

DEVELOPMENT OF TRADE UNION ORGANIZING AS A HISTORICAL LEGACY AND A CONSTITUTIONAL RIGHT

Summary

Throughout history, trade union organization has undergone significant reforms and changed as the organization of the state itself has changed. Trade union organization went through three historical phases: the phase until the nineteenth century, the phase from the nineteenth century to the middle of the twentieth century, and the final phase in the twenty-first century. Trade union organization followed the organization of the first states, through which workers defended their labor rights under primitive conditions in a primitively organized way. The first modern forms of trade union organizing were experienced in the territory of the United Kingdom, which is also considered the forerunner of trade union organizing. The right to organize a trade union, although today one of the fundamental collective rights, is increasingly becoming the subject of discussions and dilemmas, whether this right is really necessary in labor relations and, in the end, in constitutions of a large number of countries, as a promotion of economic and social rights.

The paper could be divided into three parts, firstly the authors want to define the historical development of trade union organization, the process of developing in the countries of the world, what are the key historical moments in which this right made and contributed to “a quality more” in labor relations, and which were the first laws-constitutions that provided for this fundamental right today. The second part of the paper refers to the current

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normative legal situation in the Republic of Serbia regarding trade union organization and specifically trade union rights. The third part actually represents the main purpose of the paper, which is to point out some potential problems in the twenty-first century that union organizing in the international community is facing.

Keywords: collective organizing, labor movement, trade union, politics.

RAZVOJ SINDIKALNOG ORGANIZOVANJA KAO ISTORIJSKE TEKOVINE I USTAVOM ZAGARANTOVANOG PRAVA

Sažetak

Kroz istoriju sindikalno organizovanje je pretrpjelo znatne reforme i mjenjalo se kako se i sama organizacija država mjenjala. Sindikalno organizovanje je prošlo kroz tri istorijske faze, i to: fazu do XIX vijeka, fazu od XIX do sredine XX vijeka i u krajnjem faza XXI vijeka. Sindikalno organizovanje pratilo je i samu organizaciju prvih država, kroz koju su radnici u tada primitivnim uslovima na primitivno organizovan način branili svoja radnička prava. Prve moderne obrise sindikalno organizovanje je doživjelo na teritoriji Ujedinjenog Kraljevstva, koje se ujedno smatra i njegovom pretečom. Pravo na sindikalno organizovanje, iako danas jedno od fundamentalnih kolektivnih prava, sve češće postaje predmet rasprava i dilema – da li je zaista ovo pravo potrebno radnim odnosima, a u krajnjem i tekstovima ustava velikog broja zemalja, kao promocija ekonomskih i socijalnih prava.

Rad se može podijeliti u tri cjeline. Autori u radu prvo žele da opišu istorijski razvoj sindikalnog organizovanja, kako je tekao u zemljama svijeta i koji su ključni istorijski momenti u kojima je ovo pravo doprinosilo i činilo „kvalitetu više” u radnim odnosima, kao i koji su prvi zakoni-ustavi predviđali ovo danas fundamentalno pravo. Drugi dio rada odnosi se na trenutno normativno pravno stanje u Republici Srbiji po pitanju sindikalnog organizovanja i, konkretno, sindikalnih prava. Treći dio rada predstavlja cilj rada, a to je ukazivanje na neke potencijalne probleme u XXI vijeku sa kojima se suočava sindikalno organizovanje u međunarodnoj zajednici.

Gljučne riječi: kolektivno organizovanje, radnički pokret, sindikat, politika.

1. Introduction

The primary function of unions lies in consolidating scattered energies and strengthening the social power of the working class (Stojiljković, 2011). The main cause of disagreement between the two 'waves' in industrial relations is undoubtedly misunderstanding – conflict of interest. This could define the genesis of the need for collective organizing. Collective organizing gave rise to the initial social communities – states – where people joined solely for the protection of their rights, sometimes voluntarily, sometimes by conquest. When defining this, it could be equated with the right to unionize – collective organizing, which, as we say, emerged as old as the state itself but initially in a primitive form for the protection of human and labor rights. Through subsequent legal evaluation of social systems and values, it elevated to the pedestal of workers' and collective rights. Unionization first manifests its fullness through certain rebellions – strikes, fighting for those oppressed and underprivileged (Hyman, 2004, p. 18). Strikes are considered precursors of unionization, from the strikes of slaves in Egypt during the time of Ramesses III, through Spartacus' slave rebellion in Rome, to modern massive strikes by workers, representing not only opposition between employees and management or owners but also the economic interests of employees often conflicting with those of owners and management (Lazović, 2018, p. 142). Britain, which led the initiation of the industrial revolution at the end of the eighteenth century, should be considered the precursor of modern unionism (Wrigley, 2009, p. 59). The strengthening and development of industry in the nineteenth century led to the strengthening of the working class and its rebellion, which, through collective organization, defended their economic and social rights (Milne-Bailey, 1929, p. 4). The goal of such union organization is the empowerment of wage earners, i.e., the defense of workers' rights (Guillot, Jaoul-Grammare & Terraz, 2019, p. 8).

