

The scope of trade union freedom as a human right in Algeria in comparison with international standards

نطاق الحرية النقابية كأحد حقوق الإنسان في الجزائر مقارنةً بالمعايير الدولية

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Received: 30/05/2025

Accepted:25/10/2025

Published:30/01/2026

Abstract:This study examines the legal and practical scope of trade union freedom in Algeria in light of international labor standards, particularly those established by the International Labour Organization (ILO). Although Algeria formally recognizes trade union rights through its Constitution and Labour Code, significant restrictions remain concerning the establishment, registration, and political activities of trade unions. The requirement of prior authorization, administrative oversight by the Ministry of Labour, and limitations on political engagement by unions are seen as inconsistent with ILO Convention No. 87, which guarantees freedom of association without interference from public authorities.

While Algeria has taken formal steps toward alignment with international standards, there is a pressing need for substantial reforms to ensure genuine trade union freedom and independence. Strengthening trade union rights is not only essential for safeguarding workers' rights, but also for promoting democratic governance and achieving social justice, as trade union freedom is undeniably a fundamental human right.

Keywords: Trade union freedom, International Labour Organization (ILO), Workers' rights, Human rights

ملخص: تتناول هذه الدراسة النطاق القانوني والعملي للحرية النقابية في الجزائر في ضوء المعايير الدولية للعمل، ولا سيما تلك التي وضعتها منظمة العمل الدولية. فعلى الرغم من أن الجزائر تعترف رسمياً بحقوق النقابات من خلال دستورها وقانون العمل، إلا أن هناك قيوداً كبيرة لا تزال قائمة فيما يتعلق بتأسيس النقابات وتسجيلها وممارستها للأنشطة السياسية. ويُنظر إلى اشتراط الحصول على ترخيص مسبق، والرقابة القبلية من قبل وزارة العمل، والقيود المفروضة على الانخراط السياسي للنقابات، على أنها تتعارض مع اتفاقية منظمة العمل الدولية رقم 87 التي تضمن حرية تكوين الجمعيات دون تدخل من السلطات العامة.

فالجرائر، وإن كانت قد اتخذت خطوات رسمية نحو التقارب مع المعايير الدولية، إلا أن هناك حاجة ماسة إلى إصلاحات جوهرية تضمن حرية النقابات واستقلاليتها. وتعتبر تقوية الحرية النقابية أمرًا أساسيًا ليس فقط لحماية حقوق العمال، بل أيضًا لتعزيز الحوكمة الديمقراطية وتحقيق العدالة الاجتماعية على اعتبار أن الحرية النقابية تعد لا محالة حقا أساسيا ضمن حقوق الإنسان.

الكلمات المفتاحية: الحرية النقابية، منظمة العمل الدولية، حقوق العمال، حقوق الإنسان

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1. Introduction

In 1948, the emerging field of international human rights law witnessed two landmark developments: first, the adoption by the International Labour Organization (ILO) of Convention No. 87 on Freedom of Association and Protection of the Right to Organise; and shortly thereafter, the adoption of the Universal Declaration of Human Rights. The close relationship that existed at the time between certain aspects of these two instruments has since been preserved through the supervisory mechanisms of the ILO.

Indeed, the free election of representatives of employers' and workers' organizations can be approached from multiple perspectives, which has given rise to challenges concerning the principles enshrined in the Convention. This specifically relates to procedures for electing union representatives, conditions of eligibility, re-election, and removal of leaders[1]. The autonomy of these organizations can only be ensured if such matters are regulated by the organizations themselves within their statutes. The ILO supervisory bodies have repeatedly opposed strict governmental control over union elections, which may constitute interference in violation of the Convention and poses the risk of arbitrary intervention. Where oversight is deemed necessary, it should be carried out by a judicial authority in order to guarantee an impartial process.

Nevertheless, it is important to recall that while the right to strike is explicitly recognized in instruments such as the International Covenant on Economic, Social and Cultural Rights (1966), the International Charter of Social Guarantees (1948), and the European Social Charter (1961), it is not provided for in any ILO convention or recommendation. However, ILO supervisory bodies have addressed the issue of the right to strike more frequently than any other in the context of industrial relations. It is through this monitoring process that ILO principles in this area have been established[2].

The general principle is that the right to strike is an inseparable corollary of the right to freedom of association, as protected by Convention No. 87. Therefore, the phenomenon of striking cannot be considered in isolation from the broader framework of industrial relations. Articles 3, 8, and 10 of Convention No. 87 provide the legal basis for this principle.

With regard to Algerian law, Law No. 23-02 of 25 April 2023, relating to the exercise of trade union rights, represents a major reform of the legal framework governing trade union freedom in Algeria. It aims to align national legislation with international standards, particularly ILO Convention No. 87, while reinforcing the constitutional guarantees associated with trade union rights.

