

## **Labour rights of citizens: Foreign experience in adopting amendments to the Constitution**

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### **Abstract**

The article presents a comparative analysis of the respective provisions of the constitutions of selected foreign countries in the sphere of protection of labor rights of citizens. It provides an overview of most commonly cited labour rights with an aim to review them against comparable provisions in the Constitution of Uzbekistan to develop recommendations drawing on foreign experience.

### **Keywords:**

Constitution, Constitutional law, labour rights, employment, comparative law, right to work, equal pay, leisure and rest, social security, collective labour bargaining, strikes, trade unions, participation in the management of enterprises.

Labour rights are provided for in modern constitutions of an overwhelming number of countries. Likewise, labour standards have been fixed at an international level by various treaties and conventions in the framework of international organizations like International Labour Organization.

It is claimed that labour rights are essential to the functioning of a democratic, social, legal state which is endorsed by their consolidation in the sections of the constitutions of foreign countries<sup>1</sup>. According to Khudoley, a welfare or social state is characterized by creating such conditions that allow a person to develop freely and live a decent life, providing equal opportunities to people in terms of making a living. For instance, Article 14 of the Constitution of the Republic of Uzbekistan dated December 8, 1992 provides that a state builds its activities on the principles of social justice and legality in the interests of the well-being of man and society.

Thus, it can be concluded that the very purpose of the social state is to create the most favorable conditions that ensure a decent life and free development of a person. One of the main ways to achieve this objective is to maintain an efficient policy of labour rights protection.

At the same time, in modern legal scholarship the approach to the nature of the social state is being revised. Although the concept of the “welfare state” continues to develop in the western scholarship, one can notice a deviation from this concept

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<sup>1</sup> Khudoley K.M., “Labour rights in system of constitutional rights and freedoms of citizens of foreign countries of the CIS and Baltic” (2010) Perm University Bulletin, Issue 1 (7), p. 171

towards the concept of the “workfare state” whereby the state provides decent living conditions, however, an individual is responsible for taking care of himself<sup>2</sup>. For instance, as per article 53 (4) of the Constitution of Kyrgyzstan which was in force in 2010 “Social activity of the State shall not result in the state guardianship limiting economic freedom and activity of a citizen and the possibilities of a citizen to attain economic wellbeing for himself/herself and his/her family”.

Likewise, Article 14 (2) of the Constitution of the Republic of Belarus provides that “Relations in the social and labour sphere between the bodies of state administration, associations of employers and trade unions shall be exercised on the principles of social partnership and interaction of parties”.

In general, the following have been brought under the umbrella of labour rights in constitutions of the selected foreign countries: right to work, right to freely choose one’s occupation or profession, right to equal pay for equal work, right to leisure and rest, right to be assured adequate means for their needs and necessities in the case of accidents, illness, disability, old age and involuntary unemployment, right to collective labour bargaining, right to strike, right to engage in trade union activities, right to establish relations with or join international trade union organisations.

### **Right to work/employment and freedom to choose a profession**

To illustrate, in the Constitution of Federal Republic of Germany under Section I. Basic Rights the stress is put on occupational freedom rather than the right to work: “All Germans shall have the right freely to choose their occupation or profession, their place of work and their place of training”<sup>3</sup>. This is followed by the provision on the prohibition of forced labour except under exceptional circumstances.

Article 37 of Chapter 9. “Economic and Social Rights” of the Constitution of Uzbekistan recognizes the right of the citizens to work, including the right to choose their occupation. Similar provisions can be found the Constitutions of Tajikistan<sup>4</sup>, the Russian Federation<sup>5</sup>, Ukraine<sup>6</sup>, Belarus<sup>7</sup>, Turkmenistan<sup>8</sup>, Moldova<sup>9</sup>. This is followed by entitlement to fair conditions of labour and protection against unemployment. Forced labour is likewise prohibited except for instances specified by law.

