

The Problem of Ensuring the Right to Associate at the Present Stage: International Acts and Realities

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ABSTRACT

Ensuring the right to associate is one of the main factors indicating the level of democratization of modern states. The right to associate, together with all other human rights and fundamental freedoms, is explicitly determined in the constitutions of numerous states of the World. Obviously, constitutional human rights and fundamental freedoms are the rights established in the constitution and safeguarded by the state. These rights create opportunities for every citizen and person to determine the type and size of behavior, to take advantage of social welfare given to him for the sake of his own and public interests. According researchers, rights and freedoms are two forms of expression of legal possibilities defined by law. It means, a person has the possibility to choose his/her own forms of behavior. The term "right" within the meaning of law refers to the choice of using social welfare. The use of the term "freedom" is more expedient if it refers to the level of behavior. In this regard, the right to associate characterized as a possibility to choose both the form and level of behavior. This manuscript deals with the problem of the right to associate in the context of civil society.

INTRODUCTION

The problem of legal state acting as the main guarantor of the civil society is discussed in the first place. It is emphasized that, according to the most basic approach, legal state is built upon a society where natural rights are freely enjoyed. Natural rights mean freedoms of faith and movement, right to own property, equality for all, guarantee against arbitrariness etc. According to the concept of Social Contract, the initial and independently existing element of the social world as a whole is an independent individual. Later, to flee from the dangers and conflicts that may arise in the future, people decided to escape from "the natural state" and obtain the status of a citizen. To this effect, they concluded contracts between themselves and established a state. The legal state ensuring all the terms for the establishment and development of the society where the human rights are fully protected has its own unique features, i.e., the legal state is, first of all, the legal norm of the implementation of people's sovereignty as a part of state-building in society. That is, the political power is in the hands of the state. However, this power is based on legal norms accepted and legitimized by the people. As a result of the development of state-legal institutions and their theoretical understanding, the basic and essential issues of the legal state became the problem of mutual relationship between state and individual. Resolution of this issue has led to the emergence of the people's sovereignty idea which is the main point of the theory of the legal state. The key indicator of the legal state is the civil society. According to universal approach, the social system involving government and civil society is based on humans and their needs and interests. Defining the nature of civil society, the representatives of this trend, first of all note that the personality in the core of this society has historically determined system of needs and interests. In other words, according to this trend, civil society is not a set of any formally independent relationships and institutions; but the totality of intrinsically independent creative

personalities (in terms of moral, psychology, mentality, emotions and energy). It is the symbol of the synergy of individual wills, wits and activities.

Right to associate is one of the main conditions of civil society building. It is impossible to talk about the existence, let alone the development of civil society, if the right of association is not secured. In this regard, civil society, legal state and the right to associate are closely linked with each other. Development and continuous improvement of the legal framework for the right to associate is one of the top priorities of the legal state. Any legal state is bound to secure the right to associate. The emergence and activity of various public associations that form the basis of civil society is possible thanks to the right of association. In this regard, the monograph reviews the right to associate as the driving component of civil society.

COMPARATIVE ANALYSIS OF THE STATUS OF THE RIGHT TO ASSOCIATION IN THE EXPERIENCE OF DEVELOPED COUNTRIES

The right to associate does not only refer to the establishment of political parties and other public associations for political purposes. It also aims to establish other public institutions in order to protect social and economic interests. Well-known human rights researcher. Kozlova and Kutafin ^[1] say that, the right to associate creates the possibility for people to establish public associations on voluntary basis. In this case, people have their own beliefs to protect common interests. Achievement of common goals acts as the main motive for the establishment of such associations. Undoubtedly, the right to associate does not only refer to the establishment of public associations in order to achieve public goals and protect public interest. The right to associate also expresses the right to join any public association or refuse joining, and resign the membership.

Accordingly, the right to associate can be determined as a versatile problem. In other words, it refers not only to the right to establish public associations by people and citizens, but also to the creation of conditions for realization of this right. Lazarev explained the essence of the right to associate more briefly. As for Lazarev, the right to associate provides all people with the opportunity to unite on the basis of political, professional and other interests ^[2].

