

ppi 201502ZU4645

Esta publicación científica en formato digital es continuidad de la revista impresa  
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185 Depósito legal pp  
197402ZU34

# CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"  
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia  
Maracaibo, Venezuela



Vol.37

No 65

Julio  
Diciembre  
2020



# ***Administrative and Legal Mechanism for Ensuring the Rights of Civil Servants in Ukraine and the Developed Countries of the World***

**DOI: <https://doi.org/10.46398/cuestpol.3865.18>**

**Ruslan Serbyn** \*  
**Inna Zelenko** \*\*  
**Elena Kiselyova** \*\*\*  
**Maryna Voloshyna** \*\*\*\*  
**Yevheniya Mykhaylovs'ka** \*\*\*\*\*

## **Abstract**

The relevance of this article is due to the ambiguity of the situation of trade unions in Ukraine and the lack of an effective mechanism for the protection of the rights of public officials, which directly influences the development of the state as democratic and legal. The objective of the article is to analyze the state of activity and functioning of the trade union movement in the public administration, to: describe deficiencies in these activities and identify ways to extrapolate positive international experiences in the matter to Ukraine. The main methods used were the general methods of scientific and specific research, including the methods of logic, analysis and comparison of the sources collected. By way of conclusion, the results of this study highlight the problems of union functioning together with the peculiarities in the civil service, therefore, it is proposed to amend the current legislation of Ukraine in order to protect the social and labor rights of public officials. The importance of the results obtained is further reflected in the fact that this study can serve as a basis for outlining future changes to Ukraine's current legislation on the functioning of trade unions in the civil service.

---

\* Professor, Doctor of Science in Law, Honored Lawyer of Ukraine, Professor at the Department of Public Administration and Administration, National Academy of Internal Affairs, Ukraine. ORCID ID: <https://orcid.org/0000-0002-8880-7743>. E-mail: r.serbyn17@tanu.pro

\*\* Associate Professor, PhD, Associate Professor at the Department of State and Legal Disciplines and Administrative Law, Volodymyr Vynnychenko Central Ukrainian State Pedagogical University, Ukraine. ORCID: <https://orcid.org/0000-0003-3102-4171>. E-mail: inna.zelenko@nuos.pro

\*\*\* Associate Professor, Doctor of Science in Law, Associate Professor at the Department of Administrative, Economic Law and Financial and Economic Security, Sumy State University, Ukraine. ORCID: <https://orcid.org/0000-0003-0271-5221>. E-mail: el-kiselyova5514@politechnika.pro

\*\*\*\* Associate Professor, PhD, Associate Professor at the Department of Operational Investigation Activities, National Academy of Internal Affairs, Ukraine. ORCID ID: <https://orcid.org/0000-0002-5941-6911>. E-mail: mar-vol@tanu.pro

\*\*\*\*\* Postgraduate Student, Department of Administrative, Economic Law and Financial and Economic Security, Sumy State University, Ukraine. ORCID ID: <https://orcid.org/0000-0003-4624-3457>. E-mail: yevheniya.mykh@uohk.com.cn

**Keywords:** Public service in Ukraine; unions; protection of rights; public workers; civil service.

## Mecanismo administrativo y jurídico para garantizar los derechos de los funcionarios públicos en Ucrania y los países desarrollados del mundo

### Resumen

La actualidad de este artículo se debe a la ambigüedad de la situación de los sindicatos en Ucrania y la falta de un mecanismo efectivo para la protección de los derechos de los funcionarios públicos, que influye directamente en el desarrollo del estado como democrático y legal. El objetivo del artículo es analizar el estado de la actividad y el funcionamiento del movimiento sindical en la administración pública, para: describir deficiencias en estas actividades e identificar formas de extrapolar a Ucrania experiencias internacionales positivas en la materia. Los principales métodos empleados fueron los métodos generales de investigación científica y específica, incluidos los métodos de lógica, análisis y comparación de las fuentes recabadas. A modo de conclusión los resultados de este estudio destacan los problemas del funcionamiento sindical junto a las peculiaridades en el servicio civil, por lo tanto, se propone enmendar la legislación actual de Ucrania con el fin de proteger los derechos sociales y laborales de los funcionarios públicos. La importancia de los resultados obtenidos se refleja además en el hecho de que este estudio puede servir como base para delinear cambios futuros a la legislación actual de Ucrania sobre el funcionamiento de los sindicatos en el servicio civil.

**Palabras clave:** Función pública en Ucrania; sindicatos; protección de derechos; funcionarios públicos; servicio civil.