The provisions of the Constitution of the Kingdom of the Netherlands under Chapter 1. Fundamental rights are framed in an alternate arrangement. Article 19 (1) states that “It shall be the concern of the authorities to promote the provision of

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<sup>2</sup> Ibid, p. 172

<sup>3</sup> Article 12

<sup>4</sup> Article 35

<sup>5</sup> Article 37

<sup>6</sup> Article 43

<sup>7</sup> Article 41

<sup>8</sup> Article 33

<sup>9</sup> Article 43

sufficient employment”. And again, Article 19 (3) provides for the right of every Dutch to a free choice of work save with certain reservations. Similar to the Dutch Constitution, Article 40 of the Spanish Constitution entrusts the public authorities with the task to strive for full employment. Additionally, they should aim to ensure a more equitable distribution of personal and regional income.

Workers’ rights, freedoms and guarantees. Under Chapter I. “Economic rights and duties” the Constitution of Portugal similarly guarantees the right to work for everyone. To this end, the state is tasked with the following: running full-employment policies; granting equal opportunities as regards the choice of profession or type of work, and establishing the conditions that exclude gender-based preclusion or limitation of access to any position; cultural and technical training as well as vocational development for workers must be put in place<sup>10</sup>. On top of that, the Constitution of Portugal specifically addresses so-called job security, also prohibiting dismissal without fair cause or for political or ideological reasons<sup>11</sup>.

By the same token, Article 35 of the Spanish Constitution points out that all citizens of Spain have the duty to work and the right to employment, to free choice of profession or trade and to advancement through their work.

Therefore, contrary to an opinion expressed in legal scholarship that most constitutions of post-Soviet countries as well as some European countries, in contrast to constitutions of the Soviet era, do not incorporate the right to work, since in era of market economy, development of private entrepreneurship and increasing unemployment, states are not able to really provide employment for everyone<sup>12</sup>, constitutions of many countries still incorporate such a provision.

### **Protection of migrant workers**

Constitution of the Italian Republic under Title III “Economic rights and duties” recognises the freedom of the Italian citizens to emigrate for work purposes and points out state’s responsibility to protect Italian workers abroad. Constitutions of other countries similarly grant protection to workers taking up employment abroad<sup>13</sup>.

Under the Constitution of Uzbekistan citizens are granted legal protection both on the territory of the republic and abroad<sup>14</sup>. However, this guarantee is provided for under Chapter 6. “Citizenship” and the Constitution is silent on the protection of workers working abroad.

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<sup>10</sup> Article 58

<sup>11</sup> Article 53

<sup>12</sup> See note 2

<sup>13</sup> Article 42 of the Spanish Constitution; Article 59 of the Portuguese Constitution

<sup>14</sup> Article 22

### **Training of workers**

Furthermore, under the Italian Constitution the state is obliged to provide training and professional advancement of workers. The state should also aim to conclude international agreements and cooperate under the auspices of international organisations to regulate labour rights in a proper way<sup>15</sup>.

Similarly, according to Article 38 of the Spanish Constitution public authorities shall guarantee vocational training and retraining to the workers.

### **Right to remuneration**

Article 36 of the Italian Constitution stipulates that remuneration of workers should be commensurate to the quantity and quality of the work and should guarantee the workers and their families a free and dignified existence.

In a similar way, the Spanish Constitution in Article 35 guarantees all Spaniards the right “to sufficient remuneration for the satisfaction of their needs and those of their families”.

Article 59 (2) of the Portuguese Constitution establishes the principle of a national minimum wage which should correspond to workers’ needs, the rise in market prices, economic and financial situation, and other factors. Further, Article 59 guarantees workers a remuneration in accordance with the volume, nature and quality of the work performed and in such a way as to guarantee a proper living.

### **Rest and holidays**

Moreover, Article 36 of the Italian Constitution provides a cap regarding maximum daily working hours. The article goes as far as to prohibit the waiver of the right of workers to a weekly rest day and paid annual holidays. The Constitution of Uzbekistan in Article 38 provides the following: “Citizens working on hire shall be entitled to a paid rest. The number of working hours and the duration of paid leave shall be specified by law” without foreclosing the maximum work time overtop.

According to Article 37 of the Italian Constitution working women and men are entitled to equal rights and equal pay. Furthermore, “Working conditions must allow women to fulfil their essential role in the family and ensure appropriate protection for the mother and child”. Article 59 of the Constitution of Portugal stipulates that work should be “organised in such a way as to make it possible to reconcile professional and family life”.