In-depth analysis of constitutions of most states in the World, especially the post-Soviet states, precisely defined the right to associate in all of them. For example, constitutions of the European countries like Poland and Switzerland establish that everyone has the right to associate ^[3]. Almost the same provisions were included in the constitutions of post-Soviet Republics. These constitutions determine the right to establish law-abiding political parties and public associations operating within the Constitution. The Constitution of the Republic of Azerbaijan determines the right to associate as the right to establish any non-profit organization, political party, or trade union, and to join them. The clear determination of the right to associate in the most constitutions of the World states indicates its great importance. Indeed, the right to associate can make a significant contribution to the social development while protecting the basic human rights and interests. As mentioned in the previous chapters, the right to associate creates possibilities to resolve most of public problems without state participation or intervention. Constitutional and legal regulations cover the mutual relations of the state and public associations. A state safeguards the free activities of public associations, and it does not interpose in their affairs. This point should be considered as safeguard of the right to associate. Close relation between the right to associate and other constitutional rights must be conveyed while discussing this right. For example, the right to associate reflected in the meetings, rallies, demonstrations, other collective events, and so on. Public associations are interested in the free dissemination of information regarding their activities, plans, goals and objectives. Moreover, they make proposals to the authorities and tend to protect the interests of their members before the court. Therefore, the conclusion is that the right to associate is closely linked to the freedom of information, freedom of thought and expression. Moreover, the right to associate is closely interrelated with the rule of law. The rule of law acts as an effective mechanism for protection of human rights and fundamental freedoms. To be more precise, existence of the rule of law ensures the right to associate. So that, the rule of law provides all necessary conditions for free operation of various political parties and public associations. According to researcher Tokmakov K, developing such a system acts as an essential element for consolidation of democratic principles. Applying the principles of the rule of law during the realization of the right to associate notably ensures equal rights to citizens.

The right to associate is one of the main conditions for the development of civil society. In this regard, ensuring the right to associate can be reviewed not only, as the protection of human rights and fundamental freedoms, but also as an important sign of the formation and development of civil society. So that, the main pillars of a civil society are public associations, organizations and political parties. Therefore, ensuring the right to associate is very important to achieve efficiency and progress in many areas. Moreover, stable development of society and dialogue between the government and members of the society is not possible, if the right to associate is rejected. Conceptual basis of the right to associate draws all attentions with its comprehensiveness. Obviously, there are many conventions, international regulations that emphasize the importance and create a marvelous basis for ensuring the right to associate. European Convention on Human Rights, which is analyzed in this regard, can be given as example. European Convention on Human Rights is of

great importance for the European states, which does not need an additional argument for being justified. The main feature of the European Convention on Human Rights is that it is the first universally agreed document in the field of human rights. The requirements of the Convention are valid almost for all the World states since its entry into force in 1953. The rules of appeal to international court and their handling were for the first time expressed in this Convention. The European Court of Human Rights has collected an extensive juridical experience since then. There is no other available international structure in the World, which would have much more juridical experience in the field of human rights than European Court. This points to the fact that, realization of human rights and fundamental freedoms, especially the right to associate, acts as an indispensable condition for the development of civil societies having well-established democratic values.

Democratic values are out of question without the right to associate. Simultaneously, the right to associate is safeguarded if democratic traditions and principles are realized. The right to associate provides opportunities for the citizens to assemble and express their common interests and also protect them. Protection of these freedoms by the authorities and complying with them by all the civil institutions are very essential, not only for the establishment, but also for a built-in dynamic development and stability of democratic societies. Despite the fact of political parties being the core accompanists of democratic principles at the beginning of the development process of democracy, "survival" of democracy primarily depends on the struggle of social powers. Ensuring of the right to associate definitely acts as a precondition for this purpose. Indeed, the main purpose of the struggle of social powers is about expressing and protecting public interests. Meeting individual interests like culture, recreation, sports, social and humanitarian aid etc. in various spheres of public life requires from people joining to this or other groups. This is considered as one of the main causes of strengthening democratic values in European countries. Analysis shows that one of the key points that international and regional organizations refer to within their activities is related to realization of human rights and fundamental freedoms, in particular, the right to associate ^[4].

International and European instruments on human rights identify aspects of implementation and realization of the right to associate. Obviously, it provides protection of human rights while establishing and joining public associations for protection of common interests. Protection and realization of these rights bound by International and European documents on human rights are boosted by other obligations to associate. It is note-worthy that, article 20 of the Universal Declaration of Human Rights, article 22 of the International Covenant on Civil and Political Rights, article 11 of the European Convention on Human Rights guarantees the right to associate. Moreover, the OSCE Charter emphasizes its Member States' obligations to realize the right to associate ^[5]. All of these documents provide a basis for the right to associate and impose specific obligations on states. Practically, no discrimination in the field of human rights and fundamental freedoms on any ground can be allowed. In other words, all persons regardless of their gender, race, color, religion, political views, and beliefs must have equal rights and any discrimination must be prohibited ^[6]. Additionally, conventions prohibiting any form of racial or gender discrimination also include the provisions on prohibiting discrimination for ethnic origin and social status and guarantying equal rights. All documents, including the Universal Declaration of Human Rights, safeguard the right to establish trade unions. Any restriction of rights is absolutely inadmissible. Numerous conventions set the norms on freedom of assembly and association, which are directly related to the right to associate and establish trade unions. Particularly, article 8 of the International Covenant on Economic, Social and Cultural Rights, article 5 of the European Social Charter, Convention on Freedom of Association and Protection of the Right to Organize, and also the OSCE Charter ensure and safeguard the right to associate.