Indeed, trade union freedom, as a fundamental right, plays a crucial role in safeguarding workers' interests and promoting social justice. In Algeria, although this right is enshrined in the legal framework, it remains subject to interpretation and certain limitations. Understanding how this freedom is defined and protected in Algeria requires a thorough analysis of both national legislation and international standards, particularly those established by the International Labour Organization (ILO) and other international bodies.

This study seeks to examine the scope of trade union freedom in Algeria, to compare it with international standards, and to identify areas in need of improvement.

2. Definition and Scope of Trade Union Freedom in Algeria

Trade union freedom in Algeria is primarily governed by the Algerian Constitution and various labor laws. The Constitution of 1963, along with subsequent revisions, guarantees the right to organize and form trade unions. Article 53 of the 1996 Constitution explicitly mentions that citizens have the right to form trade unions, though this right is subject to certain conditions and limitations set forth by law. This provision is in line with the international standards outlined by the ILO in its conventions, particularly Convention No. 87 on Freedom of Association and Protection of the Right to Organize (1948). [3]

In Algeria, the right to form trade unions is not absolute. Although individuals are free to create associations for the purpose of defending their professional interests, the law imposes several restrictions on this right. For example, trade unions must register with the Ministry of Labour to become legally recognized, which means that they must comply with bureaucratic processes that could potentially delay or prevent the formation of unions. Furthermore, the law limits the ability of trade unions to engage in certain political activities, which might be seen as a restriction of their freedom to act according to their members' best interests.

We can nevertheless readily highlight the significant advancements introduced by Law No. 23-02 regarding trade union freedom, particularly in the following areas:

Clear recognition of trade union rights: The law explicitly guarantees the right of every salaried worker and employer to freely join a trade union organization, without discrimination or pressure from the employer. It prohibits any discriminatory measures related to trade union membership, particularly in matters of recruitment, promotion, remuneration, or disciplinary actions.

Protection against interference: The law prohibits acts of interference by employers aimed at controlling or influencing trade union organizations,

including the creation of “company unions” or the provision of financial support intended to undermine union independence.

Legal personality and capacity to act in court: Trade union organizations acquire legal personality upon the declaration of their establishment, granting them the right to take legal action to defend the collective and individual interests of their members.

Participation in social dialogue: Representative unions are authorized to participate in collective bargaining, procedures for resolving collective disputes, and consultations on public policies related to employment, wages, and social security.

3. International Standards on Trade Union Freedom

Internationally, trade union freedom is considered a cornerstone of labor rights. The ILO, as the leading body on labor standards, has established a set of conventions that aim to protect the right of workers to freely form and join trade unions. Convention No. 87 on Freedom of Association and Protection of the Right to Organize, adopted in 1948, is one of the key instruments in this regard. This convention emphasizes that workers and employers have the right to establish and join organizations of their own choosing without interference from the government.

Article 2 of Convention No. 87 specifically states that "workers and employers shall have the right to establish and, subject only to the rules of the organizations concerned, to join organizations of their own choosing without previous authorization." This principle of freedom of association is central to the idea of trade unionism, as it ensures that unions are independent and free from undue influence by the state or employers.

By extrapolation, we can identify certain evident limitations and concerns arising from the Algerian law, particularly in the following areas:

Complex declaration procedure: The law maintains a declaration process for trade union organizations, requiring the issuance of a registration receipt

within 30 working days. This requirement, perceived as a form of prior administrative authorization, may be inconsistent with Article 2 of ILO Convention No. 87.

Discretionary power of the administration: The administrative authority is granted discretionary power to suspend the issuance of the registration receipt if the application for establishment does not comply with legal provisions. This may hinder the effective exercise of freedom of trade union association.

Strict criteria for representativeness: In order to be recognized as representative, trade union organizations must demonstrate that they have at least 25% membership or an equivalent electoral audience, in addition to proving financial transparency and political neutrality. These more stringent requirements may exclude many union structures, particularly in the private sector.

Severe sanctions for non-compliance: Trade unions that fail to meet the representativeness criteria may be subject to judicial dissolution after three years of inactivity, raising concerns about trade union pluralism and the right to freely organize

4. **Comparative Analysis: Algeria vs. International Standards**

When comparing Algeria's approach to trade union freedom with the standards set by the ILO, several differences emerge. While Algeria has made strides in recognizing trade union rights, certain legal provisions still fall short of international expectations. For example, the requirement for unions to register with the Ministry of Labour contradicts the principle of freedom of association as defined by the ILO, which advocates for minimal state intervention in the establishment of unions. This administrative hurdle can be seen as a form of indirect restriction on the exercise of trade union freedom.

Moreover, the limitation on political activities for trade unions in Algeria stands in contrast to the international understanding of union freedom. The ILO stresses that trade unions should be able to engage in political activities if they so choose, as long as such activities are within the bounds of the law. By restricting this freedom, Algeria limits the scope of union activism and its ability to fully represent workers' interests.