The historical origins of unions constitute the general characteristics that marked the development of the industrial era: capital accumulation and division of labor. The industrial revolution gave birth to fundamental societal stratification and was the basis for the development of permanent economic and social inequalities, which, deepening constantly, became a strong motive for the self-organization of wage laborers to fight for better working conditions. As a product of such a social condition, emerging through centuries of historical development, the union came to be as an organized socio-historical phenomenon, established on the ideal of social justice (Martinić, 2016, p. 10). The first two decades of the nineteenth century witnessed legal persecution of unionists as rebels and revolutionaries (Webb & Webb, 1920, p. 63). From all the above, we can conclude that

union organizing brought an additional 'value-add' as one of the most legitimate values of the working class today, which workers throughout history painstakingly and flexibly forged (Guillot, Jaoul-Grammare & Terraz, 2019, p. 8).

2. Historical Development of Trade Unions in the International Community

British unionism has a history that spans over two centuries. The first industrial nations spawned the initial national union movement, shaping the character of industrial relations and establishing a distinctive form of unionism. What stands out in the British case, compared to most other countries, is the historical continuity and the enduring nature of long-established traditions, specific to individual unions in some aspects (Hyman, 2017, p. 98). In the UK, the freedom of union association and the right to strike were recognized by law in 1824, much earlier than in France and Germany. However, by 1825, these rights were significantly restricted due to the disorder often accompanying strikes. David Brody's perspective on the genesis and typology of political unionism in Britain suggests that this form of unionism emerged as a result of unions being compelled, during an era of industrial expansion, to operate as a political movement, representing a threat to national unity and economic progress in the eyes of ruling structures. They defined themselves as a political movement until conditions allowed them to evolve into a more classic economic movement (Milosavljević, 2018a, pp. 44-45).

The 1869 law introduced improvements that benefitted the workers; however, dissatisfied workers soon demanded its amendment (Ravnić, 2004). British unionism is highly unitary, with one union confederation, the TUC, founded in 1869, representing almost all significant unions. However, in other aspects, it is highly fragmented. Its significance in British union organization is crucial, contributing immensely to the culture of organization (Panagiotopoulos, 2005, p. 2). Its role in consolidating European unionism is emphasized by Hyman (Hyman, 2017, p. 103). White-collar unions were formed as early as 1870. Ideological and political expansion of unions after 1889 marked a sharp leftward turn, creating new leaders mainly inspired by various versions of socialism (Hobsbawm, 1967, p. 358). By 1900, there were around 1,323 unions in Britain with a total membership of about 2,022,000 workers. Over time, there were fluctuations in their numbers and membership, with 1,121 unions existing in 1930 with a membership of 4,842,000. The passing of a set of laws from 1980 to 1990 concerning union organization led to a significant decline in union membership, from 12.1 million in 1978 and 1989 to 8.6 million and 335 unions, as recorded in 1989 (Carby-Hall, 2016, p. 5). The density of unions in the private sector in Britain is about three times higher than in France (Bryson,

Forth, Laroche, 2009, p. 1). A distinct feature of the British union model, according to Blanden & Machin (2003, pp. 391-415), is the high likelihood of someone becoming a union member if their parent is already a member.

In the United States, union organization began integrating into societal reality in the early nineteenth century, with organized unions existing as early as 1800, functioning similarly to contemporary unions. Professional hazards, economic uncertainty, and managerial treatment were among the primary forces motivating workers in various industries to organize for self-protection. Employees increasingly viewed collective strength, rather than individual virtue, as a means to overcome the power imbalance between labor and capital (Donaldson, 2022, p. 11). However, labor unions faced a long period of non-recognition. Even when unions were legally recognized in the 19th century, courts often deemed their actions like strikes and boycotts illegal, citing restrictions on entrepreneurship. It was not until around 1880 that courts became slightly more tolerant towards unions. However, the labor movement before 1880 was not significantly developed except for some national unions (Wolman, 1927, p. 11).