### Introduction

Complex reform of the civil service institution, especially in a democratic and rule of law state, is based on the implementation of the rule of law, civil society development, etc., is closely linked to the improvement of the constitutional right to civil service and the newest reform of the legal status of the civil service. Based on the experience of the developed countries of the world, it should be noted that a civil servant plays a key role in the general paradigm of public authority, given the fact that it directs its official and labor activity towards the fulfillment of the tasks, functions and powers

of the state (Harust *et al.*, 2019). At the same time, the legal status of a civil servant is quite vulnerable to the state of transformation declared in our country. To some extent, it is a reflection of the imperfection of the civil service reforms that have taken place in Ukraine throughout the entire period of Ukraine's independence. V.L. Kostiuk and I.B. Vorobiova, while researching the issues of legal status of civil servants, among the main features that characterize their legal status are defined such as: inconsistency with the trends in security and human rights and freedoms; inconsistency with social and state development trends; lack of proper motivation for work and social protection, including pensions; lack of effective legislative support; the absence of a balanced system of rights, obligations, guarantees, restrictions and prohibitions of a civil servant; lack of a proper vocational education system, advanced training; the absence of clear and transparent mechanisms for protecting the rights and interests of civil servants (Kostiuk and Vorobiova, 2018).

A civil servant is a person who is closely associated with the apparatus (or body) of the public relations management service. V. Cherepanov (2016) emphasizes that in fact a civil servant is a person who provides his/her personal professional or technical services for the purpose of performing the administrative functions of the state entrusted to him by the functional duties for recompense (pay).

At the same time, V. Y. Matsiuk defines two groups of emerging legal relations in the sphere of civil service and points out that the public service is a professional, paid service activity of citizens, which is characterized by two groups of legal relationships – service and labor, which are to ensure the exercise of a civil servant's right to work, payment to the latter of the recompense for the performance of official duties, as well as providing guarantees and state-government relations, which are intended to ensure the realization of the needs and interests of the state through the fulfillment of the tasks and functions of the latter (Matsiuk, 2017).

The position of V.L. Kostiuk and M.I. Inshyn is enough plausible. They emphasize that the legal status of a civil servant as a subject of employment relationship is characterized by the following features: the activity of a civil servant is subordinate to the performance of tasks assigned to the relevant state body; the exercise by the official of his/her rights and duties is envisaged and guaranteed by the current legislation and established within the competence of the relevant state bodies; rights and obligations are characterized by a unity, the originality of which is that their rights are duties at the same time, because they should be used for the benefit of the service and duties are rights, otherwise the duties would not be possible; there are restrictions on civil rights of civil servants in order to increase the efficiency of their official activity (Kostiuk, 2016). M.M. Klemparskyi emphasizes that the legal status of civil servants as subjects of labor law

reflects their position not as representatives of the state and carriers of power authority in connection with this, but as employees who carry out specific work functions (Klemparskyi, 2014).

Collective protection and protection of labor rights of employees is determined by the very nature of labor relations: participation in the employment relationship of two opposing entities – the employee and the employer – causes constant conflicts of interest, the first way to settle which should be the collective action of either party or the joint action of both parties. Among the bodies which are called upon to exercise collective protection of labor rights, the first should be mentioned the trade unions, which according to the Law of Ukraine “On Trade Unions, their rights and guarantees of activity” are voluntary non-profit governmental organizations that unite citizens bound by common interests according to the type of their professional (labor) training activities and which are created for the purpose of representation and protection of labor, socio-economic rights and interests of trade union members (Panchenko, 2019).

## **1. Materials and methods**

The following methods were used during the research: general theoretical (analysis, synthesis, concretization, generalization, analogy method, modeling); empirical methods (research of experience of functioning of trade unions on the civil service in Ukraine and abroad, research of normative-legal and scientific-methodical literature on the subject, scientific researches and conclusions).

In accordance with Article 36 of the Constitution of Ukraine (1996), citizens have the right to participate in trade unions in order to protect their labor and socio-economic rights and interests. Trade unions are non-governmental organizations that bring together citizens related to common interests by type of professional activity. Trade unions are formed without prior permission based on the free choice of their members. The Law of Ukraine “On Civil Service” (2015) provides for the existence of trade union organizations in state bodies, and even confers upon them certain competences. Civil servants have the right to join trade unions (associations) to protect their rights, socio-economic and professional interests. The law recognizes the trade union as an officially organized form of association of civil servants. The latter may grant the right of representation to their trade unions and associations according to the profession.

The purpose of the trade union organizations creation in any labor collective of a state body is to exercise the representation of employees,

to protect their labor, socio-economic rights and interests before the administration. The activities of a trade union of a public authority should be based on the principles of legality and transparency, with universal access to information on their statutes and program documents. The main criterion for the effectiveness of the implementation of human rights activities by trade unions is the restoration of violated rights of civil servants. Therefore, trade unions are actively involved in securing their legal rights, and human rights activities are to ensure that civil servants enjoy their rights without interruption, to terminate violations of these rights, to restore them, and to compensate for damages resulting from their violations.