Additionally, there are numerous other guarantees for freedom of assembly and association of individual categories of people. For example:

- Children
- Environmental activists
- Judges
- Ethnic minorities
- Refugees
- Stateless persons
- International non-governmental organizations and others.

It is worth mentioning that, the right to participate in cultural life is safeguarded by Article 15 of the Covenant on Economic, Social and Cultural Rights. Naturally, this right implies establishment of an association for a specific purpose. A number of safeguards, particularly, the ones related to trade unions require additional legacy. Not all of them imply legal obligations. However, according to the principles of international law, the above-mentioned conventions have binding force for State Parties. Other documents, not only enlarge the importance of political commitments, but also clarify some points related to their implementation. Nevertheless, the right to associate has not reached the status of

international law yet. However, this point is not principal for the states bound with treaty obligations. In any case, they have to fulfill undertaken obligations.

Considering the lack of certainty regarding the total capacity of the right to associate and forms of safeguards, it would be more logical to refer to the case law. This law is usually determined by the study of the above-mentioned documents and provides for individual and collective appeal. Convention on Freedom of Association and Protection of the Right to Organize can be a suitable example for such a law.

Furthermore, the Convention on the Elimination of all Forms of Discrimination against Women can be described as one of such laws. There are largest amounts of court cases only in respect to Convention on Freedom of Association and Protection of the Right to Organize and the European Convention.

Although, both conventions use the same approaches, the European Convention expresses the points we discuss much more clearly. Significantly, case law clarifies only the cases considered by various courts, in contempt of their great importance. As all other notions defined in international documents, the notion of “association” should have its own independent definition. Accordingly, the documents applicable to national level, belonging to any national organization or association can't have the final and decisive power. Certainly, it is possible to determine the power of an organization by its signs of nature and character. It should be underlined that, a comprehensive approach to the forms of assembling developed at the international level. To improve the effectiveness of the right to associate, the association must demonstrate its greater importance than any group of people. Accordingly, here envisaged the nature of goals that the association is facing. Indeed, these goals must be within the framework of common interests and the association should have real capacity for their realization. Only in this case, the right to associate can be considered as a serious point.

That means, simply assembling of people is not a basis for putting forward the demands for getting the right to associate. They should have a specific platform and common goals that ensure legal safeguards for their association. Thus, mass rallies, demonstrations and other mass meetings can be characterized as much more serious organization of people. However, it is not right to review such meetings as the realization of the right to associate considering their short-term nature. Moreover, these factors can be characterized as the realization of the freedom of assembly, but the right to associate. Hence, some essential points need to be clarified while talking about ensuring the right to associate. An association is not limited to just the assembling of people.

In most cases, associations are reviewed as organizations with formal legal status and, in particular, they operate with the status of legal entity. Most of the founders of associations are eager to this. In addition, international guarantees are not restricted to only such organizations. These guarantees are applied to a group of people with informal nature. It is crucial that, these groups should not operate in a short-term basis. The necessary consequence of the freedom of assembling is that, freedom of assembling people, determine the basis of their association.

Based on the analysis, it should be noted that, everyone has the right to associate and to join associations, in accordance with all legal guarantees, and this occurs within the state jurisdiction. The term of “everyone” implies both individuals and legal entities as well. Since, the right to associate is not set as the right and freedom for the use of individuals only. In this respect, public authorities are the only exception. Because, they are a part of the state and they are obliged to safeguard the right to associate. However, they must not be considered as the law source of the right to associate. Ensuring the right to associate does not imply only the establishment of public associations in the sake of common interests, but also realization of the right to join them. This point deserves special attention while ensuring the right to associate. Otherwise, the right to associate would have just one-sided approach. Besides, it should be noted that, forcing anyone to join any association must be considered as the violation of the right to associate and interference to the personal decisions.

The citizen must independently define own wishes regarding the participation in any association. In this respect, the right to associate enshrined in international conventions and international regulations, aimed at ensuring the establishment of associations and joining them in order to achieve common goals of citizens in their communities. Moreover, forced joining of the citizen to this or that association is clearly defined as unacceptable.

Reviewing of the right to associate as a subjective law brings to the conclusion that, it has a direct impact, and is constancy realized either actively, or passively. The main features of this political right can be summarized as follows:

- Involves a person to the active management of public affairs
- Stipulates the formation of civil society institution
- Acts as an information channel while the communication between the public authorities and citizens
- Serves as a mean of realization of individual and group interests and civil demands
- Plays a role of the mechanism of protection of human and civil rights.

One of the main features of the right to associate is that, it can also be seen in other areas of management of public affairs. Apparently, the right to associate ensures the formation of political parties, which are the main subjects of the

electoral process and provides the organizational basis for mass public events. This right allows diverting the collective appeals to the state agencies and local self-governing bodies, as well. The realization of the right to associate in the democratic states is considered as a prerequisite for ensuring human and political rights of citizens. Establishment of civil society is out of question without freedom of act of its citizens, and without the opportunity to participate in the public associations [7].