By way of contrast, Article 46 of the Constitution of Uzbekistan under Chapter 10. “Guarantees of Human Rights and Freedoms” establishes equal rights for men and women as a general mechanism without specifying their equal footing in the workplace.

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<sup>15</sup> Article 35

Other countries have incorporated similar provisions related to the right to adequate rest and leisure, limited working day, weekly rest period, periodic paid holidays<sup>16</sup>.

### **Welfare benefits**

Article 38 of the Italian Constitution ensures that “Every citizen unable to work and without the necessary means of subsistence is entitled to welfare support”. In the same manner, adequate means of social protection are guaranteed to workers in case of accidents, illness, disability, old age and involuntary unemployment. Article 38 goes even further in recognizing the right of the disabled and handicapped persons to receive education and vocational training.

Article 59 of the Constitution of Portugal incorporates provisions related to work-related special protection for women, minors, students, the disabled and “those whose occupations are particularly strenuous or take place in unhealthy, toxic or dangerous conditions”. Material assistance in case of involuntarily unemployment as well as adequate compensation to workers who have become victims of work-related accidents or occupational illnesses are available too<sup>17</sup>.

In a similar vein, the Constitution of Uzbekistan aims to guarantee social security in case of disability and loss of the bread-winner and other situations. At the same time, welfare benefits such as pensions and allowances may not be lower than the established minimum level<sup>18</sup>.

Article 41 of the Spanish Constitution establishes a public social security system which would guarantee adequate social assistance in situations of hardship and unemployment.

### **Trade unions and collective bargaining**

Article 39 of the Italian Constitution provides for free establishment of trade unions which may enter into collective labour agreements. A mandatory condition for their registration is that the trade unions conduct their activities on a democratic basis as established by their statutes. Similarly, Article 37 (1) of the Spanish Constitution guarantees the right to collective labour bargaining between workers and employers and ensures the binding force of such agreements. By contrast, the right of citizens to form trade unions has been included in the Chapter 8. “Political Rights” of the Constitution of Uzbekistan along with the right to form political parties and any other public associations<sup>19</sup>.

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<sup>16</sup> Article 38 of the Spanish Constitution; Article 59 (1) of the Constitution of Portugal

<sup>17</sup> Article 59 (1) of the Constitution of Portugal

<sup>18</sup> Article 39

<sup>19</sup> Article 34

Similar to the Italian case, the Constitution of Spain provides for a possibility to establish professional associations subjecting them to the condition that their operation must be democratic<sup>20</sup>.

The Constitution of Portugal devotes a specific chapter to labour rights - Chapter III. Article 55 of the Constitution of Portugal by the same token recognizes the right to form trade unions at any level charged with promoting interests of the workers. Apart from that, “workers’ elected representatives shall enjoy the right to be informed and consulted”. Workers’ representatives also enjoy legal protection against any form of constraints or limitations in the exercise of their functions.

Article 56 then goes on to list the specific rights of trade unions: to exercise of the right to enter into collective agreements; to take part in drawing up labour legislation; to take part in the management of social security institutions and other organisations that seek to fulfil workers’ interests; to give their opinion on economic and social plans and supervise their implementation; to be represented on social conciliation bodies; to take part in corporate restructuring processes, especially in relation to training actions or when working conditions are altered.

### **Right to strike**

Article 57 of the Portuguese Constitution guarantees workers the right to strike. Nevertheless, workers shall be in charge of determining the scope of the interests they are seeking to protect by strike and that scope cannot be limited by law. Further, the law should ensure that the most essential social needs are still provided to the population during the strikes. The article also prohibits lock-outs.

It is noteworthy that the right to strike in the Italian Constitution specifically belongs to the chapter on economic rights and duties<sup>21</sup> while under the Constitution of Uzbekistan the right of the citizens to engage in public activity in the form of rallies, meetings and demonstrations has been included under Chapter 8. “Political Rights” only and is absent as an economic or labour right<sup>22</sup>.

### **Collective management of enterprises**

Article 46 of the Italian Constitution grants workers the right to collaborate in the management of enterprises subject to limitations prescribed by law.