Carrying out activities aimed at identifying the prerequisites for violations of the rights of employees of a state body, eliminating possible causes of such violations, protecting their rights, restoring them in the event of violations, prosecuting officials who violate legislation in the social and labor sphere, determines the role and place of trade unions in the development of social and legal state. By adhering to the democratic principles of our country's development in accordance with Ukrainian law, the state guarantees the realization of the citizens' right for association in trade unions and recognizes them as representatives of labor collectives and defenders of workers' rights, including decent pay and appropriate conditions (Pchelina et al., 2019).

The Law of Ukraine "On Civil Service" (2015) provides for mandatory participation of trade unions in only three cases, namely:

1. When approving the internal rules, when they are submitted for approval by the general meeting of civil servants upon the submission of the head of the civil service and the elected body of the primary trade union organization, if it exists in this state body;
2. When directed by the head of the civil service for approval by the central body of executive power providing for the formation and implementation of state policy in the sphere of labor relations, the Model provision on bonuses, which agrees with the elected body of the primary trade union organization (if any);
3. When issuing an order (instruction) of the head of the civil service regarding the attendance of civil servants to perform urgent or unforeseen tasks and the need to work more than a fixed working day, as well as on weekends, holidays and non-working days, at night, the elective authority of the primary trade union organization (if any) must be reported.

In view of the above, it can be noted that the number of rights enjoyed by other workers on the basis of general labor standards is limited for civil servants. Thus, among government employees, the right to join trade unions belongs only to those who do not hold higher positions, that is means they are not related to participation in issues of a political nature or implementation

administrative functions. A similar restriction is also imposed on employees whose activities are highly confidential (secret) (Solominchuk, 2018). This is unacceptable when the strategic task of systematic transformation of Ukrainian society is to acquire the characteristics of a modern democratic, social and legal European state that would adequately and effectively respond to the challenges of globalization by synthesizing the best national traditions.

By adopting the Law of Ukraine “On trade unions, their rights and guarantees of activity” (1999), the state gave the citizens the opportunity to create trade unions, join them and leave them on the terms and in the manner determined by them statutes, to participate in the work of trade unions on the basis of free will without any permission. The Federation of Trade Unions of Ukraine (FPU) is formed and operates in Ukraine, which includes 44 industry affiliates and 27 territorial associations. The primary trade union membership of the FPU as at January 1, 2019 was 52,975 organizations, with a total membership of 4,828 thousand (Solominchuk, 2018).

In fact, the FPU united virtually all union organizations of central executive bodies and became the main union of the civil service of Ukraine. In accordance with Article 259 of the Labor Code of Ukraine (1971), Article 21 of the Law of Ukraine “On trade unions, their rights and guarantees of activity” (1999) and its own Statute, the Federation of Trade Unions of Ukraine exercises civil control over the observance of labor legislation by the employers including state bodies. For this purpose, the FPU constantly monitors employees’ rights violations and conducts appropriate work to organize their protection and maintains a unified register of trade union rights violations. FPU Operational Response Expert Group was established, which is involved in requesting member organizations to respond in a timely manner to trade union rights violations, and which is acting on the basis of the Decree of the FPU Presidium dated June 22, 2016 No. P-2-18 “On Approval of Documents Supporting Operations of the FPU Operational Response Expert Group” (2016).

The FPU Presidium also approved the “Procedure for accounting and analysis of petitions of affiliate organizations on the facts of trade union rights violations that require the response of the FPU” and “Procedure for the organization and assistance of FPU affiliates in the work of the FPU Operational Response Expert Group” (Panchenko, 2019). The FPU informs the Ministry of Social Policy, State Labor and the Commissioner for Human Rights of Ukraine about violations of trade union rights every year. FPU affiliates, their structural units may also inform local authorities about these violations and require them to take appropriate response.

Relations between the administration of the state body and trade unions are regulated on the basis of collective contracts and agreements. Trade

unions have no right to interfere in the official activities of state bodies to fulfill their tasks. The proposals of the trade unions on the passing of the civil service, as well as on the official activity of the state bodies, are advisory. Civil servants are also not allowed to take part in strikes, and they can apply to the relevant public authorities or to court to resolve disputes related to public service. The inability of civil servants to take part in strikes to assert their rights makes trade unions the only body capable of upholding civil servants' rights.

Among the preconditions for the emergence of trade unions in public institutions in different countries of the world are political and economic reasons. But in each country, this process was individual. In examining this question, it should be noted that historically the trade union movement originated first in England, then in France, the USA and Germany. Among the various organizations created by employees, trade unions have their own peculiarities: the largest employee associations; available to all employees; no restrictions on prior membership of a public association (age, gender, income level, nationality, political views); this non-governmental organization is closest to the economy, production and other spheres of life of society, where the interests of all employees are combined (Melnyk, 2014).