The right to associate is of great social and political importance. Its importance is elevated while the implementation of reforms in most areas of the state and public life. The purpose of reminding this is to cite the attention to the right of association and to its significant role both in state and civil life. As observed previously, both national legislative norms, and international conventions and regulations setting serious and concrete obligations on the states parties, guarantee the right to associate. Generally, activities of various public associations, political parties, charities, trade unions, non-profit organizations are regulated by special laws. The constitutional basis for freedom of activity of public associations, are reflected on several legislative acts. At present various organizational and legal forms of public associations that are identified, act as a basic requirement for the activities of civil society and realization of the rule of law. As a result, the states which have chosen the path of democratic development and met obligations regarding the democratization of their society firstly fulfill their obligations ensuring the right to associate. Generally, it can be noted that, enough serious moments stipulate the importance of ensuring the right to associate in modern stage. As previously mentioned, recognition of the rights that affect to the freedom of assembling and collective bargaining is focal point of the International Labour Organization. This supreme principle has been identified in the Charter of the International Labour Organization since 1919. It has a dual role that can be considered as follows:

- The fundamental human right in the field of labor
- The essential element of economic, social and political processes.

The main principle of the right to free assembling and collective bargaining stipulates the embodiment of human dignity. This right provides the workers and employers to assemble in various organizations and defend their common interests altogether. Naturally, not only economic interests, but also ensuring civil freedoms are stressed here. For example, the right to life, safety, personal privacy and security, personal and collective freedoms can be mentioned. They defend from discrimination, interference and decisiveness.

As an integral part of democracy, they are playing a key role for the realization of other fundamental rights enshrined in international documents, as well as in the Charter of International Labour Organization. It is note-worthy that, the freedom of assembling and collective bargaining plays a principle and positive role in ensuring a balanced economic development.

Within the framework of globalization of economy, the principle of freedom of assembling acts as the connecting point between the social purposes and market economy. Regarding, the current debates are not going on the observance or not-observance of these principles, but on finding a more efficient manner of observance. Despite the general positive trends like expansion of democracy, rise of the ratification of key international labor standards, development of transparency of global market, it still remains serious problems. Violation of the law norms regarding the freedom of association of employers and workers continues to manifest itself in different forms. This can be attributed to the following forms:

- Murder
- Violence
- Arrest
- Refuse to ensure the legal rights for the existence of organizations, etc.

Indeed, the experience of different states shows clearly that, people endanger their lives by establishing new organizations and trying to defend their basic rights collectively. Accordingly, International Labour Organization tries to assist in solving of the problems regarding the respect to the freedom of assembling. For example, realization of certain activities trying to prevent the arrest of activists of trade unions and their release from prisons.

It is crucial to distinguish the difference between the strengthening of real democracy and “formal democracy”, also the ratification and the realization of law norms. Only in this case, it will be possible to get full imagination of the real situation in the field of ensuring the right to associate. For example, despite the ongoing democratization process in the Central and Eastern European, mono-controlled trade union systems remains there still. Such a tendency cannot be eliminated instantly and it is used for political purposes.

Trade unions being used for the realization of political purposes may have a negative impact on the democratization process of the society. In this case, accordingly the right to associate also carries a formal character.

It is possible to witness the violations of the principles of the freedom of assembling and collective bargaining in many parts of the World and in several areas of economy. In fact, people can encounter different challenges for trying to realize

the right to associate even where these principles and rights were adopted and recognized. The realization of rights in this direction occurs gradually step by step.

Conditionally, it is possible to consider them in the following ways:

- At the first stage, international labor norms are ratified
- At the second stage, necessary legal and administrative framework to ensure the rights is established
- At the third stage, the realization of rights at the workplace, are provided
- To this end, strengthening of the positions of social partners and their empowerment issues are resolved.

The society needs strong political will in order to take all the appropriate stages. However, if this political will is not supported by the objective result of institutional and procedural activities, the weakening of the will is totally real. Practically, no any case of the exact transition from one stage to another has been observed. The activities are carried out in parallel at all three stages.

While talking about ensuring the right to associate, exact provisions of the Convention on the protection of human rights and fundamental freedoms must be studied in more depth. The Convention was adopted on November 4, 1950, and it entered into the legal force in 1953. The important point in this regard is that, the conditions of accession to the Convention demands the EU Membership. At present, the opposite trend is being observed. Thus, the European Union membership implies the accession to the Convention. One of the requirements for joining the EU is to join the Convention on Human Rights. In addition to all provisions in the Convention on human rights and fundamental freedoms, the right to associate and freedom of assembly is enshrined in precision. Article 11 of the Convention is called “the freedom of assembly and association”. According to the first paragraph of this article, everyone has the freedom of peaceful assembly and the freedom of association.