American economic democracy was maintained through the struggle of unionists for workplace control. Following a long tradition, unionists sought to establish and maintain workplace rules that not only affirmed worker dignity but also contributed to the pace of work, the rate of its achievement, and its organization. Adhering to what historian David Montgomery termed a “code of honorable behavior”, union members protected each other from arbitrary abuse by creating and adhering to their own labor standards (Kessler-Harris, 1987, p. 33). Unions also served as a factor improving productivity and communication between workers and management (Freeman & Medoff, 1984). The right to unionize and engage in collective bargaining in the US was guaranteed only after the Great Depression with the passage of the Wagner Act in 1935 (Urdarević, 2021, p. 283). Subsequently, the Taft-Hartley Act in 1947 diminished the initially guaranteed rights of unions in favor of management and workers (Lubarda, 2013, p. 830). The Wagner Act played a crucial historical role in reinstating unionism in the US by making collective bargaining a respected practice through which unions could operate. David Brody suggests that unions should be credited for remaining a mechanism to curb managerial discretion and power through objective rules (Kessler-Harris, 1987, p. 33). By their role in securing progressive social legislation, unions propelled generations of American families into the middle class and shielded many Americans from poverty.

In France, after 1848, the right to unionize was initially recognized but soon revoked (Laulom, 1995, p. 33). It was only on March 21, 1884, that freedom of union organization was finally guaranteed, allowing autonomy for unions from

employers and the state, the right to join a union, and the right not to join any union (Despax, Rojot & Laborde, 2011, pp. 194–195). The initial revolutionary unionist orientation was abandoned during World War I, leading to a reformist transformation of the movement. The constitutionalization of the right to unionize in France occurred in the Constitutions of 1946 and 1958, guaranteeing freedom of organization and association for unions. At the national level, unions are recognized as negotiating partners by the state and must, at the very least, be formally involved in discussions on government social policy reforms. The rights and duties of unions related to enterprises and sectors are regulated by law and can be expanded through social partnership (Noblecourt, 2023, p. 1). French unions grappled with their own vulnerability and were most affected by social crises. The “politicization” of French unions was a significant burden they had to carry, with a strong ideological component leading to an emphasis on a confrontational culture (Boulin, 2000, p. 227).

In Germany, the freedom of union association was only established in 1871, considerably later compared to many Western countries (Lubarda, 2013, p. 829). The development of union organization was greatly influenced by political factors. In the 1860s, an independent socialist-oriented labor movement was established in Germany, presenting a fundamental challenge to the existing social order by refusing to collaborate with bourgeois political parties, particularly progressive liberals (Mommensen, 1985, p. 1). Germany had two advocated streams of union organization, “locals” and “centralists”, placing it among the most democratic countries regarding union organization (Muller, 1985, p. 239), a characteristic that would later manifest in the drafting of the Weimar Constitution. Germany’s free unions, despite multiplying their membership almost fourfold from 1889 to 1900, almost reached numerical strength comparable to Britain’s “old unions” (Hobsbawm, 1985, p. 13). By the onset of World War I, Germany had a robust organized union movement. The war also reinforced organized labor, as before the war, despite a membership of 3 million, unions did not enjoy official recognition (Balderston, 2002, p. 3). After the war, the first constitutionalization of this labor right in the world occurred in the Weimar Constitution of 1919, which first provided for this right in its normative part, thereby becoming a model and practice how lawmakers in the region and the international community would address the working class (Rapajić, 2015, p. 276). Thus, Kahn Freund observed that all other economic and social rights prescribed by the Weimar Constitution were “dead letter on paper”, except for the right to organize and collective bargaining (Ewing, 2012, p. 1041). However, with the victory of the National Socialists in the elections and their rise to power in 1933, unions lost their autonomy (Lubarda, 2013, p. 829). In Germany post-1945, the principle of a

unitary non-partisan union prevailed, as the political division within the union movement was seen as one reason why the National Socialists managed to break the movement in 1933 (Dribbusch & Birke, 2019, p. 6).

A common trend observable across international communities from 1955 has two distinct characteristics. Firstly, membership and density tended to grow between 1955 and the late 1970s, followed by a decline in most countries during the 1980s and 1990s. Secondly, the end of the post-war boom in the 1970s marked the beginning of a contraction in the level and rate of union organization (Waddington & Hoffmann, 2000, p. 50). For instance, by the end of the twentieth century, the United States had only 17% unionized membership among the total workforce, the United Kingdom had 35% in 1995, France had 10%, and Germany had 30%. Particularly interesting are the post-socialist countries where the level of union organization was nearly 100% due to mandatory union membership (Milaković, 2011, p. 164). Marinković reminds us that unions have always served a political function since their inception, substantiating this stance with historical data indicating that the most radical forms of worker and union protest in the early stages of the union movement had a political character and conveyed specific political messages (Marinković, 2012, p. 151). Therefore, it is not surprising to find examples of 100% membership in unions in post-socialist countries where the hypothesis that unions can be an “extended arm” of the government has materialized. From all the aforementioned, we could conclude that the situation regarding union organization throughout history aligns with Professor Stojiljković’s current stance (Stojiljković, 2018, p. 107) that the position of unions is determined by the role of representing interests situated in the intersection of economic activities, civil, and political organizing. The broader and more complex role of unions, beyond their economic and political facets, is evidenced by their sociological role, which was far-reaching in the 1980s and 1990s, when they were an essential societal lever fighting against racial discrimination. All this serves as proof that unions should not be seen solely through the prism of politics and economics and that their role is not limited to the welfare of workers’ rights but encompasses the struggle for the well-being of society as a whole (Martens & Pulignano, 2008, pp. 446-447).