The Universal Declaration of Human Rights, adopted at the UN General Assembly in Paris in 1948, states that everyone has the right to join trade unions to defend their interests (The Universal Declaration of Human Rights, 1948). We agree with the results of A. Melnyk's research that prove that among the various organizations created by workers, trade unions have their own peculiarities: the largest unions of workers; accessible to all employees; there are no restrictions on prior membership of a public association (age, gender, income level, nationality, political views); this non-governmental organization is closest to the economy, production and other spheres of life of society, where the interests of all employees are combined (Melnyk, 2014). The development of trade unions in the world's leading countries has made them a truly genuine and powerful mechanism for protecting the rights of workers, including government agencies.

Thus, the UK's trade unions now have over 7 million members, and the Trade Union Congress remains one of the most powerful in the country. Most employers recognize the decisions of trade unions voluntarily. If the administration of a public authority refuses to do it, trade unions may seek recognition of their right through legal process. Under the Labor Relations Act of 1999, the trade union may apply to the Central Arbitration Committee, which will resolve these disputes (Labor Relations Act, 1999). Most decisions are made in favor of the trade union, since the majority of interested employees are members of the trade union. The rights enjoyed by British workers today have been acquired for many years, and in some

cases reflect more than two centuries of collective action by workers and their unions (Melnyk, 2014).

France is an outpost not only of world fashion, but also of the world trade union movement. When French unions organize strikes, it becomes a global event. Their echoes extend to the Ukrainian media. The authorities are accustomed to treating trade union members with respect and even with caution. French President Emmanuel Macron pursues a rather rigid policy on trade unions, but they continue to justify the reputation of real opposition to power. Usually, trade unions, including government agencies, in developed countries resort to strikes and demonstrations in the last place, because the governments of these countries are well aware of their power and prefer to negotiate social issues peacefully. But if the strike becomes the latest argument in disputes with the authorities, then organizing it in France is elementary. The strike must be reported in just 5 days – that is a high level of labor law culture in this country (Yatsun, 2020).

There are many associations that are committed to protecting workers' rights in Germany. There are now around 7.4 million trade union members in Germany. The Main Trade Union Confederation – DGB includes the vast majority of all union members. Within it are separate trade unions such as IG Metall and Verdi, which in turn have considerable autonomy and influence. Trade union membership is strongest among workers in the workforce and in the civil service, but much weaker among private service workers. Among DGB unions, 33.1% of union members are women and 66.9% are men (Fulton, 2015).

## **2. Results and discussion**

In Ukraine, unlike in Europe, the tradition of the trade union movement was annihilated in Soviet times, when the state sought to curb workers' protests and avoid the spread of radical unions by distributing selective social payments through the trade union network – holiday allowance, medical care and health resorts, distribution of cheap housing, etc. After the declaration of Ukraine's independence, the infrastructure that made these social payments possible was transferred to the ownership of the FPU by the state, which made membership in it much more attractive than in the so-called independent trade unions. As a result, they have not been able to become a worthy alternative to the official one. The state at certain times gave the trade unions great powers to protect the rights and interests of workers, and then deprived the trade unions of these powers. In connection with this, there were various problems in regulating the activities of trade unions in the protection of individual and collective rights and interests in the protection of public servants. All this affected the legal status of trade

unions. However, it should be noted that trade unions are in constant motion and this leads to the improvement of regulations governing their activities (Stoian, 2002).

Trade union organizations have sufficient legislative means to protect the violated rights of public servants in their activities. However, no matter how perfect the legal framework for regulating trade union issues regarding the protection of civil servants' rights may be, the inability to enforce it puts all the efforts of the legislator to naught. Today, there are many problems in Ukraine that still need to be addressed. Unfortunately, in today's Ukraine trade union organizations and associations are more often used in political processes than in the development of really effective legislation to protect the rights of civil servants. Thus, so-called "yellow" trade unions under the control of the employer, the authorities or political forces are being created in modern Ukraine.

This contradicts the principles of unity, solidarity and significantly weakens both the trade union movement as a whole and the ability of each organization to implement the main function of trade unions to protect labor and socio-economic rights and interests of trade union members. As a result, the level of trust in trade unions is low. The problem of motivation of trade union membership, which in turn directly affects the number of trade unions, and indirectly – their organizational status, financial strength and, of course, the ability to fulfill their main function – to protect the rights of civil servants, is extremely important.