Overall, as stated above, the Convention of International Labour Organization covers the main conceptual framework for ensuring the right to associate. In this regard, some aspects of the convention deserve to get close attention. Firstly, it should be noted that, the International Labour Organization Convention was called by the Administrative Council of the International Labor Office, on June 17, 1948. The convention that was adopted at the thirty-first session, expresses serious enough provisions related to the freedom of association and organization. One of the interesting aspects of Convention is that, its preamble emphasis the important moments like approval of the principles of improving working conditions, ensuring peace, and the freedom of association.

Overall, the fundamental principle the Convention based on, is that intellectual freedom and freedom of association are the necessary condition of constant progress. It should be noted that, the thirtieth session of the International Labor Convention will be held in the abovementioned direction basing on international regulations.

The UN General Assembly in its second session made a decision about joining to the abovementioned principles and requested the International Labor Convention to continue efforts in this direction.

The first part of the Convention is called “Freedom of Association”. This part consisting of ten articles includes precisely almost all aspects of the right to associate and freedom of association. Reviewing of these articles would significantly define and direct our vision regarding them:

- Every member joining the International Labour Organization undertakes commitments and obligations on implementation of the following provisions
- Workers and employers are entitled to the right to join this or any other organization without any discrimination, without previous authorization, of their own choosing, subject to compliance with the charter
- Organization of workers and employers are entitled to the right to develop their own charters and administrative regulations, to choose their own representatives freely, to organize their own institutions and activities, and to formulate their own action plans
- Administrative authority shall refrain from interferences limiting the rights of these associations
- Associations of workers and employers are not liable to be dissolved and cannot be forced to suspend their activities by administrative authority
- Organization of workers and employers are entitled to the right to establish and join federations and confederations, which may in turn affiliate with international organizations of workers and employers
- The provisions of the Articles 2, 3, and 4 are applied in respect of federations and confederations;
- Organization of workers and employers, their federations and confederations, which have the rights of being a legal entity shall not be subjected to the conditions that prevent the implementation of the previously mentioned Articles 2, 3, and 4
- Workers and employers, as other individuals or organizations shall observe law norms while realization of the relevant rights recognized by the Convention

- National legislation shall not touch the indemnities, mentioned in the Convention and they are not subject to the limitation on liability
- National legislation and laws shall determine the procedure of applying the indemnities, mentioned in the Convention, to armed forces and the police
- According to the principles mentioned in the paragraph 8 of the Article 19 of the International Labour Organization, in no case shall the ratification of the Convention, be deemed to affect any law, award, custom or agreement which ensures more favorable conditions to the workers and employers concerned
- The term of “organization” according to the Convention means any social unit of people that is structured and managed to meet a need and protect workers and employers or pursue their collective goals and interests^[8].

Thus, the articles of the first part of the Convention clearly show that the required legal and regulatory framework for ensuring the right to associate exists. The aspect drawing attention is that the concrete obligations for the states being a member of the International Labour Organization and joining the Convention are also expressed. As it has been already mentioned, the main principle is to consider ensuring the right to associate as the “the main term of progress”. Besides, the restriction of the right to freedom of association by the state government is also clearly expressed, and that must be examined as the essential ensuring the right to associate. It must be noted that the provisions of the Conventions propose a good base for providing in the relevant direction of national legislation of the joined states. In reality, ensuring the rights to associate in the national legislation of the modern world states, as well as normative acts formed based on the provisions and requirements of the Convention are included. Another aspect to be discussed is that International Labour Organization Regulation mentions that there is no reason for additional rent to establish own organizations for workers and employers.

It must be also mentioned that the second part of the International Labour Organization Convention is called “The protection of the organizing right”. This part can be considered as essential one from the point of ensuring the right to freedom of association. Because there are the aspects regarding ensuring the right to freedom of association. Thus, it is mentioned in the relevant article of the second part of the Convention.

“Each member of the International Labour Organization joined the Convention assume the obligations regarding the implementation of all required and relevant measures to provide the independent fulfillment of the organizing rights of workers and employers.”

As it is seen, this aspect assumes a serious importance in ensuring the right to freedom of association. It also shows that one way or another, the member states of International Labour Organization assume the obligations regarding noninterference to the activity of the organizations of workers and employers, as well as ensuring the right to associate. Alongside with the creating the real opportunities or the general progress of the society, assuming such obligations by the states also provides forming the development of the civil societies and the democratic principles. As it is seen, all these processes mutually complement each other by possessing a real connection with each other.

