The Right to Work in International and National Law in the Time of Globalization

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Abstract

Work is not a commodity like all other commodities, but it is an emanation of the human person. For this reason, its value is higher than all other things. With the beginning of industrialization, in addition to state measures for the protection and education of work, the workers joining forces in mutual unions have done everything to oppose the inferiority of the labor factor to capital. It should be emphasized that the right to work is not a subjective right that you can claim in court in case of non-realization, but it is a principle that the State through policies must be committed to create conditions for everyone to be employed. In the time of economic and financial globalization that today's society is experiencing, the right to work is not regulated only in national legislation, but also in international legislation and collective contracts. In this work, the sources of international labor law approved by the ILO, the UN and some regional organizations such as the Council of Europe and the European Union will be explained first. It is very important to know the international sources for labor law because they occupy a privileged position in the hierarchy of sources of law in the Republic of Albania, which are often overlooked by law enforcement officers. After exhausting the sources of international labor law, the national sources will be treated with a focus on our Constitution. A special place in this work will be occupied by trade union freedom and the right to strike according to domestic law, which have historically represented the basic means to protect the rights of women workers. At the end of the report in this conference, we will briefly dwell on the impact of globalization on labor law.

Keywords: international law, national law, the right to work, globalization, the Constitution

1. Instead of Entering

International labor law aims to help improve domestic legislation, by defining general principles and guidelines, and not to replace it. Before dealing with the sources of international law for labor law, it should be noted that international law has a privileged position in the hierarchy of sources of law in our country. The Constitution, in the part of the basic principles,¹ provides that the Republic of Albania applies international law binding on it.² More specifically, at the head of the sources of law is the Constitution as the law with the highest legal power in the Republic of Albania.³ International law (treaties, conventions, agreements) ratified by the highest representative body of the people's sovereignty, the Parliament, is listed

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¹ The fundamental principles represent the basis of our company and its objectives.
² Neni 5, Kushtetuta e Republikës së Shqipërisë, miratuar me Lgjin nr.8417, datë 21.10.1998, e ndryshuar.
³ Neni 4'2 Kushitetuta e Republikës së Shqipërisë, miratuar me Lgjin nr.8417, datë 21.10.1998, e ndryshuar parashikon se: The Constitution is the highest law in the Republic of Albania.
immediately after the Constitution. The European Convention on Human Rights makes an exception, regarding the limitation of basic human rights and freedoms, which has the same legal force as the Constitution.

International law, after being ratified in the Parliament, has a higher legal power than national law, with the exception of the Constitution. As regards the place where International law takes place, in the field of labor law, object of analysis, the Labor Code of the Republic of Albania stipulates that it respects the ratified International Conventions and is based on the generally accepted norms of international law. The second article of the Labor Code determines that Albania respects not only the international acts ratified by the Assembly but also the generally accepted norms of international law, regardless of their ratification by our State. Whereas, Article 11 of the Labor Code, in the first paragraph, provides that the ratified International Conventions come immediately after the Constitution regarding the regulation of rights and obligations in labor relations. Whereas, in the first part of the third paragraph of Article 11, it determines that any norm that violates a norm of a higher power is invalid. Exceptions to this rule are only those rates in favor of the weaker party, i.e. the employee.

2. The Right to Work in International Law

The Constitution of the Republic of Albania, unlike some Constitutions of the European Union, does not provide for any specific provision that gives international importance to the protection of employment, regardless of the fact that this is easily achieved by the provisions mentioned in the introduction part of this paper. One of the main sources of the right to work at the international level is undoubtedly the Constitution and the Conventions of the ILO. Albania is part of the International Labor Organization (ILO), founded in 1919 with the main aim of promoting a work regime in accordance with the needs of workers for a dignified life by all member countries. The ILO is a specialized agency of the United Nations, whose main function is to draft international labor standards in the form of Conventions, recommendations and protocols that determine the minimum conditions of protection at work and to ensure their implementation.