Today, trade unions face a number of strategic challenges. First, it is information policy. The published materials that distort and diminish the role of trade unions in the life of the state and society are biased, and at the same time there is a desire to create anti-union sentiments in the country. The positive developments that have been achieved with regard to the social protection of workers in the media are reported as a result of the activity of state authorities, not of the trade unions themselves. As a consequence, the authority of trade unions in society is falling, the motivation of trade union membership decreases. The second strategic issue is the relationship with public authorities, which should be built on three principles: social partnership, constructive opposition and labor dispute. But these trade union relationships with government agencies are very difficult to build. In state institutions, there is a restriction on the powers of trade unions in the management of public affairs, the distribution of income, the regulation of social and labor relations. The leadership of state bodies in every way restrains the activities of trade unions, sometimes – forbids them or makes them controlled, which is contrary to moral principles. The problem of updating of working personnel remains acute. Life requires of strong, active, effective union leaders coming to the unions. Today the average age of a member of a domestic union is almost ten years greater than the average

age of a worker. Staff aging is observed, and the rejuvenation of the union asset is slow. The trade union movement should become an important component of modern democracy, the key to building a democratic and social state.

In a time of economic crisis, the role of trade unions in regulating public relations between public servants and the governing body of a union of a state body is increasing and depends directly on their effective protection of labor and socio-economic rights and interests. Therefore, trade unions need to seriously review not only the forms and methods of their activities, but also to develop a new ideology that takes into account all the changes taking place in society, the world, the trade union movement, and defines strategy and tactics in modern conditions (Osovyi, 2018).

Therefore, summing up, we can say that the free activity of effective trade unions, independent of the administration of the state body, is one of the main prerequisites for the proper realization and effective protection of the civil servant's labor and social rights. It is known that the representation and protection of labor and socio-economic rights and interests of its members is the main purpose of trade unions. At the same time, unions must be provided with the appropriate tools enshrined in the legislation of each developed country to achieve this goal. In today's Ukrainian realities, trade unions in the civil service are more formal and "puppet" in nature, because union members are civil servants and therefore under the control of the head. They are also subject to the Law of Ukraine "On Civil Service" (2015), according to which they must comply with all orders of the head. If in Ukraine workers are joining trade unions mostly just to check the box, hoping for various social benefits, such as free health resort vouchers, then in developed countries such as Germany, every self-respecting worker is ready to become a member of *Gewerkschaft* (German "trade union"). After all, German trade unions offer their members not only help and protection in the workplace, but also many other benefits, such as free legal advice or refresher courses (Osovyi, 2018).

Trade unions in modern Ukraine, especially trade unions of state bodies, are disparate and even competing organizations, the official part of which, on the one part of FPU, tends to establish subordination relations with the state in matters of protection of workers' rights, the other part – the so-called free trade unions – try to declare the principle of independence from the authorities and the priority of the interests of employees. The lack of concerted human rights protection tactics, the low level of mutual support for the protection of workers' rights, and the fact that there are no legal mechanisms for trade union representatives to participate in court sessions to protect violated rights, especially civil servants' rights, reduce the confidence of Ukrainian citizens in trade unions. However, despite the existing problems, trade unions still remain quite structured

public organizations and, given the mass of their membership, constitute a significant electoral resource. Given Ukraine's increasing integration into the world economic and political processes, which likens the problems and tasks of trade unions to those existing in other countries, it is necessary to count on adequate contemporary political and socio-economic realities of self-determination (Melnyk, 2014).

Analyzing this issue, we have come to the conclusion that the basic problem of the legal status of trade unions of civil servants in Ukraine is that the members of the trade union organization are civil servants, that is, subordinate to the head. Accordingly, they are subject to the Law of Ukraine "On Civil Service", according to which civil servants are obliged to obey the orders of the head. The lack of legal regulation of the issue of the persons who are representatives of the trade union committee subordination in a dispute over violated rights of a civil servant before the administration of a state body negates any activity of trade unions in the state body.

Another problem is the creation of so-called "hand-raised" trade unions in the state body, whose management includes persons close to the head and who are under his/her control. This happens quite simply, through administrative pressure on civil servants – members of a trade union organization in the election of an executive body of a trade union committee. As a result, the level of trust in such unions is low. The problem of motivation of trade union membership among civil servants, which in turn directly affects the number of trade unions, and indirectly – on their organizational status, financial power and, of course, on the possibility of fulfilling their main function – protection of civil servants, is extremely important.

One of the problems is the representation of legal rights and interests of employees, in our case civil servants, in court. It should be noted that, unfortunately, there is no such practice in Ukraine, since only lawyers are given this right. Although, for example, in France, unions may represent employee in court and even replace him/her in court on their own initiative or at the request of an employee. In addition, the French trade unions were granted the right to defend the collective interests of the professional category in court.

Today, the situation of trade unions in Ukraine is at the stage of finding its place in the system of new socio-economic and political relations. However, it should be noted that the legal status of an employee in the enterprise is quite different from the legal status of a civil servant, in particular, the latter must comply with all orders and orders of the management. As we noted above, the issue of the legal status of trade unions in the civil service is not sufficiently regulated in Ukraine, which leads to the fact that unions do not fulfill the tasks and powers envisaged by the legislation of Ukraine on the protection of civil servants' rights.