It is clearly seen from the considered aspects, International Labour Organization implements a function creating a norm in the sphere of the right to associate. And this aspect again proves the importance of the right to associate for the organizations. Besides this function, according to the results of discussions and agreements between International Labour Organization Administrative Council and UN Economic and Social Council in 1950 and 1951 the special procedure was established for the protection of the right to associate. The procedure complements the procedure on controlling of application of International Labour Organization norms. Besides, the procedure is included in the authority frame of two bodies of International Labour Organization. The bodies are the followings:

- Commission on investigation and conciliation in the sphere of the right to associate;
- International Labour Organization Committee of the Administrative Council.

According to the special procedure, the government or the organizations of workers or employers can address a complaint on the violation of trade union rights by the state. In this case, it has no matter whether you are an International Labour Organization member or only the UN.

This procedure can be applied even without the ratification of the Conventions on freedom of association and collective bargaining. As additional information on this point, the Investigation and Reconciliation Commission on the right to associate was established in 1950 and consists of independent experts. The scope of authority of the Commission includes examining any complaint about the violation of the rights of labor associations entrusted to it by the International Labour Organization Administrative Council. Despite the fact of being a basic investigation body, the Commission, according to the agreement, can discuss the issues regarding elimination of arising problems in respect to governments. If the Convention on the freedom of association has not been ratified by state, then the Commission can get permission from the respective government to participate in the settlement of the problem. This procedure is based on respect to the traditional and written procedural safeguards and it is considered as complex and quite expensive. In this regard, the procedure is applied rarely enough or in a narrow range^[9].

The committee on the freedom of association is a tripartite body established by the Administrative Council in 1951. The committee consists of nine members and nine deputies selected from the Government group, the Labor group and the Recruitment group of the Administrative Council. The committee is headed by the independent chairman. The Committee holds three meetings a year and deal with complaints in accordance with the procedure, taking into account the comments of the governments.

Besides, depending on the situation, the committee is entitled the right to propose to the Administrative Council as follows:

- The examination of the case is not intended
- To draw the attention of the relevant government to the disclosed issues and to propose the implementation of the proper measures in order to eliminating them;
- To get a permission from the relevant government in order to submit the case to the committee on investigation and reconciliation.

As it clearly seen, the reviewed aspects are of great importance for ensuring the right to associate in a reliable way. It is worth mentioning that, the Committee on the freedom of association has been examining more than 2500 cases during fifty years of its operation. Its wide experience has stipulated the development of the complex principles in the sphere of the right to freedom of association.

Naturally, these principles are based on provisions, the relevant conventions, proposals and resolutions of the International Labour Organization Charter. These complex principles were created by qualified and completely neutral international bodies. These bodies have a high reputation and establish their activities upon the analysis of the real situation. Accordingly, herein the situations intend the violation of the right to freedom of association or the rights of the trade unions. In this regard, the developed complex principles are of popularity both at the national as well as the international levels. It is worth mentioning that, the importance of these principles for the national legislation is much bigger. The reason is that they have a crucial role in the development of the national legislation in the relevant sphere. The effect of these principles while eliminating the problems arising from the violation of the right to freedom of association is real enough.

Decisions and principles of the Committee on the right to freedom of association are developed according to the examination of the complaints of the workers and employers. It should be noted that most of the complaints examined by the Committee were presented by the organizations of the workers. Besides, in recent years the number of the complaints made by the employers' organizations has been increased, too. It should be noted that most of the Committee principles are of general character. Thus, these principles can be applied to the cases concerning workers' organizations, as well as the cases concerning employers' organizations.

Accordingly, speaking out of the reviewed issues, it can be mentioned that the International Labour Organization was established as a support for ensuring the right to associate which carries out the aim of improving labor conditions. This is clearly expressed in the above-mentioned provisions of the International Labour Organization Charter. According to this, the concrete obligations of the member states of the International Labour Organization were determined in order to ensure the right to freedom of association. So, as a matter of fact, ensuring the right to freedom of association cannot be accepted as an internal affair of the states. Assuming the obligations regarding ensuring the right to freedom of association by states means that there are also the mechanisms of controlling the way of the implementation of the obligations exist. As already mentioned, complaints regarding the violation of the right to freedom of association are being investigated by the international instances, and discussions and high consultations are being conducted with the relevant governments in order to eliminate the problems.

The aim of the special procedure on realization of the freedom of association is not about finding the guilty party for the violation or limitation of the rights, but to organize a tripartite constructive dialogue in order to eliminate the problems in this direction. Particularly, the key target of the special procedure on the freedom of association is about to help to ensure the rights of the trade unions in legislative and practical order.

