



Background paper

The amendments are registered in the Verkhovna Rada of Ukraine bill 'On Amendments to the Law of Ukraine 'On Trade Unions, their Rights and Guarantees of Activity' (reg. No. 3474 of 11/13/2015) They are submitted by the People's Deputies of Ukraine I. Markevych, A. Riabchyn, S. Zalishchuk, I. Klympush-Tsyntsadze, and S. Leshchenko. Justifying the need for the adoption of the bill, the authors point to the imperfection of the legislation and limitations to the protection of the students' rights.

The bill proposes to amend Article 7 (trade union membership) and Article 36 (duty of trade unions and their associations regarding the protection of the rights and interests of their members) of the Law of Ukraine 'On Trade Unions, their Rights and Guarantees of Activity', namely to supplement the provisions on cessation of participation in the primary trade union organisation of the individual who finishes the educational institution; on definition as a basis for the resumption in the primary trade union organisation of the individual who continues studying in a different educational and qualification level, the repeated application of the citizen (worker); on establishing restrictions on the right to be elected to the elected bodies of the primary trade union exclusively to the individuals studying in this institution; on limiting the term of office of the members of the elective bodies of two years; on requiring for all trade unions and their associations to publish annually all the financial reporting on their official websites.

These provisions of the bill are another attempt aimed at the narrowing the scope of the existing rights of the studying individuals to participate in the trade unions. The restriction of the rights and guarantees of activity of the trade unions contravene: Articles 22, 36 of the Constitution of Ukraine and the International Labour Organization Convention No. 87 on Freedom of Association and Protection of the Right to Organise. The amendments also contradict the Laws of Ukraine 'On Trade Unions, their Rights and Guarantees of Activity', 'On Public Associations', 'On Personal Data Protection'. They are an interference in the self-governing trade union activity of the student trade union organisations and trade unions in general.

Based on past jurisprudence of the ILO Committee on Freedom of Association, the right to form the trade union or the employers' association cannot be subject to any conditions in respect of neither the creation of the organisation, nor the approval of the statutes or regulations of the organisation.

Article 36 of the Constitution of Ukraine guarantees the citizens of Ukraine the right to freedom of association in the non-governmental organisations, including the trade unions, to exercise and defend their rights and freedoms, and to meet the economic, social, cultural and other interests. The trade unions are formed without prior permission based on the free choice of their members. All trade unions have equal rights. Any restrictions on membership in the trade unions shall be established exclusively by this Constitution and the laws of Ukraine. No one may be compelled to join any association of citizens or be restricted in his/her rights for belonging or not belonging to the political parties or public organisations.

EPSU Secretariat 40 rue Joseph II, box 5 – 1000 Brussels, Belgium
Phone: +32 2 250 10 80 Fax: +32 2 520 10 99 Mail: epsu@epsu.org www.epsu.org

European
Federation
of Public
Service
Unions

Federación
Sindical
Europea
de Servicios
Públicos

Fédération
Syndicale
Européenne
des Services
Publics

Europeiska
Federationen
för Offentlig-
anställdas
Förbund

Europäischer
Gewerkschafts-
verband für den
Öffentlichen
Dienst

Европейская
Федерация
Профсоюзов
Общественного
Обслуживания



EPSU is a member
federation of the ETUC
and represents
PSI in Europe

The proposed provisions of the bill on the automatic termination of the studying individual's participation in the primary trade union organisation violate Article 36 of the Constitution of Ukraine and Article 5 of the Law of Ukraine 'On Public Associations' on the right to freedom of association in the non-governmental organisations and the right to terminate the membership (participation) in the public association freely, at any time, in the order established by the statutes. The proposed provisions violate the principle of self-activity of the public organisations, and interferes in the statutory activities of the trade union organisations.

The introduction of rules of automatic termination of participation in the primary trade union organisation narrows the scope of the individuals' right to participate in the trade unions, the right to voluntary termination of membership (participation) and is contrary to Article 22 of the Constitution prohibiting the adoption of the new laws or amending the existing laws in order to narrow the content and scope of the existing rights and freedoms.

In accordance with Part 2, Article 4 of the Law of Ukraine 'On Trade Unions, their Rights and Guarantees of Activity', the laws and other legal acts shall not restrict the rights and guarantees of activity of the trade unions under the Constitution of Ukraine and this Law.

The interference of the state authorities, local governments, their officials, employers and their organisations in the statutory activity of the trade unions, their organisations and associations shall be prohibited (Part 3, Article 12 of the Law).

The conditions and procedure of trade union membership and withdrawal, the rights, duties of the trade union members, the conditions, procedure and grounds for expelling from the trade union shall be determined by the statutes of the trade union (paragraphs 3, 4, Part 3, Article 14 of the Law).

The legislative proposals relating to the accounting changes on the financial activities of the trade unions do not meet the provisions of the national and international law. In accordance with Article 3 of the Convention of the International Labour Organization No. 87 on Freedom of Association and Protection of the Right to Organise, Article 11 of the Law of Ukraine 'On Public Associations' and Part 4, Article 34 of the current trade union law, the public organisations independently develop their own statutes and regulations, freely elect their representatives, organise their administration and activity, establish accountability of the governing bodies before the members (participants).

The public authorities shall refrain from any interference that would restrict or impede the lawful exercise of the trade union activity. In addition, paragraph 2, Article 3 expressly refers to the prohibition of the government' interference in the trade union affairs.

From the perspective of the ILO Committee on Freedom of Association, it is necessary that the legal norms regulating the content of the trade union statutes do not lead to the restriction of independence of the trade union and employers' organisations from the state.

Under the current law, the state authorities and local governments do not carry the financial control over the means of the trade unions and their associations. The control over their income and expenditure is carried out by the auditing bodies elected in accordance with the statutes (regulations) of the trade unions and their associations.

In accordance with Article 23 of the Law of Ukraine 'On Public Associations', the obligation to publish the reports on the targeted use of the funds is only set for the non-governmental organisations receiving financial support from the State Budget of Ukraine, local budgets and exclusively on these funds.

The provision on publication on the official websites of the trade unions and their associations their financial reporting is contrary to the Law of Ukraine 'On Personal Data Protection', as this information contains personal data of trade union members and may be made public only with their consent.

EPSU Secretariat 40 rue Joseph II, box 5 – 1000 Brussels, Belgium
Phone: +32 2 250 10 80 Fax: +32 2 520 10 99 Mail: epsu@epsu.org www.epsu.org

European
Federation
of Public
Service
Unions

Federación
Sindical
Europea
de Servicios
Públicos

Fédération
Syndicale
Européenne
des Services
Publics

Europeiska
Federationen
för Offentlig-
anställdas
Förbund

Europäischer
Gewerkschafts-
verband für den
Öffentlichen
Dienst

Европейская
Федерация
Профсоюзов
Ощественного
Оьслуживания

SYNDICAT
EUROPEAN
TRADE UNION



EPSU is a member
federation of the ETUC
and represents
PSI in Europe