It is possible to determine the legal status of a trade union organization of a state body by amending the Law “On Trade Unions, Their Rights and Guarantees” (1999). Such a legislative consolidation of the place of trade union in the state body will allow to solve the problem of creating “hand-raised” trade unions in the state body, whose management includes persons close to the head and who are under his/her control. The introduction of legal responsibility for such actions will force the leadership of the state body to transparent actions towards members of the executive body of the trade union.

Summarizing the study of the problems associated with improving the effectiveness of trade unions in the public service in Ukraine, it should be noted that the trade unions have proven their necessity and ability to ensure representation and protection of the rights and interests of its members in the social and labor sphere by their history (Law of Ukraine On trade, 1999). Only with the participation of trade unions can the state ensure a stable economic development without social upheaval. Considering the importance of trade unions in the protection of labor rights and the socio-economic interests of workers, in the development of democratic forms of citizen participation in the management of economic and political processes, a democratic, legal and social state, which is Ukraine, should support trade unions and ensure that their powers are legislated (Tsvykh, 2020). Trade unions at all levels must once again return to the consideration of their core functions and pay attention to those that are now more conducive to the achievement of the main purpose of the creation and activity of trade unions – the protection of social-labor rights and interests of trade union members.

Almost all trade union functions can be implemented within the framework of social-partnership relations (Law of Ukraine No. 137/98-BP..., 1998). In collective agreements it is possible and necessary to resolve the issues of wage regulation, employment protection, labor protection, creation of own insurance companies, non-state pension funds, health and medical institutions, etc. The experience of such activities is in different trade unions and should be disseminated and generalized. Trade unions of all levels should be more frequent in the press, on television, participate in conferences and round tables, promote their activities, pay more attention to the training of trade union staff and assets, and involve young people in their ranks (Shevchuk, 2011). International practice has shown that trade unions are necessary for a democratic state and its working citizens. They are an important element of civil society. But without significant changes in the trade union movement, without strengthening the unity of trade unions, increasing the activity and responsibility of the leaders of trade union organizations, the tasks will not be solved.

Today, the situation of trade unions in Ukraine is at the stage of finding its place in the system of new socio-economic and political relations. However,

it should be noted that the legal status of an employee in the enterprise is quite different from the legal status of a civil servant, in particular, the latter must comply with all orders and orders of the management. Considering that the issue of the legal status of trade unions in the civil service is not sufficiently regulated in Ukraine, we believe that our state needs to adopt a law that provides for the legal status of trade unions in the public service. We also propose to amend the Law of Ukraine "On Civil Service", in particular to extend the rights of trade union organizations in the civil service. For example, we propose to include an article in this law that the transfer of a civil servant to a lower position is possible only with the prior consent of the trade union organization.

Ukraine also needs to take into account the French law, according to which trade union organizations can represent the interests of employees in court, in our case civil servants. In Ukraine, unfortunately, there are restrictions provided by the lawyer's monopoly, according to which only lawyers have the right to represent the legal rights and interests of employees. In our opinion, Ukrainian trade unions should also be empowered with this right, so it would be appropriate to add to the Law of Ukraine "On Trade Unions, Their Rights and Guarantees of Activity" in section 2 the article on the powers of trade union organizations and their associations to represent legal rights and interests in court. The control and coordination of the activities of trade union organizations should be exercised by the executive authorities, in particular, by the National Agency of Ukraine for Civil Service, which ultimately regulates the issues of the civil service. Therefore, we believe that a trade union department should be added to the structure of this body, which will be responsible for protecting the legal rights and interests of civil servants. This will be a strong foundation for building strong unions in the civil service.

The European Trade Union Federation is an equal partner of business and government. Its representatives are in the legislative and executive structures of the EU. Within the European Commission, which can practically be considered as a Common-European government, there are directorates dealing with the interests of trade unions. The Economic and Social Committee, the Committee of the Regions, in which trade unions and business are represented, work actively. Without discussion in these committees, no law is passed in parliament for approval. Trade union representatives work in EU parliaments. Any laws are passed without their agreement. Any laws are passed without their agreement. Trade union representatives are part of the economic and social councils of each EU country. Therefore, it would be quite advisable that in the Verkhovna Rada of Ukraine there should also be representatives of trade unions, in order to defend the rights of workers at the legislative level, as well as to initiate the raising of the issue of trade union reform.

Additionally, it is necessary to solve the problem of the lack of the right of regional and less numerous trade unions by amending Art. 4 of the Law “On the procedure for the settlement of collective labor disputes”. It is necessary to give them the right to make demands and carry out strikes not only at the decision of the whole labor collective or its authorized body, but also at the decision of a separate trade union organization. Without this, fewer trade unions are effectively deprived of the opportunity to pursue independent policies. The perception of trade unions as a social phenomenon, prospects and directions of development of trade union movement in Ukraine requires a radical change in their structure.