3. The Development of Trade Union Organizing in the Republic of Serbia

The development of trade union organizing and trade unions in the Republic of Serbia gained significance only towards the end of the nineteenth century. Their integration into the constitutional system of the Republic of Serbia occurred

with the Constitution of 1888. Prior to that, this matter was regulated by the Law on Associations and Assemblies in 1881, which was amended in 1884 (Lubarda, 2013, p. 338). Further constitutionalization of this right continued with the Constitutions of 1903 and the Vidovdan Constitution of 1921, as well as the Imposed Constitution of 1931. The Vidovdan Constitution was greatly influenced by the Weimar Constitution, which became a benchmark for further unification and implementation of socio-economic rights in the state of that time. As the process of industrialization demanded attention in Serbia only at the beginning of the twentieth century, the Vidovdan Constitution acted as a catalyst for the working class at that time. It marked a turning point in recognizing trade union freedoms and the scope of protecting workers' rights in general. Based on it, a series of laws were later enacted, which were fairly progressive for that time. The entire struggle of the labor movement after the enactment of these laws was directed towards the implementation of legal provisions in practice (Jovanović, 2018, p. 42).

After the Second World War and the shift towards a communist framework of governance inspired by the USSR, trade unions represented not only organizations for the protection of workers and the working class but also an iconographic substrate of communist ideology. A significant stage in the development of unions in Yugoslavia began in June 1950, when the People's Assembly of FNRJ (Federal People's Republic of Yugoslavia) adopted the Basic Law on the management of state and economic enterprises and higher production associations by work collectives, popularly known as the Law on Self-Management. Its primary goal was to have direct producers (worker self-managers) who manage social production because state-owned enterprises were declared the property of the general public and were managed by work collectives on behalf of the social community (Vidaković, 2019, p. 128). In the 2006 Constitution, the right to trade union organizing is regulated by Article 55.

According to Reljanović (2021, p. 259), this freedom is broadly presented, and the constitutional text does not contain any limitation for trade union association. However, this does not sufficiently guarantee trade union freedoms. The right to associate in a union is just one initial aspect of trade union freedom; it must be guaranteed in terms of union activity, joining or leaving a union, as well as the independence of the union from the employer or state. It is unclear why the right to union association did not receive more space and detailed elaboration in a separate article. As per the current legal state, the right to union organizing and its functioning are regulated by the Labor Law, and under this law, a union is considered an independent, democratic, and autonomous organization of employees who voluntarily join it to represent, advocate, promote, and protect their professional, work-related, economic, social, cultural, and other individual and collective interests, while

employees are guaranteed the freedom of union organizing (Brković & Urdarević, 2023, p. 282). The abuse of this freedom is evident by the fact that around 26,000 unions are registered in Serbia (Lazović, 2018, p. 145), whereas, for example, in 2013, the United Kingdom had about 160 registered unions with a membership of around 7.5 million (Willman, Bryson & Forth, 2016, p. 24). While this number is unattainable for much larger economies or industrial powers, the Labor Law allows this in Serbia, allowing unions to be established in accordance with the union statute, with the method of registering unions regulated by the competent minister. With such a large number of unions in legal circulation in Serbia, it is not surprising, with good reason, that the legislator did not prescribe more detailed conditions for registration, such as those concerning the determination of the representativeness of unions. This large number of unions dilutes the density of the trade union movement or factions, potentially resulting in many unions, none of which are representative at the employer, favoring employers, who then resolve it by enacting a unilateral act, i.e., the work regulations. Since the trade union movement in Serbia is not unified, it is not uncommon for union organizations to view each other as competitive (Urdarević, 2015, p. 64).

