международный пакт «Об экономических, социальных и культурных правах», принят резолюцией 2200 А (XXI) Генеральной Ассамблеи ООН от 16 декабря 1966г. См.: [https://www.un.org/ru/documents/decl\\_conv/conventions/pactecon.shtml](https://www.un.org/ru/documents/decl_conv/conventions/pactecon.shtml)



a democratic society in the interests of State security or public order or to protect the rights and freedoms of others;

(b) The right of trade unions to form national federations or confederations and the right of these latter to found or join international professional organizations;

(c) The right of trade unions to function freely without any restrictions other than those provided for by law and which are necessary in a democratic society in the interests of State security or public order or to protect the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in accordance with the laws of each country.

2. This article does not prevent the introduction of legal restrictions on the use of these rights for persons who are members of the armed forces, the police or the administration of the State.

3. Nothing in this article shall entitle States parties to the 1948 International Labour Organization Convention on Freedom of Association and Protection of the Right to Organize to adopt legislation to the detriment of the guarantees provided for in the said Convention, or to apply the law in such a way as to prejudice these guarantees".

Two universal international human rights instruments adopted and announced by the United Nations: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights define the most important human rights in the field of trade union formation.

"The worldwide significance of this document lies in the fact that it recognizes the fact that man is the most valuable being on earth, his body, personality and ensuring the inviolability of his rights and freedoms, from an international legal point of view, is one of the sacred duties of the modern state and society"<sup>8</sup>.

Therefore, it can be said that the right to join trade unions is the right of an employee to protect and represent their legal rights and obligations to the employer, since some of them, due to objective circumstances, are not able to do this independently. The Universal Declaration of Human Rights, after the independence of the Republic of Uzbekistan, became the first international legal document to which it acceded. The Republic of Uzbekistan is also a party to the two above-mentioned Pacts. Accordingly, Uzbekistan has undertaken to implement decent work of citizens in the country in all possible ways.

The Constitution of the Republic of Uzbekistan recognizes the priority of generally recognized norms of international law and, accordingly, international treaties are part of the national legal system: international acts ratified by the Republic of Uzbekistan have legal force.

The basic human rights related to obtaining social security, the content and essence of these rights, their implementation, guarantees and protection are described in detail in the Convention and recommendations of the International Labour Organization (ILO).

---

<sup>8</sup> Турсунов Ю. Всеобщая декларация прав человека и право на свободный труд в Узбекистане. –Т.: Информационный бюллетень ТГУ. 2008, №5, - стр. 90.





Multilateral agreements of regional international organizations also provide for international norms and requirements concerning the legal basis for the activities of trade unions.

The ILO Conventions are of particular importance for labor law among other international legal documents that define the content of all legal institutions of labor and social security legislation. Courts use these conventions to resolve specific labor disputes<sup>9</sup>.

International labour standards are legal acts developed by the ILO's tripartite participants (Government, employers and employees), which enshrine the basic principles and rights in the field of work. They take the form of conventions that are legally binding international treaties that can be ratified by Member States, or recommendations that serve as binding guidelines. In many cases, the convention contains the basic principles to be followed by the countries ratifying it, while the accompanying recommendation supplements the convention with more detailed instructions on how it can be applied. Recommendations can also be independent, i.e. not related to any conventions.

The opinion of the scientist A.Ya.Petrov on the issue of the ILO Declaration "On Fundamental Principles and Rights at Work" is especially symptomatic<sup>10</sup>. Article two of this declaration stipulates that all Member States, even if they have not ratified these Conventions, have obligations arising from the very fact of their membership in the Organization, to observe, promote and implement in good faith, in accordance with the Charter, the principles relating to the fundamental rights that are the subject of these conventions, namely: freedom of association and effective recognition of the right to collective bargaining; abolition of all forms of forced or compulsory labor; effective prohibition of child labor; non-discrimination in the field of labor and employment.

Based on this rule, it seems that it is not entirely correct to narrow the provision specified in the Law "On Trade Unions" to "international treaties of the Republic of Uzbekistan, conventions of the International Labor Organization ratified by Uzbekistan". The imperfection of this legal norm is an indication only of the "ILO conventions", without mentioning the ILO recommendations. Thus, ILO Recommendation No. 91 "On Collective Agreements" (1951) notes the important role of workers' organizations as parties to collective bargaining. Direct negotiations between employers and their employees, bypassing existing representative organizations, may in some cases damage the principle that negotiations between employers and workers' organizations should be encouraged and developed. Representative organizations are understood mainly as trade unions<sup>11</sup>.

---

<sup>9</sup> Турсунов Ю. Международное трудовое право. Учебник. - Т.: ТДЮИ, 2012, - 371 с.