Obviously, the need for change in the public administration is long in the making. However, it is also obvious that the current model suits too many people to talk about the possibility of rapid change. Therefore, it is necessary to look for ways to gradually resolve the problems in the legal support of trade unions in the protection of civil servants’ rights and getting out of this situation, which has become a dead end. The state, as the main and universal institute of the political system, exists even when the actions of the authorities are contrary to the interests of civil society. However, trade unions, as groups based solely on social communities, do not have the same strong structure: unions must reflect the interests of employees, otherwise they cease to perform their functions.

Ukraine needs special trade union legislation. At present, the only full-fledged regulatory act governing the activities of trade unions is the Law of Ukraine “On Trade Unions, Their Rights and Guarantees”. The provisions contained therein are already clearly insufficient to clearly define the relationship between union members and employers. Further development of Ukraine’s political system is impossible without the role of trade unions as its most important element. Ultimately, trade unions are a factor capable of alleviating social tensions in society, of developing a mutually beneficial dialogue between civil servants, government, and trade unions. It is much more appropriate to build civic awareness on a real organizational basis rather than a spontaneous one.

Today’s Ukraine needs strong trade unions. A strong union is a union that effectively protects the interests of its members, enjoys their trust and support, is able to organize, if necessary, collective action to protect the socio-economic rights and interests of workers, has sufficient organizational, financial and human resources to fulfill its statutory tasks.

## Conclusions

In our study, we have shown that Ukraine needs to take into account the French law, according to which trade union organizations can represent the interests of employees in court. In Ukraine, unfortunately, there are restrictions provided by the lawyer's monopoly, according to which only lawyers have the right to represent the legal rights and interests of employees. In our opinion, in the presence of a lawsuit in court against the violated rights of an employee (a civil servant), the Ukrainian trade unions should also be empowered to represent the interests of the applicant-union member. To do this, we propose to amend the domestic procedural law and section 2 of the Law of Ukraine "On Trade Unions, Their Rights and Guarantees", to supplement the article on the powers of trade union organizations and their associations to represent the legal rights and interests of trade union members in court.

We believe that in order to coordinate the activities of trade union organizations of state bodies, timely response to violations of the rights of civil servants within the National Agency of Ukraine for Civil Service, to create an appropriate unit for ensuring the activity of trade unions. This unit will become the foundation for building strong and effective unions in the civil service.

In examining the issue of trade union activity, we have found that the European Trade Union Federation is an equal partner of business and government. Its representatives are in the EU legislative and executive structures. Within the European Commission, which can practically be considered as a Common-European government, there are directorates dealing with the interests of trade unions. The Economic and Social Committee, the Committee of the Regions, in which trade unions and business are represented, actively work. Any law is passed in parliament for approval without discussion in these committees. Trade union representatives work in EU parliaments. Any laws are passed without their agreement. Trade union representatives are part of the economic and social councils of each EU country. Therefore, we believe that it is necessary to create an appropriate committee on trade unions in the Verkhovna Rada of Ukraine, which will defend the rights of workers, as well as initiate the raising of the issue of trade union reform at the legislative level.

Additionally, it is necessary to solve the problem of restricting the rights of regional and less numerous trade unions by amending Art. 4 of the Law of Ukraine "On the Procedure for Settlement of Collective Labor Disputes". It is necessary to give them the right to make demands and carry out strikes not only at the decision of the whole labor collective or its authorized body, but also at the decision of a separate trade union organization.

Without this, fewer trade unions are actually deprived of the opportunity to pursue independent policies. The perception of trade unions as a social phenomenon, prospects and directions of development of trade union movement in Ukraine requires a radical change in their structure.

### **Bibliographic References**

- CHEREPANOV, Volodymyr. 2016. The system of state and municipal government. Norma. Kiev, Ukraine.
- CONSTITUTION OF UKRAINE. 1996. Available online. In: <https://zakon.rada.gov.ua/laws/show/254k/96-вр>. Consulted: 29/12/2019.
- DECISIONS OF THE FPU PRESIDIUUM NO. P-2-18. 2016. On Approval of Documents Supporting the Operation of the FPU Expert Response Team. Available online. In: <http://www.fpsu.org.ua/dokumenti-fpu/postanovi-prezidiji-fpu.html>. Consulted: 29/12/2019.
- FULTON, Leon. 2015. Labor representation in Europe. Department of Labor Studies and ETUI. Available online. In: <https://www.worker-participation.eu/National-Industrial-Relations/Countries/Germany/Trade-Unions>. Consulted: 29/12/2019.
- HARUST, Yuriy; ZAGORSKA, Daria; VASHCHENKO, Svitlana; MOSKALENKO, Serhii. 2019. "Problems of construction of the financial system of the state: organizational and legal aspects" In: Asia Life Sciences. No. 2, pp. 63-69.
- KLEMPARSKYI, Mykola. 2014. Problems of moral regulation of the status of civil servants as subjects of Ukraine. Nika Nova. Kharkiv, Ukraine.
- KOSTIUK, Valentyna. 2016. "Institutional innovations of the civil service through the lens of the latest legislation: scientific-theoretical aspect" In: NaUKMA Scientific Notes. Jurisprudence. No. 181, pp. 26-32.
- KOSTIUK, Valentyna; VOROBIOVA, Iryna. 2018. "Principles of legal status of a civil servant: scientific-theoretical aspect" In: Public Law. No. 1, pp. 134-143.
- LABOR RELATIONS ACT. 1999. Available online. In: <http://www.legislation.gov.uk/ukpga/1999/26/contents>. Consulted: 29/12/2019.