Moreover, the legally defined percentage representation of 15% for the private sector and 10% for the public sector does not favor such a large number of registered unions. Interesting solutions regarding the legal definition of trade union organizing are offered by France, the United Kingdom, Germany, and Croatia (Paunović & Kosanović, 2015, pp. 164-169). It is interesting to note that in Croatia, the specific problem is the fragmentation of the union scene. Namely, there is a relatively small number of workers - union members, yet they are members of a large number of "small" unions. Heterogeneity is unequivocally a feature of the Croatian union scene, where there are 625 registered unions (Grgurev & Vukorepa, 2015, p. 392).

4. Trade Union Organizing in the Twenty-First Century

In the twenty first century, trade unionism in the international community has not experienced the anticipated growth. Unions have significantly weakened compared to other industrial players. Due to numerous internal and external negative factors, they have been forced into a defensive stance, compelling them to find new solutions in their mission and preserve the existing status quo. Preserving workers' rights, standards, and the achievements of the welfare of the state remains a key mission for unions in the new century (Milosavljević, 2018b, p. 79). Novaković (2012, p. 33) attributes the problem in the twenty first century primarily to anti-union

actions by authorities and capitalists, culminating through economic globalization, rapid capital migration over workforce migration, as well as the neoliberal concept of development, resulting in labor market flexibility, deregulation, and flexibility in employment relations. A decline in union membership is a prevailing trend today, noticeable over the last three decades, most pronounced in advanced industrialized countries of the global North – the United States, the United Kingdom, Australia, New Zealand, Germany, France, and Central and Eastern Europe. This trend is not observed in Scandinavian countries. Developed countries in the international community attempt to maintain at least a ‘seeming’ favorable position for workers, while in ‘peripheral’ countries under the influence of predatory capitalism, the status of union organization has drastically deteriorated to the point of being rendered meaningless (Reljanović, 2019, p. 2013). As the manufacturing sector shrinks rapidly, unions lose their main stronghold, relying on the vulnerable public sector. Furthermore, both in the West and in Eastern Europe, there has been a rapid rise in various ‘atypical’ forms of employment, increasing labor market insecurity and unemployment. This labor market insecurity particularly affects young workers (Bernaciak, Gumbrell-McCormick & Hyman, 2014, p. 1). For young workers entering employment for the first time, flexible forms of work are often their only entry point into the job market (Rajić Čalić, 2020, p. 88). To regain shaken confidence and reaffirm the necessity of unions as the cornerstone of workers’ organizing, Pološki-Vokić & Obadić (2010, p. 208) propose steps to revitalize the union crisis, such as: 1. more active involvement of unions in shaping economic policy, 2. targeting traditionally non-unionized labor, 3. offering a broader range of services, 4. new forms of organization, 5. modern leadership approaches, and 6. additional education and development of union leadership.

5. Conclusion

The historical development of union organizing was accompanied by extensive industrialization. The closure of numerous large enterprises and the transition from state to private ownership, along with the reliance of unionism on the public sector, are among the main reasons for the decline and further negative trend in union development. Despite these negative trends, unions and their organizational structure have maintained continuity and resilience despite the adverse circumstances that befell them at the end of the twentieth century.

The constitutionalization of this right in the Weimar Constitution, according to many theorists, occurred at an inconvenient time, between the two World Wars, and its impact could not reach broader territories that had shortly before

emerged from one war only to enter another. It was certainly a precursor to today's union organization, being one of the most liberal constitutions, especially in terms of socio-economic rights. Historically, whether union organizing wanted to acknowledge it or not, it was dependent on politics, and it cannot be claimed to be an independent organization. Looking back in history, laws in Great Britain, the Wagner Act, the Weimar Constitution, the Vidovdan Constitution, and the French Law of 1884 were products of policy-making and the observation of social events in the respective countries and the international community.

The right to union organizing in the Republic of Serbia has not been utilized properly, hence the weak external influence of unions in spheres directly impacting economic and social aspects related to labor. The substantial number of small and medium enterprises does not allow for the mobilization of large unions; instead, they rely exclusively on the public sector. The registration process should, in our opinion, be stricter and legally regulated. Implementing good models from neighboring countries and the international community would increase the transparency of unions even further, especially considering that unions are predominantly funded through membership fees.

Globalization, as an endless phenomenon, has brought some negative trends, including flexibilization, deregulation, and flexicurity, which have significantly affected the workforce. Due to such conditions, the decline in membership and the desire for union organizing among employees has dramatically decreased. Many see a way out in revitalizing unions and the union scene. In our opinion, as the strength of unions lies in their historical development and legal continuity, the international community must show its strength and maturity and, alongside a few revolutionary decisions, stand against the erosion of 'unions' and union organizing. Whether there is a political will for such an endeavor, only time will tell.

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