Albania has ratified 54 ILO Conventions, including 8 Basic Conventions, 4 Governance Conventions and 42 Technical Conventions. In February 2020, our country ratified the Instrument of Amendments to the ILO Constitution, approved in Geneva in 1986, as well as deposited the Instrument of Acceptance at the ILO Secretariat in 2020. States that ratify ILO Conventions are mandatory for implementation according to the constitution of the ILO and will undertake the necessary actions to make applicable the provisions of the conventions. In reinforcement of Article 19, letter d of the ILO Constitution, the Vienna Convention on the Law of Treaties should also be considered. This Convention determines the binding force of treaties for the parties and prohibits the parties from using domestic law as an excuse for non-implementation of a treaty. One of the most important initiatives of the ILO is the 1998 Declaration on Principles and Rights at Work, which prohibits forced labor, establishes freedom of association, collective contracts and prohibits

4 Shih nenin 116, Kushtetuta e Republikës së Shqipërisë, miratuar me Ligjin nr.8417, datë 21.10.1998, e ndryshuar.
5 Neni 17, Kushtetuta e Republikës së Shqipërisë, miratuar me Ligjin nr.8417, datë 21.10.1998, e ndryshuar.
6 Nenet 121 dhe 131, Kushtetuta e Republikës së Shqipërisë, miratuar me Ligjin nr.8417, datë 21.10.1998, e ndryshuar.
7 Shih nenin 2, Kodi i Punës i Republikës së Shqipërisë, miratuar me Ligjin nr.7961, datë 12.7.995, i ndryshuar.
8 These norms may have to do with the prohibition of discrimination at work, safety at work, freedom of association and the right to strike, etc.
9 Shih nenin 11, Kodi i Punës i Republikës së Shqipërisë, miratuar me Ligjin nr.7961, datë 12.7.995, i ndryshuar.
10 Neni 11, pjesa e pare e paragrafit 3, Kodi i Punës i Republikës së Shqipërisë, miratuar me Ligjin nr.7961, datë 12.7.995, i ndryshuar.
11 Shih nenin 11, pjesa e fundit e paragrafit 3, Kodi i Punës i Republikës së Shqipërisë, miratuar me Ligjin nr.7961, datë 12.7.995, i ndryshuar.
14 Ne nenin 26, Konventa e Vjenës "Për të drejtën e traktateve", 1969, perçaktohet se: Any treaty in force is binding on the parties to it and must be performed by them in good faith.
15 Ne nenin 27, Konventa e Vjenës "Për të drejtën e traktateve", 1969 perçaktohet se: A party cannot use the provisions of its domestic law as a justification for not applying a treaty. This rule does not prejudice Article 46.
discrimination at work. The Universal Declaration of Human Rights\textsuperscript{18} in the first paragraph of its article 23 provides that: \textit{Everyone has the right to work, to freely choose a profession, to have favorable working conditions and to be protected from unemployment}. In addition to this provision, this act contains several other specific provisions that apply to labor matters. Here we can list, for example, the right to freedom from slavery,\textsuperscript{19} to social security,\textsuperscript{20} to form and join unions,\textsuperscript{21} the right to rest,\textsuperscript{22} etc.

The International Covenant on Civil and Political Rights\textsuperscript{23} in Article 8 provides for the right to freedom from slavery and forced labor. Whereas, the International Covenant on Economic, Social and Cultural Rights\textsuperscript{24} in Article 6 defines: \textit{The States parties to this Covenant recognize the right to work, which includes the right of everyone to have the possibility of securing a living by working freely accepted work and receive appropriate measures to protect this right}. This provision recognizes the right to work and calls on the Party States to take appropriate measures for the realization of this right, which is so vital for the development of society. The following provisions of this Pact define the rights of women workers, such as safe working conditions, fair wages, equal opportunities, freedom of association and the right to strike.\textsuperscript{25}

The Convention on the Elimination of All Forms of Discrimination against Women\textsuperscript{26} defines that women are entitled to the right to work, which is the inalienable right of all human beings, to the right to equal employment opportunities, to the right to choose freely profession and place of work, the right to equal remuneration, the right to social security, etc.\textsuperscript{27}