As already stated, the determination of the relative obligations of the states in the direction of ensuring the right to associate is extremely important. The exact obligations regarding ensuring the right to freedom of association for the member states are mentioned in the International Labour Organization Charter. Firstly, it should be mentioned that a state while making the decision to join the International Labour Organization, undertakes the obligations on abiding by the main principles of the ILO Charter. The obligations on ensuring the right to freedom of association, occupy the central position more than the others. Member states of the International Labour Organization undertake the obligation regarding the following of the principles on the freedom of association in their national legislation. The membership requires the ratification of the Convention too ^[10]. The government of a state is responsible for the application of the principles on the freedom of association. The government is also responsible for the application of the international conventions regarding the right to freedom of association. The conventions are usually ratified independently and must

be protected by all state bodies. Importance of monitoring the conventions by judicial bodies, are also mentioned here. The rights of the trade unions are the part of other human rights. Therefore, alongside with other human rights, the rights of the trade unions must be abided by all states regardless their level of development. The examination of the ILO Charter clearly indicates that the chances of a state for not ensuring the right to associate are strictly limited. Accordingly, the state cannot refer to other obligations or agreements for non-fulfillment of the provisions of the ILO conventions. Besides, some other aspects of free operation of trade unions are also considered. Thus, as previously mentioned, interference to the activities of the trade unions or restriction of these activities by the state authorities is unacceptable and this point is clearly stated in the ILO Conventions. Furthermore, employers must observe concrete principles regarding the workers organizations. Firstly, they must not interfere with the activities of the workers organizations. Secondly, they must avoid any discrimination among the trade unions of the various worker groups. Expressly, there must not be given priority to one of those organizations ^[11]. In order to regulate the situation in this regard, the ILO Party states governments must implement the relevant measures. So that, concrete punitive measures must be considered in the framework of the national legislation for the interference with the operations or activities of the worker's organizations. In most cases, the states undertake obligations regarding this aspect. As previously mentioned, all these aspects are clearly expressed in the International Labor Conventions number 87 and 98. These conventions are exactly about the freedom of association. By ratifying these conventions, the governments undertake exact obligations regarding ensuring the right to freedom of association. According to observations, there is a serious reviving in the sphere of ratification of these Conventions in recent years. Thus, 148 and 158 states out of 181 member states of the International Labour Organization have ratified accordingly the Conventions number 87 and 98 ^[12]. It should be noted that the Convention number 87 has been ratified less in comparison with the others.

Although, the ratifications of the Conventions by the Party states are essential, the level of their realization in practice appears as a factor, determining the real situation. Generally, according to the research, it can be mentioned that the positive change is being observed in this direction. Actually, it is also mentioned in the international reports that the number of complaints in the according direction has been decreased. It actually means that, the importance of the right to associate is accepted by the world states. But alongside with that, it should be noted that some serious problems are still remaining in the realization of the right to freedom of association. Thus, the massive dismissal, arrest, assassination, persecution, etc. of trade union activists exist in practice. As usual, the trade unions and the employer's organizations still face some problems in their daily activities. Most of the observed problems have the following nature:

- Limitation of opportunities to establish an organization and join them
- Interference of the government and other bodies with the activities of workers' and employers' organizations
- Restriction of the right to the collective bargaining
- The case of discrimination towards the trade union members
- Illegal restrictions on the right to strike.

The complaints on the discrimination of the trade union members and external interference are often accepted by the supervisory authorities of the International Labour Organization. Such complaints are about the cases afflicting the interested parties. Most of the complaints are regarding the government interfering with the activities of the trade unions. In most cases, the government interfering with the activities of trade unions becomes the reason for failure of ensuring of the right to freedom of association. But in most cases, the interested parties cannot realize their right to associate under the influence of exact factors. Indeed, they hesitate to realize their right to associate. The factors of such hesitation can be listed as, dismissal, persecution, arrest etc. Frequently, there are extremely high requirements for membership of the regarding organizations, and subsequently, that stipulates restriction of the right to associate. Parallel to that, it must be noted that most of the states refuse the laws and legislation stipulating domination and monopoly of the unified trade unions. Besides, some important exceptions are still remaining. Currently, several countries do not recognize the rights and do not create the opportunities for the workers of exact category to conduct the collective bargaining and to act in order to realize their common interests. Naturally, it is accepted as the remaining problem waiting for its solution regarding ensuring the right to associate. So, according to the provisions of the previously examined conventions, workers and employers have the right to establish their own organizations or to join the ones that already exist, in order to provide their common interest, without any exception. The states joining conventions, in other words, ratifying them, undertake certain obligations regarding this. Besides, it is worth noting of certain progress in respect of workers in the spheres of state governance and agriculture. Thus, most of the countries are implementing their obligations on providing the workers with the right to collective bargaining in order to protect their common interests. However, in some cases, the government tries to interfere with the process of collective bargaining and achieves this aim. It basically seeks to use the followings:

- Adjusting the collective bargaining to the requirements of the state's economic policy
- Applying for the juridical system of mandatory arbitration in order to regulate the employment disputes
- Enhancing the system of signing the individual employment contracts, etc.