<sup>10</sup> Декларация Международной Организации Труда об основополагающих принципах и правах в сфере труда и механизм её реализации, принята на 86й сессии Генеральной конференции МОТ от 18.06.1998г, Женева. См.: [https://www.un.org/ru/documents/decl\\_conv/declarations/ilo\\_principles.shtml](https://www.un.org/ru/documents/decl_conv/declarations/ilo_principles.shtml)

<sup>11</sup> Петров, А. Я., Права профсоюзов в сфере труда и гарантии их деятельности/ Журнал российского права - М.: Проспект, 2015. - № 14 – С. 47 9



To date, the ILO has adopted 190 conventions, 206 recommendations and 6 protocols<sup>12</sup>, 1 part of which dates back to 1919. As expected, some of these acts no longer meet modern needs. The Republic of Uzbekistan has ratified 18 conventions and 1 ILO Protocol to date<sup>13</sup>.

The ILO conventions ratified by the Republic of Uzbekistan are of fundamental importance for trade unions:

ILO Convention No. 87 "On Freedom of Association and Protection of the Rights to Organize" (1948)<sup>14</sup>. This fundamental convention enshrines the right of employees and employers to form organizations of their choice and join them without prior permission. Organizations of workers and employers are freely created and are not subject to dissolution or temporary administrative prohibition, they have the right to create federations and confederations, which, in turn, can join international organizations of workers and employers.

ILO Convention No. 98 "On the Application of the Principles of the Right to Form Trade Unions and to Conduct Collective Bargaining" (1949)<sup>15</sup>.

This fundamental convention provides that employees enjoy adequate protection against any discriminatory actions aimed at infringing on the freedom of trade union association, including the requirement to hire an employee or keep his job, provided that he does not join or leave a trade union. Workers' and employers' organizations enjoy adequate protection against any acts of interference on the part of each other, in particular actions aimed at facilitating the establishment of workers' organizations dominated by employers or employers' organizations or supporting workers' organizations through financing or other means in order to put such organizations under the control of employers or employers' organizations. The Convention also enshrines the right to collective bargaining.

ILO Convention No. 135 "On the Protection of the Rights of Employees' Representatives at the Enterprise and the Opportunities Provided to Them" (1971)<sup>16</sup>

Employees' representatives at the enterprise enjoy effective protection from any action that may harm them, including dismissal, based on their legal status or on their activities as employees' representatives, or on their membership in a trade union, or on their participation in trade union activities to the extent that they act in accordance with the existing legislation, or collective agreements, or other jointly agreed terms. Employees'

---

<sup>12</sup> Информационная система по международным трудовым стандартам Международной Организации Труда. URL.: <https://www.ilo.org/dyn/normlex/en/f?p=1000:12000:::NO>

<sup>13</sup> Информационно-поисковая и экспертная система – Всё законодательство Узбекистана «NORMA». URL: [https://nrm.uz/contentf?doc=70098\\_perechen\\_konvenciy\\_mejdunarodnoy\\_organizacii\\_truda](https://nrm.uz/contentf?doc=70098_perechen_konvenciy_mejdunarodnoy_organizacii_truda)

<sup>14</sup> Закон Республики Узбекистан №ЗРУ-603-III от 06.10.2016г. «О ратификации Конвенции Международной Организации труда №87 о свободе объединений и защите права на объединение в профсоюзы». Ведомости палат ОлийМажлиса Республики Узбекистан, 2016 г., № 10, ст. 320

<sup>15</sup> Закон Республики Узбекистан №ЗРУ-412-III от 25.10.2016г. «О ратификации Конвенции Международной Организации труда №98 о применении принципов права на объединение в профсоюзы и на ведение коллективных переговоров». Собрание законодательства Республики Узбекистан, 2016 г., № 43, ст. 496

<sup>16</sup> Постановление ОлийМажлиса Республики Узбекистана №494-I от 30.08.1997г. «О ратификации Конвенции Международной Организации труда №135 о защите прав представителей работников на предприятии и предоставляемых им возможностях». Ведомости ОлийМажлиса Республики Узбекистан, 1997 г., № 9, ст. 250



representatives are provided with appropriate opportunities at the enterprise, allowing them to quickly and efficiently perform their functions;

ILO Convention No. 144 "On Tripartite Consultations to Promote the Application of Labour Standards" (1976)<sup>17</sup> This directive convention defines the term "representative organizations" of employers and employees and requires ratifying States to implement procedures that ensure effective consultations between representatives of the Government, employers and employees. Employers and employees are represented on an equal basis in any bodies through which consultations are carried out, and the consultations themselves are held at least once a year;

ILO Convention No. 154 "On the Promotion of Collective Bargaining" (1981)<sup>18</sup> The Convention defines collective bargaining and calls for the promotion of collective bargaining in all sectors of economic activity, including in the public service.

These conventions and recommendations apply only to ILO member countries. But not all of them have ratified the ILO Conventions governing the problems of trade unions. In accordance with the latest decisions of the ILO, all its members who have adopted the Charter of the organization are automatically responsible for the implementation of all conventions. The ratification by interested States of international conventions regulating the process of trade union movement is an important and necessary condition for their implementation.