The International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families\textsuperscript{28} determines that no migrant worker and his family members are held in slavery, migrant workers enjoy the same treatment as citizens of the State where they are employed, enjoy freedom to join unions together with their families.\textsuperscript{31} The European Convention on Human Rights\textsuperscript{32} in its article 4 prohibits forced labor.\textsuperscript{33}

\begin{thebibliography}{99}
\bibitem{19} The Declaration was approved by the General Assembly of the United Nations on December 10, 1948. This Declaration, we can say without any doubt that it constitutes the foundation of the new international system that was created after the end of the Second World War. This act gives equal protection to political, civil, economic, social and cultural rights. Although it is not legally binding in itself, it contains principles that are considered legally binding for States, based on customary international law. \textit{Everyone shall have the right to work, to freely choose a profession, to have favorable working conditions and to be protected from unemployment}. In addition to this provision, this act contains several other specific provisions that apply to labor matters. Here we can list, for example, the right to freedom from slavery, to social security, to form and join unions, the right to rest, etc.
\bibitem{20} The International Covenant on Civil and Political Rights is defined in Article 8 provides for the right to freedom from slavery and forced labor. Whereas, the International Covenant on Economic, Social and Cultural Rights determines that no migrant worker and his family members are held in slavery, migrant workers enjoy the same treatment as citizens of the State where they are employed, enjoy freedom to join unions together with their families. The European Convention on Human Rights in its article 4 prohibits forced labor.
\bibitem{21} The Convention on the Elimination of All Forms of Discrimination against Women defines that women are entitled to the right to work, which is the inalienable right of all human beings, to the right to equal employment opportunities, to the right to choose freely profession and place of work, the right to equal remuneration, the right to social security, etc.
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\bibitem{29} The Convention on the Elimination of All Forms of Discrimination against Women defines that women are entitled to the right to work, which is the inalienable right of all human beings, to the right to equal employment opportunities, to the right to choose freely profession and place of work, the right to equal remuneration, the right to social security, etc.
\bibitem{30} The International Covenant on Economic, Social and Cultural Rights defines that women are entitled to the right to work, which is the inalienable right of all human beings, to the right to equal employment opportunities, to the right to choose freely profession and place of work, the right to equal remuneration, the right to social security, etc.
\bibitem{31} The European Convention on Human Rights defines that women are entitled to the right to work, which is the inalienable right of all human beings, to the right to equal employment opportunities, to the right to choose freely profession and place of work, the right to equal remuneration, the right to social security, etc.
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question refers to civil and political rights, but over time, the ECtHR, through interpretation, has also derived rights of a
social nature, including the right to work. The European Social Charter (revised), in its second part, the right to work, fair
working conditions, safe and healthy working conditions, fair wages, the right to organize and collective bargaining.

3. The Right to Work in Albanian Legislation

In the broad sense of the word, work consists in the use of energy to achieve a specific goal, while in the narrow sense of
the word, it consists in a human activity that aims to produce a product, including the application of intellectual and
manu al knowledge, in exchange for compensation of any kind (monetary or not). Human work is taken into account and
regulated by the legal system, since it is suitable to produce a useful economic result, and therefore to be the object of an
obligation. It should be emphasized that the right to work is regulated in national and international normative acts. In this
paper, when we talk about the national right to work, we also mean the rights of employees that embody this sublime
right. Regarding the national acts, the Constitution of the Republic of Albania, the law with the highest power in our legal
system, provides for the right of everyone to earn the means of earning by work respecting the legislation in force, which
the person chooses and accepts himself. The phrase of the constitutional provision, provided in Article 49, everyone has
the right to earn his means of living by legal work, which he has chosen or accepted himself, strictly prohibits forced
labor. This is an innovation of our post-communist Constitution because during the totalitarian regime, work and the
choice of profession was de facto forced. Here we are not dealing with a right that we can claim in court and realize it, but
it should be interpreted as an objective to be achieved through the commitment of the public power to create the
necessary conditions for the realization of this right. It is more than clear that in case of non-fulfillment of this commitment,
the way to go to court is not open to the citizen, but the way to political judgment (through voting) is opened to those
responsible for political-economic decisions.