CONCLUSION AND OFFERS

There is a need for rational legislation and effective institutions to protect the right to unite. They create favorable conditions for the settlement of disputes and thus, providing sustainable development. The political will power is required for the implementation of the existing proper legislation. Without the political will power, the state cannot implement the undertaken obligations and serious problems can occur regarding ensuring the right to associate. The government must possess administrative and technical lever arms for ensuring the right to associate. Naturally, these lever arms can appear as effective instruments only when the state possesses the political will power in the sphere of ensuring the right to associate. The existence of effective authorities regulating employment agreements is essential in order to help to conduct the collective bargaining.

While analyzing the issue regarding ensuring the right to associate, it must be noted that, the way of approach to the issue under the conditions of globalization has been changed. Accordingly, the globalization has sharpened the struggle of competition significantly. Technical and structural changes reveal serious challenges for current fields of industry and traditional methods of representation. These challenges are relating to the collective bargaining of the workers and employers. The result of various researches gives ground to mention that ensuring the right to freedom of association and the principles of the collective bargaining can make a positive impact on the competitiveness and economic development. The new strategy of the collective bargaining is directed to ensure the effectiveness and productivity. The practice of the modern stage confirms the potential of the process of collective bargaining for finding the successful responses to the new challenges. Undoubtedly, it is important to carry out serious explanatory and promotion activities in order to use this potential expediently. The role of the International Labour Organization from this point is irreplaceable. So that the influence of the ILO in the sphere of realization and ensuring the right to freedom of association and collective bargaining is evident in the form of information-promotion and explanation. The technical cooperation also carried out, with the purpose of development of the institutions providing the effectiveness in the relevant direction. Getting the results in this direction is possible mainly with the help of six tools. These tools stipulating the serious changes in the according direction can be listed as follows:

- Implementation of reforms in the sphere of labor legislation;
- Enhancing the potential opportunities of the authorities regulating the labor issues;
- Strengthening of the workers' and employers' organizations;
- Improvement of tripartition and institutional development;
- Implementation of information-promotion activities.

The enhancement of the potential of the tripartite structure of the ILO is appearing as an essential element. The goal is about ensuring the right to associate and the principles of collective bargaining. The International Labour Organization declarations and motivational mechanisms are aimed to help the states both ratifying and non-ratifying its acts in the relevant spheres. The practice of the modern stage clearly shows that the budgetary financial resources regarding the technical cooperation in the field of ensuring the right to freedom of association and collective bargaining are limited. Supposed that, it can have both a positive, as well as a negative impact on ensuring the right to associate and collective bargaining. Accordingly, if there is available financing by state, then the opportunities of interference with the activities of the organizations of workers and employers will be real. On the other hand, the existence of the financial resources is of a significant role in order to establish a reliable organization for ensuring the common interests. From this perspective, the additional financial resources apart from the budget can make a positive impact on the general condition. International Labour Organization needs additional financing in order to assist its member states in the according way. In this regard, support of an additional donor in most cases can make a positive impact on ensuring the right to associate and collective bargaining. However, in this case the state attitude towards the issue must be given a special attention. So that, in most cases, the state does not make a positive approach regarding the funding of the trade union by an additional donor organization and takes this as a contrary to own interests. As a result, the attempts of the state to interfere with or control the activities of the organizations are clearly reveals.

Thereby, the rights to associate and collective bargaining belong to the category of fundamental human rights. The principle on the right to associate is expressed in International Labour Organization Charter and in Philadelphia Declaration added to it. The importance of ensuring the right to associate has been repeatedly approved by the international community. Ensuring the right to associate creates an opportunity for taking essential measures in order to establish decent conditions in labor field. The recognition of the right to collective bargaining plays a key role in representing the collective interests. Especially for that reason, first of all, the situation in the field of ensuring the right to associate needs to be optimized. Generally, the right to collective bargaining is being built upon the basis of the principles of the right to associate and it forms the real basis for the collective representation. Collective bargaining can play an essential role in the rise of the industrial indicators, the management of changes and the formation of harmonic labor relationship. It is important to have a favorable environment creating new opportunities in order to ensure the right to freedom of association and collective bargaining. The legislative framework acts as a key element of the favorable

environment. The legislative framework, first of all, safeguards and defends the right to freedom of association and collective bargaining. Additionally, the legislation mentioned on the platforms of the revised Conventions suggests the possibility of effective elimination of disputes arising in the field of labor.

The ratification of the relevant international conventions plays an effective role in ensuring the right to freedom of association and collective bargaining. Therefore, the party states to the convention must ensure the provisions of these conventions in the framework of their own national legislation. The conventions number 87 and 98 are appearing as the essential regarding ensuring the right to freedom of association and collective bargaining. In the current stage, the provisions of these conventions play the key role in the realization and ensuring the right to freedom of association and collective bargaining. As a result, the ILO member states undertake the concrete obligations regarding ensuring the right to freedom of association by ratifying these conventions.

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