- LAW OF UKRAINE “On trade unions, their rights and guarantees of activity”. 1999. Available online. In: <https://zakon.rada.gov.ua/laws/show/1045-14>. Consulted: 29/12/2019.
- LAW OF UKRAINE NO. 1045-XIV “On trade unions, their rights and guarantees of activity”. 1999. Available online. In: <https://zakon.rada.gov.ua/laws/show/1045-14>. Consulted: 29/12/2019.
- LAW OF UKRAINE NO. 137/98-BP “On the Procedure for Settlement of Collective Labor Disputes”. 1998. Available online. In: <https://zakon.rada.gov.ua/laws/show/137/98-%Do%B2%D1%80>. Consulted: 29/12/2019.
- LAW OF UKRAINE NO. 889-VIII “On Civil Service”. 2015. Available online. In: <https://zakon.rada.gov.ua/laws/show/889-19>. Consulted: 29/12/2019.
- MATSIUK, Viktor. 2017. Public service in the system of labor relations: theory and practice: Konstanta. Kharkiv, Ukraine.
- MELNYK, Anton. 2014. “The role of trade union control in supervising and controlling labor law compliance” In: Legal Bulletin. No. 5, pp. 233-238.
- OSOVYI, Hryhorii. 2018. “Trade union movement in Ukraine: current state and prospects for development” In: ATSVT Bulletin. No. 1, pp. 76-85.
- PANCHENKO, Maksym. 2019. “The right to the protection of labor rights in the light of the concept of decent work for civil servants” In: Enterprise, Economy and Law. No. 12, pp. 145-150.
- PCHELINA, Oksana; SEZONOV, Viktor; MYRHOROD-KARPOVA; Valeriia; ZHEROBKINA, Yevheniia. 2019. “Administrative and legal mechanism of execution of decisions of the European Court of Human Rights as the basis of case law application in the judicial system of Ukraine” In: Asia Life Sciences. No. 2, pp. 34-49.
- SHEVCHUK, Olha. 2011. Trade unions in Ukraine: separate problems of functioning, 2011. Available online. In: <https://blogs.korrespondent.net/blog/users/3251007-profspilky-v-ukraini-okremi-problemy-funktsionuvannia>. Consulted: 29/12/2019.
- SOLOMINCHUK, Viktor. 2018. Participation of trade unions in the development of a social and legal state (theoretical and legal aspect). V.N. Karazin Kharkiv National University. Kharkiv, Ukraine.
- STOIAN, Oleh. 2002. Essays on the history of trade unions of Ukraine. Federation of Trade Unions of Ukraine. Kyiv, Ukraine.

THE LABOR CODE. 1971. Available online. In: <https://zakon.rada.gov.ua/laws/show/322-08>. Consulted: 29/12/2019.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS. 1948. Available online. In: [https://zakon.rada.gov.ua/laws/show/995\\_015](https://zakon.rada.gov.ua/laws/show/995_015). Consulted: 29/12/2019.

TSVYKH, Viktor. 2020. Unions in the Global World: Status and Trends. Available online. In: <https://pon.org.ua/publications/1750-profsoyuzy-v-globalnom-mire-sostoyanie-1.html>. Consulted: 29/12/2019.

YATSUN, Oleh. 2020 What can unions do? Available online. In: <https://gurt.org.ua/articles/3282/>. Consulted: 28/01/2020.



UNIVERSIDAD  
DEL ZULIA

---

# CUESTIONES POLÍTICAS

Vol.37 N°65

*Esta revista fue editada en formato digital y publicada en julio de 2020, por el **Fondo Editorial Serbiluz**, Universidad del Zulia. Maracaibo-Venezuela*

[www.luz.edu.ve](http://www.luz.edu.ve)  
[www.serbi.luz.edu.ve](http://www.serbi.luz.edu.ve)  
[www.produccioncientificaluz.org](http://www.produccioncientificaluz.org)