The Constitutional Court of the Republic of Italy has declared unconstitutional a provision of law no. 6211/1952 that
forced agricultural owners to employ workers based on criteria in proportion to the size of the fund, contrary to Article 41
of the Constitution. The right to work provided by Article 49 of the Constitution should be understood as a principle and
not as a legal norm. In other words, the State has the duty to create suitable conditions for everyone to work, not the duty
to find a job for those who do not have one. We are not dealing with a subjective (positive) right, but the State must be
committed to creating conditions for everyone to be employed. The Constitutional Court of the Republic of Albania has
stated that the right to work guaranteed by the Constitution in the first paragraph of Article 49 includes the choice of
profession, workplace and the system of professional qualification with the aim of securing a legitimate means of living.
The right of a person to legal work is also important from a social point of view, the aforementioned Court emphasized,
because work as a profession is also valuable for the contribution it brings to society as a whole. While the constitutional
doctrine has stated that the intervention of the State for the employment of persons is related to the social
nature of the State itself. The second part of the first paragraph, article 49, provides for the freedom of the person to
choose the profession, the place of work as well as the professional qualification system. The Constitutional Court has
stated that the choice of profession constitutes a right of the individual in the sense that he dedicates himself to an activity

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32 This convention was drawn up by the Council of Europe in 1950 and entered into force on September 3, 1953. This convention differs from other instruments for the protection of human rights by creating the control mechanism, which allows any individual to submit a complaint, in the ECtHR, after having exhausted all internal means, in case of violation of the Convention and Protocols.
40 Shih në https://www.treccani.it/enciclopedia/lavoro/.
41 Neni 49, paragrafi 1, Kushtetuta e Republikës së Shqipërisë, miratuar me Lgjin nr.8417, datë 21.10.1998, e ndryshuar.
43 Gjykata Kushtetuese e Republikes e Italise, Sentenza 98/1998.
44 Gjykata Kushtetuese e Republikes se Shqiperise, Vendimi 20/2006.
45 ANASTASI A dhe OMARI L, E drejta kushhtetuese, Shëtepia botuse Pegi, Tirane, 2010, fq.188.
to ensure the means of living.\(^{46}\) In this sense, any activity of the state bodies that brings direct consequences in hindering the professional activity constitutes a violation of this freedom of action. The freedom of the profession is not a right to have a job, but it should be understood as a negative freedom that does not allow the intervention or obstruction of the State during its exercise.\(^{47}\)

The Italian constitutional doctrine has stated that the freedom of profession or the freedom of a work activity (understood as freedom from limitations or unreasonable obstacles for entering the chosen profession) includes the freedom of access to work and the freedom to carry out an activity that corresponds to the choice and his professional skills.\(^{48}\) This above-mentioned doctrine has been confirmed by the Constitutional Court of Italy by declaring the unconstitutionality of the legal provisions that require the absence of children as a criterion for recruitment into public offices.\(^{49}\) Moreover, this Court has declared the unconstitutionality of the legal provisions that required quality and good moral behavior to become part of the police or the judicial system.\(^{50}\) The Constitutional Court stated that the right to work provided by Article 49 has a double meaning: it constitutes a positive obligation that requires the commitment of state structures to create suitable conditions for the realization of such a right, but also a negative obligation of which requires the non-interference of the State to violate this right.

In order to guarantee this very important right to a dignified life, the Constitution and legislation in force have provided several guarantees, such as the preservation of the workplace, the right to a sufficient reward to ensure a free and dignified existence, the maximum length of working days, etc. Regarding the limitation of the right to work, the Constitutional Court has implemented the notions of the Federal Constitutional Court of Germany. The latter, dated July 11, 2006, stated that: "According to the doctrine, the exercise of a profession can be limited by reasonable rules that can be attributed to assessments of the general good." The situation changes when the state returns to the controller of the objective conditions of admission to a workplace. In these cases, restrictions are permissible only for very limited and well-defined conditions. In general, the legislature may set such conditions only when they are necessary to highlight potential dangers that may affect interests of fundamental importance in the community.\(^{51}\)

