

## FREEDOM OF ASSOCIATION IN A GLOBAL ECONOMY: CURRENT SITUATION AND PROSPECTS

### *I INTRODUCTION*

1. The debate on the social consequences of international economic competition, one of the major reasons for the creation of the International Labour Organization, is very long-standing.
2. New elements make the problems more acute and more difficult to resolve:
  - ✓ increase in the volume of trade;
  - ✓ geographic and sectoral transformations in trade;
  - ✓ globalisation of corporate strategy thanks to technology;
  - ✓ regional economic integration;
  - ✓ greater mobility of capital;
  - ✓ greater influence of shareholders and tendency for immediate profitability;
  - ✓ development towards world economic integration.

### *II DEVELOPMENT OF FREEDOM OF ASSOCIATION IN THE LIGHT OF THESE TRANSFORMATIONS*

Preliminary question: How have these developments influenced freedom of association, particularly trade union rights themselves, collective bargaining and the right to strike?

#### 1 - Trade union rights

Positive development in certain respects:

- ✓ Democratization has favoured the independence of workers' and employers' organizations and the reduction of trade union monopolies (Convention 87). Examples of success: East European countries but also Argentina, Ivory Coast, Mauritania, Korea and Indonesia, and for employers, East European countries;
- ✓ Greater respect for public freedoms (with an impact on subjects addressed in complaints submitted to the Committee on Freedom of Association).

On the other hand:

- ✓ Greater international competition encourages companies to seek competitive advantages (example of free export zones, sometimes called duty-free zones). However, the creation of these zones leads to the arrival of workers in the formal sector where it is easier to join unions;
- ✓ Insecurity of non-standard jobs, the development of home work and unemployment make trade union membership and action difficult, so that anti-trade union discrimination or the fear of discrimination become more frequent;
- ✓ Reduction in jobs in the public sector (privatizations), traditionally the most heavily unionised sector;
- ✓ More dispersed political and economic power, making the advantages of trade union membership less evident (democratic deficit, bargaining and

dialogue more difficult against multinational companies and in the context of regional economic integration).

## 2 - Collective bargaining

Globalization has made the working world more complex, and has therefore made the issue of the hierarchy of sources of law more difficult. Collective agreements traditionally prevailed over legislation when they granted workers more favourable conditions. Nowadays the notion of “more favourable conditions” has become more blurred. An example of this is shorter working hours while forcing people to work on public holidays. How far can the convention derogate from the legislation?

Over the last few years the development of collective bargaining has been contradictory in certain respects.

Towards less collective bargaining:

- ✓ Requirements associated to stabilization policies by structural adjustments and the limiting of public expenditure have led to greater State intervention in determining wages and working conditions (developing countries under the influence of the World Bank and the International Monetary Fund, but also developed countries – example of Canada);
- ✓ Marked tendency to favour the negotiation of working conditions at enterprise level, or even to transform collective bargaining into individual bargaining, or to give preference to the latter – example of Australia;
- ✓ Participation in collective bargaining processes by workers’ organizations that do not have all the characteristics of genuine trade union organizations (‘solidarism’ in Central America);
- ✓ Transformation of contracts of employment into commercial contracts (example of the aviation sector in Venezuela)

Towards more collective bargaining:

- ✓ Less interventionist States, more liberal view of public action;
- ✓ Search for formulas which are less rigid than the legislation for regulating working conditions;
- ✓ Beginning of the internationalization of collective bargaining by the signing of framework agreements: example of multinational sectors of activity and companies (food sector with UITA-Accor and Danone, construction sector with FITBB-Ikea, distribution sector with UNI-Carrefour, automobile sector with FIOM-Volkswagen and Daimler-Chrysler, power sector with ICEM-ENI... a total of 35 agreements between international federations and multinational companies);
- ✓ Note should also be taken of agreements signed between the International Transport Workers’ Federation and international employers’ organizations in the maritime sector (flags of convenience), concerning working conditions and wages;
- ✓ Agreements signed within the European Union between UNICE and the CES on parental leave (1995), part-time work (1997), fixed-term contracts (1999) and teleworking (2002); the latter agreement, contrary to the

preceding ones, will not be covered by a Directive but will be implemented directly by the signatories;

- ✓ Problem arising: Who should ensure the monitoring of the application of international agreements? The company itself, the trade unions, both of them together, an NGO, specialized offices, the ILO?

### 3 - Right to strike

- ✓ Now more than ever before, the strike has become a double-edged sword: opportunities for companies to migrate more easily, change in trade name. Examples of cases before the Committee on Freedom of Association in Central America;
- ✓ Relocations decided after a strike are often decided in distant places by unknown people or bodies based on grounds which are never revealed. The workers and their trade unions are losing the power to influence decisions;
- ✓ Examples of relocation after a social conflict are still relatively rare, however;
- ✓ The strike nevertheless remains a guarantee to prevent collective bargaining in bad faith.

The current situation therefore highlights the fact that, despite a rather favourable legislative context, in practice trade union action often tends to be more difficult.

### *III WHAT ACTION CAN BE TAKEN IN THE LIGHT OF THIS CONTRASTING SITUATION?*

The first proposal would involve a return to an economy in which trade is managed.

This is an unrealistic proposal, however, since it denies technological progress.

It is also not advisable: the positive aspects of globalization cannot be denied, including the social aspects (certain countries start to develop and living standards rise, trade and mutual understanding increase).

As the World Commission on the Social Dimension of Globalization has found, the problems identified are due not to globalization per se, but to shortcomings in its governance, particularly because measures to open markets up and financial and economic considerations prevail over social ones.

Globalization is therefore a phenomenon that must be regulated.

The second proposal would involve adopting a social clause.

This is a clause that tends to ensure that minimum basic standards are observed, failure to respect this clause leading to commercial sanctions or the withdrawal of advantages.

This system already exists at national level (United States) and at regional level (European Union).

But there is no consensus at international level, either within the World Trade Organization or the International Labour Organization.

The third proposal is to emphasise and accelerate the trend towards the globalization of law.

This is an increasing phenomenon in many areas:

- politics, with the creation of the International Criminal Court;
- the economic and social area, with standards concerning intellectual property, the environment, stability of the international monetary system, and finally in the area of work.

The area of work is without doubt the most delicate (entrenched in the national milieu, difficulties even in the framework of the European Union).

Freedom of association is without doubt the most important element in this area, since social progress is conditional upon the existence of independent, strong and responsible employers' and workers' organizations.

The importance of an international approach to problems should be emphasized (solidarity between workers in the west and developing countries).

The weight of international employers' and workers' organizations tends to offset the democratic deficit.

The most recent developments provide grounds for optimism:

- the current period is a period of transition and therefore a difficult one;
- but at all decision-making levels there is a broad awareness of the internationalization of problems, with as a result:
  - the development of international collective bargaining;
  - the social dimension of regional economic integration;
  - birth and development of truly independent workers' and employers' organizations in emerging countries.

The International Labour Organization cannot avoid world development and must therefore intensify and diversify its action. It should in particular take account of the emergence of crucial new elements in the political and economic world, i.e. regional economic integration communities and multinational companies.