5. The Legal Framework for Trade Union Activities in Algeria

Algeria's legal framework regulating trade unions is largely shaped by the Labour Code, which has undergone various amendments since its initial adoption in 1990. The Labour Code, while recognizing the right to form trade unions, establishes detailed procedures for union registration and recognition. Trade unions are required to submit a formal declaration of their formation to the Ministry of Labour, which then has the authority to approve or reject the application based on legal criteria. This process has raised concerns among critics, as it introduces state control over the formation of trade unions, potentially hindering their independence and ability to operate freely. [6]

The Labour Code also regulates the scope of trade union activities, specifying the rights of unions to represent workers in negotiations with employers and in disputes related to employment conditions. However, it limits the ability of unions to engage in political activities or to form alliances with political parties. Such restrictions are justified by the state as necessary to maintain social order and prevent any potential disruptions to the political system. Critics argue that these provisions undermine the role of trade unions as independent bodies that should be able to represent workers' interests in a wide range of societal issues.

6. International Criticism and Recommendations for Improvement

While Algeria's legal framework on trade union freedom does offer some protections for workers, it has attracted significant criticism from international bodies such as the ILO. In particular, the ILO has raised

concerns about the excessive state control over the registration and functioning of trade unions, arguing that such restrictions are incompatible with the principles of freedom of association.

The ILO's Committee on Freedom of Association has repeatedly called on Algeria to amend its Labour Code to remove provisions that allow for undue state interference in the formation and operation of trade unions. Specifically, the ILO has recommended that Algeria eliminate the requirement for trade unions to register with the Ministry of Labour and allow unions to function freely without state intervention. Additionally, the ILO has emphasized the importance of ensuring that trade unions can engage in political activities if they choose, as long as they do so within the confines of the law. [4]

The International Trade Union Confederation (ITUC) has also criticized the Algerian government's stance on trade union freedom. According to the ITUC, the restrictions on political activities and the bureaucratic hurdles involved in union formation create a climate of fear and repression, limiting workers' ability to organize effectively and advocate for their rights. The ITUC has urged the Algerian government to bring its laws into line with international standards and ensure that trade unions can operate freely and without interference. [5]

7. The Role of Trade Unions in Algerian Society

Trade unions in Algeria have historically played a significant role in advocating for workers' rights and improving labor conditions. However, their effectiveness has been hampered by political and legal restrictions, which have limited their ability to function as fully independent organizations. Trade unions in Algeria often face challenges in mobilizing workers and engaging in collective bargaining due to the government's tight control over the labor market and its stance on political activities.

One notable example of trade union activism in Algeria occurred in the early 2000s when workers in the public sector staged a series of strikes demanding better wages and improved working conditions. These strikes were met with harsh responses from the government, which sought to suppress the unions involved. While the protests highlighted the important role that trade unions play in advocating for workers, they also underscored the challenges faced by unions in a context of state control and political repression.

Despite these challenges, Algerian trade unions continue to be active in promoting workers' rights, particularly in sectors such as healthcare, education, and transportation. However, their ability to influence national policy and secure improvements in labor conditions remains limited due to the restrictions placed on their activities.

8. Comparative Analysis with Other Countries in the Region

To better understand the situation in Algeria, it is helpful to compare the country's trade union framework with that of other countries in the region. Many North African countries share similar historical and political contexts, which have shaped their approach to trade union freedom. For instance, in Tunisia, trade unions have traditionally played a more prominent role in political life, particularly through the Tunisian General Labour Union (UGTT). The UGTT has been a key player in negotiations with the government and has been able to advocate for workers' rights more effectively than unions in Algeria.

In contrast, Morocco has a more liberalized trade union system, with multiple independent unions operating in the country. This has allowed for greater diversity in union activities and has given workers more options for representation. While Morocco still faces challenges in ensuring that trade unions can operate freely, it has made significant strides in aligning its labor laws with international standards.

Algeria's approach to trade union freedom, with its heavy state involvement and restrictions on political activities, places it closer to countries with more authoritarian regimes, where unions are often co-opted by the state and cannot function independently. The comparative analysis highlights the need for reforms in Algeria to bring its trade union laws more in line with international standards and ensure that unions can operate as independent entities that truly represent workers' interests.

9. Conclusion

Trade union freedom in Algeria is a right that is formally recognized in the country's legal framework but is significantly restricted in practice. The Algerian government's control over trade union formation, registration, and activities limits the ability of unions to operate independently and to fully represent workers' interests. International standards, particularly those set by the ILO, provide a more expansive view of trade union freedom, emphasizing minimal state intervention and the right of unions to engage in political activities.

The Algerian government has made some progress in recognizing the importance of trade unions, but there is still much work to be done to ensure that unions can function freely and independently. International organizations, such as the ILO and the ITUC, continue to monitor Algeria's compliance with international labor standards and advocate for legal reforms that would enhance the rights of workers and strengthen trade unionism in the country.

In conclusion, for Algeria to fully respect and protect trade union freedom, it must undertake significant legal reforms to remove the bureaucratic and political restrictions that currently hinder the effective operation of trade unions. Only then will unions be able to play their full role in advocating for workers' rights and contributing to social and economic development in the country.

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