#### REFERENCES:

1. Ю.Турсунов. Халқаро меҳнат ҳуқуқи. // Дарслик. – Тошкент: ТДЮИ. 2010 й. – 491 б.
2. Всеобщая декларация прав человека, **принята резолюцией 217 А (III) Генеральной Ассамблеи ООН от 10 декабря 1948 года** См.: [https://ru.wikipedia.org/wiki/Всеобщая\\_декларация\\_прав\\_человека](https://ru.wikipedia.org/wiki/Всеобщая_декларация_прав_человека)
3. Прояева С. С. Резолюции Генеральной Ассамблеи ООН в системе нормативных регуляторов международного права //Аллея науки. – 2019. – Т. 3. – №. 6. – С. 544-548.
4. Турсунов Ю. Всеобщая декларация прав человека и право на свободный труд в Узбекистане. –Т.: Информационный бюллетень ТГЮУ. 2008, №5, - стр. 90

---

<sup>17</sup> Закон Республики Узбекистан №ЗРУ-525 от 04/03/2019г. «О ратификации Конвенции Международной Организации труда №144 О трехсторонних консультациях для содействия применению трудовых норм». Национальная база данных законодательства, 05.03.2019 г., № 03/19/525/2700

<sup>18</sup> Постановление ОлийМажлиса Республики Узбекистана №495-І от 30.08.1997г. «О ратификации Конвенции Международной Организации труда №135 о содействии коллективным переговорам». Ведомости ОлийМажлиса Республики Узбекистан, 1997 г., № 9, ст. 251



5. Международный пакт «О гражданских и политических правах», принят резолюцией 2200 А(XXI) Генеральной Ассамблеей ООН от 16 декабря 1966г., См.: [https://www.un.org/ru/documents/decl\\_conv/conventions/pactpol.shtml](https://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml)

6. Международный пакт «Об экономических, социальных и культурных правах», принят резолюцией 2200 А (XXI) Генеральной Ассамблеей ООН от 16 декабря 1966г. См.: [https://www.un.org/ru/documents/decl\\_conv/conventions/pactecon.shtml](https://www.un.org/ru/documents/decl_conv/conventions/pactecon.shtml)

7. Турсунов Ю. Международное трудовое право. Учебник. -Т.:ТДЮИ, 2012, - 371с.

8. Декларация Международной Организации Труда об основополагающих принципах и правах в сфере труда и механизм её реализации, принята на 86й сессии Генеральной конференцией МОТ от 18.06.1998г, Женева. См.: [https://www.un.org/ru/documents/decl\\_conv/declarations/ilo\\_principles.shtml](https://www.un.org/ru/documents/decl_conv/declarations/ilo_principles.shtml)

9. Петров, А. Я., Права профсоюзов в сфере труда и гарантии их деятельности/ Журнал российского права - М.: Проспект, 2015. - № 14 – С. 47 9

10. Информационная система по международным трудовым стандартам Международной Организации Труда. URL.: <https://www.ilo.org/dyn/normlex/en/f?p=1000:12000:::NO>

11. Информационно-поисковая и экспертная система – Всё законодательство Узбекистана «NORMA». URL: [https://nrm.uz/contentf?doc=70098\\_perechen\\_konvenciy\\_mejdunarodnoy\\_organizacii\\_truda](https://nrm.uz/contentf?doc=70098_perechen_konvenciy_mejdunarodnoy_organizacii_truda)

12. Закон Республики Узбекистан №ЗРУ-603-III от 06.10.2016г. «О ратификации Конвенции Международной Организации труда №87 о свободе объединений и защите права на объединение в профсоюзы». Ведомости палат Олий Мажлиса Республики Узбекистан, 2016 г., № 10, ст. 320

13. Закон Республики Узбекистан №ЗРУ-412-III от 25.10.2016г. «О ратификации Конвенции Международной Организации труда №98 о применении принципов права на объединение в профсоюзы и на ведение коллективных переговоров». Собрание законодательства Республики Узбекистан, 2016 г., № 43, ст. 496

14. Постановление Олий Мажлиса Республики Узбекистана №494-I от 30.08.1997г. «О ратификации Конвенции Международной Организации труда №135 о защите прав представителей работников на предприятии и предоставляемых им возможностях». Ведомости Олий Мажлиса Республики Узбекистан, 1997 г., № 9, ст. 250

15. Закон Республики Узбекистан №ЗРУ-525 от 04/03/2019г. «О ратификации Конвенции Международной Организации труда №144 О трехсторонних консультациях для содействия применению трудовых норм». Национальная база данных законодательства, 05.03.2019 г., № 03/19/525/2700

16. Постановление Олий Мажлиса Республики Узбекистана №495-I от 30.08.1997г. «О ратификации Конвенции Международной Организации труда №135 о содействии коллективным переговорам». Ведомости Олий Мажлиса Республики Узбекистан, 1997 г., № 9, ст. 251