4. Union Freedom and the Right to Strike

Trade union freedom and the right to strike have historically represented the basic means to protect the rights of workers. A trade union is a free and spontaneous association that unites members of a category of workers or employers with the aim of protecting their collective professional interests, while a strike is an instrument of trade union struggle that consists of collective abstinence from work, which is generally promoted by trade unions and implemented from the employees.\(^{52}\) The first trade unions were born after the industrial revolution\(^{53}\) to protect workers from the human exploitation to which they were subjected. The need to face the excessive power of the employers has made the workers aware that only by joining associations in defense of their rights, they can exert the right pressure for the protection of their demands.\(^{54}\) With the birth of capitalism and the differentiation between capital and labor in the 18th century, the strike in the modern sense of the term was born. As for Albania, after the second world war, the communist regime was installed, which did not allow the true, real implementation of trade union freedom and the right to strike. Law No. 7491/1991, On the Main Constitutional Provisions, initially did not provide for trade union freedom and the right to strike. Two years later, Law no. 7692/1993, for an addendum to Law no. 7491/1991, on the Main Constitutional Provisions, added the chapter on fundamental human rights and freedoms, where the freedom of association was foreseen in Article 29\(^{55}\) and the right to strike in Article 30.\(^{56}\) The Constitution of 1998 in chapter IV of the second part finally provides for trade union freedom

\(^{46}\) Gjykata Kushtetuese e Republikes se Shqiperise, Vendimi 20/2006.
\(^{47}\) Gjykata Kushtetuese e Republikes se Shqiperise, Vendimi 20/2006.
\(^{49}\) Gjykata Kushtetuese e Republikes se Italise, Sentenza 332/2000.
\(^{50}\) Gjykata Kushtetuese e Republikes se Italise, Sentenza 391/2000.
\(^{52}\) The Industrial Revolution was a long process of productive change that began in Europe in 1780 and ended in 1878.
\(^{53}\) LA NUOVA UNIVERSITA, LeXikon, Leggere la costituzione Repubblicana, breve commento articolo per articolo, III edizione, Napoli, 2004 f.47.
\(^{54}\) LIGJ Nr.7692, datë 31.3.1993, PËR NJË SHTOJÇË NË LIGJIN NR.7491, DATË 29.4.1991 “PËR DISPOZITAT KRYESORE KUSHTETUESE”, neni 29 percaktion: Employees have the right to freely join trade unions for the protection of their interests in the fields of labor and social security.
\(^{55}\) LIGJ Nr.7692, datë 31.3.1993, PËR NJË SHTOJÇË NË LIGJIN NR.7491, DATË 29.4.1991 “PËR DISPOZITAT KRYESORE KUSHTETUESE”, neni 30 percaktion: The right of employees to strike to improve working conditions, wages or any other benefit from...
and the right to strike. So, the post-communist constitution of 1998 recognizes the right of employees to join trade unions in order to protect their work interests, as well as the right to strike as an effective instrument in re-establishing the balance between the employee and the employer.

More specifically, trade union freedom is provided for in Article 50 of the Constitution, which stipulates that employees have the right to freely join trade unions for the protection of their work interests. The Law on Main Constitutional Provisions, amended as I mentioned above, mentioned the freedom of trade unions in the field of social insurance. The freedom of association provided for by provision no. 50 represents a broader specification of the freedom of organization provided by Article 46. Furthermore, without straining the constitutional text too much, trade union freedom is also recognized in the part of the basic principles of the Constitution. More specifically, it does not foresee only the creation of parties, but also of organizations in general, which must comply with democratic principles. The freedom of association provided for in Article 55 of the Constitution has a double meaning: on the one hand, it is the right of the individual to join an existing union, to create a new one or not to join any union, on the other hand, the unions have the right to carry out their activity freely and without restrictions or controls. The constitution protects the right of employees to join a trade union organization, but the legal basis for the activity of trade union organizations in Albania is the Labor Code.

The amended Labor Code, in chapter XVI, provides for the way of creating trade union organizations, the rights of trade union members, their financing, the prohibition of interventions by state bodies, etc. Since it is a constitutionally protected right, the legislation provides facilities for their creation and organization. Some of the main tasks of the trade unions that emerge from the analysis of the legal provisions of the labor code are: to negotiate wages and working conditions, to negotiate collective contracts with the representatives of the employees at the time of renewal. In general, their duty is to represent categories of workers in the protection of their interests within the workplace. Unions can use the democratic method of protest, the strike, to achieve their goals such as protecting the workplace, improving working conditions and pay. In this case, the strike is used to convince the other party to accept demands regarding wages, hours and working conditions.