In the same spirit, Article 54 of Constitution of Portugal empowers workers to form workers’ committees to participate in the management of a company’s businesses in a democratic way. Workers’ committees have as broad powers as to take part in drawing up labour legislation and economic and social plans that address their sector.

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<sup>20</sup> Article 36

<sup>21</sup> Article 40

<sup>22</sup> Article 33

### **Equal pay for equal work**

The Spanish Constitution under Section 2 “Rights and Duties of Citizens” in Article 35 prohibits discrimination on the basis of gender in the context of employment. Article 59 of the Constitution of Portugal in a similar vein follows the principle of equal pay for equal work.

### **Adequate work conditions**

Article 40 of the Spanish Constitution has tasked its public authorities with maintaining a policy to ensure workplace safety and hygiene.

The Constitution of Portugal likewise provides for maintaining hygienic, safe and healthy work conditions<sup>23</sup>. Article 37 of the Constitution of Uzbekistan briefly mentions fair conditions of labour in this regard without making the provision clearer.

### **Conclusion**

The right to work and to the free exercise of a profession go hand in hand with the latter taking a predominant role in the Constitutions of Western countries. Furthermore, while some countries incorporate labour rights in the section of basic rights/fundamental rights and duties (Germany, the Netherlands, Spain), other countries devote a specific section of the Constitution to economic rights and duties (Italy). The Constitution of Portugal which provides the most expansive list of workers’ rights among the selected countries goes as far as to introduce a separate chapter on workers’ rights, freedoms and guarantees.

Drawing on foreign experience, it would be advisable to devote a specific subsection to workers’ rights under the chapter on economic and social rights of the Constitution of Uzbekistan. While a predominant number of countries presented in the paper recognize the right to work/employment and free exercise of the profession, in most of the cases the right to work is placed on the same footing as freedom of labour. The Spanish Constitution is the only constitution among the selected countries where the duty to work has been laid down explicitly. It follows therefore that it is the state’s responsibility to create all necessary conditions for an individual to exercise that freedom and its role has gained a supporting rather than prescribing nature. Nevertheless, state bodies still have to perform certain obligations such as prevent discrimination, ensure safe working environment and take care of the social protection in case of loss of an opportunity to make one’s living.

Gender policy in Uzbekistan is actively developing with many legislative acts being adopted. Emphasizing equality of men and women in the workplace by incorporating the right to equal pay for equal work and guaranteeing work conditions that would allow a fair balance between professional and family responsibilities of

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<sup>23</sup> Article 59

men and women would reinforce other legislative acts in the area. Certain privileges are usually established in relation to such categories of population as women, children, the disabled which should not be in any case considered discrimination.

Further, the provision in the Constitution of Uzbekistan as it stands provides that the number of working hours and the duration of paid leave is to be determined by law. In line with Italian experience, to ensure greater protection to workers and commit to the right to leisure and rest, maximum daily/weekly working hours should be guaranteed in our country as well.

The right to remuneration also does not find its place in the Constitution of Uzbekistan. However, pay for work is what allows people to make a living and without it the right to work is a mere nullity. Thus, it should be expressly provided for ensuring that its level is such as to allow a decent living and should not be below the amount fixed nationally. It is commonplace in the constitutions of the selected states that the amount of remuneration should be determined in a way that would allow workers and their families a worthy existence.

In some countries like Portugal state's role in promoting vocational development for workers is essential in exercising the right to work given the fact that it has been put before all other workers' rights. Therefore, it is important for a state to create necessary conditions for peoples' life-long vocational development and could be likewise incorporated in the Constitution of Uzbekistan.

The study of foreign experience demonstrates that the right to strike and right to engage in trade union activities belong to the economic context. It is recommended to guarantee them not only as a political right as in the current version of the Constitution of Uzbekistan but as explicit workers' rights to advance legitimate interests of workers.

Finally, the right to collective labour bargaining, right to establish relations with or join international trade union organisations, the rights of workers to collaborate in the management of businesses and protection of nationals working abroad should be similarly incorporated as they constitute the very basic workers' entitlements, find their place in constitutions of many developed countries and reflect international standards set by international organizations.



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