The strike can also be used to increase the awareness of the public opinion to renew the collective contracts of different sectors which have expired. The right to strike is provided for by the Constitution of the Republic of Albania in Article 51, which stipulates that: the right of the employee to strike related to labor relations is guaranteed. It should be emphasized that the right to strike is a subjective right and the State cannot prohibit it, nor condemn the collective abstention from work, nor allow the dismissal of the person who participated. Based on the constitutional phrase the right of employees to strike, the right to strike is recognized by the individual worker who can exercise it even without the approval of the union. This right belongs to the individual, but it is presented as a collective in terms of its exercise. So, it requires the accession of a number of workers who collectively refrain from performing their duties, in order to achieve the objective through pressure on the employer.

The right to strike, in addition to the Constitution, is also regulated by the Labor Code and Law no. 152/2013,
dated 30.5.2013 For civil servants, as amended.\textsuperscript{62} It should be emphasized that the right to strike is not an absolute right, but like any other right, it can be limited to guarantee the rights of third parties who are not part of the agreement. For this reason, the Constitution provides that: restrictions for special categories of employees can be established by law to provide society with the necessary services.\textsuperscript{63} The Labor Code\textsuperscript{64} and the Civil Servant Law\textsuperscript{65} have determined that the strike cannot extend to vital services where the interruption of work endangers the life, personal safety or health of a part or the entire population.

5. Conclusions

The right to work is a basic human right regulated not only by national sources but also by international sources of law. In recent years, there is talk not only about economic globalization, but also about the globalization of human rights. The recognition and implementation of international and national resources for the right to work is the starting point to improve working conditions for a more dignified life, besides the fact that work constitutes an essential and inseparable part of the affirmation of other human rights.

The phenomenon of globalization, especially during the last years, has deeply influenced the labor market in the Republic of Albania. Today, Albania is experiencing a great wave of labor force emigration. The effects of this emigration are positive and negative. To see the positive and negative effects of emigration, in the case of Albania, it is enough to take as an example the departure of qualified workers. The host country, foreign, certainly has an advantage, while our country is losing qualified human resources. Seeing that the phenomenon of globalization can negatively affect the conditions of workers, the ILO (International Labor Office) devotes a special section to decent work related to the phenomenon of globalization. Regarding decent work, the ILO states: "Decent work is the key to eliminating poverty." If people have decent work, they can participate in the redistribution of income from an increasingly globalized international economy. Expanding the opportunity for decent work for all is the essential condition for globalization to be fair and bring about social integration. Therefore, the creation of good working conditions should be the basis of all development policies."

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\textsuperscript{62} Ligji nr.152/2013, date 30.5.2013 Per nempunësin civil i ndryshuar, ne paragrafin e pare te nenit 35 perca kton: Nëpunësi civil ka të drejtën e grevës, përveçse kur parashikohet ndryshe nga ligji.
\textsuperscript{63} Shih paragrafin e dyte te nenit 51,Kushtetuta e Republikës se Shqipërisë.
\textsuperscript{64} The labor code in article 197 determines that: 1. The strike cannot be exercised in services of vital importance, where the interruption of work endangers the life, personal safety or health of a part or the whole population. In this case, collective conflicts are resolved in a final and mandatory manner, according to Article 196 of this Code. 2. The following are services of vital importance: a) necessary medical and hospital services; b) Repealed c) Repealed ç) air traffic control services; d) essential fire protection services; d) necessary services in prisons.
\textsuperscript{65} Ligji nr.152/2013, date 30.5.2013 Per nempunësin civil i ndryshuar, ne paragrafin e dyte te nenit 35 perca kton se: In any case, the right to strike is not allowed in the field of essential services of state activity, such as transport, public television, supply water, gas and electricity, prison administration, justice system administration, national defense services, emergency health services, food supply services or air traffic control services.
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