

## The Principle of Trade Union Freedom and the Representativeness Clause: Compatibility or Opposition?

مبدأ الحرية النقابية وشرط حيافة الصفة التمثيلية: علاقة تناسب أم تعارض؟

Touabti Imene Ryma Sourrour\*  
University Sétif 2  
i.touabti@univ-setif2.dz

Date of send: 02/04/2023 Date of acceptance: 16/05/2023 Date of publication: 30/05/2023

### Abstract:

“Trade union representativeness” is a concept whose origins and roots are to be found in the standards of International Labour Law, set out in 1919. This new concept was progressively imbued in the national legislations of the countries where trade union pluralism was established. In Algeria, it was the cornerstone of the right to participate in social dialogue.

Subsequently, the conditions and criteria on the basis of which the most representative professional organizations can be distinguished, at company, national or even international level, were decreed. Thus, the problematic of this study revolves around the legal nature of the clause of trade union representativeness enacted within the legislative provisions relating to the exercise of the trade union right in Algeria, in order to be able to discuss the constitutionality of this clause, as well as its impact on the free exercise of trade union right.

**Keywords :** Labour, Professional Organizations, Trade Union Freedom, Trade Union Representativeness.

\* *Corresponding author*

## Introduction

Trade union freedom is an integral part of fundamental human rights and a cornerstone of the provisions aimed at ensuring the defense of workers in many international instruments<sup>1</sup>. The principle of freedom of association is also at the heart of the ILO's values and is enshrined in the ILO Constitution (1919) and the Declaration of Philadelphia (1944). Under the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), workers and employers shall have the right to establish and to join organizations of their own choosing, without previous authorization<sup>2</sup>.

Later, this freedom was constitutionalized and regulated as a fundamental right granted to all workers, as well as employers. It is the possibility for them to join a trade union, to exercise a trade union activity within the framework of the delegation hours of a union mandate during their working time or to benefit from trade union information and training in order to defend their professional interests of a material or moral nature.

In the past, the formation of a trade union or any other form of trade union activity was prohibited by law, but today, in most countries, trade union activity is an acquired right. Moreover, it is a freedom that is attributed to everyone who is legally employed.

Nowadays, professional trade unions, in the public and private sectors, are independent professional organizations. Therefore, the exercise of the trade union right is a freedom attributed to every person holding a position at work and to anybody having the title of a trade union. Thus, the employer must not use any means of pressure in favor of or against a trade union organization. He must not discriminate against a trade union or favor one trade union over another.

This right is exercised through the establishment of the principle of equality between all organizations established in accordance with the law without any distinction, pressure or favouritism emanating from the administrative authorities against a trade union. It is also exercised through the application of the principle of representativeness, in order to insure the right to participate in social dialogue to all active trade unions on an equal basis.

In Algeria, Law No. 90-11 promulgated on April 21, 1990 on labour relations<sup>3</sup> (amended and supplemented)<sup>4</sup>, lists among the fundamental rights granted to workers, their rights to participate in collective bargaining and the settlement of labour disputes. The trade union sphere was regulated by new provisions governing the representation of trade unions and their equal participation in social dialogue. The Algerian legislator enacted, through Law No. 90-14 of 1990(amended and supplemented by Law N° 22-06 promulgated on April 25, 2022)<sup>5</sup>, (amended and supplemented by Law N° 22-06 promulgated on April 25, 2022)<sup>6</sup> specific provisions determining the criteria on which the trade union organization is considered representative.

This raises the question of the nature of the trade union representativeness clause provided for in Law No. 90-14, and its compatibility and/or opposition to the principle of trade union freedom. Is it a simple regulatory clause or a real legal mechanism of a discriminatory nature?

Thus, this study aims to determine the nature of this condition in order to extract the gaps and contradictions in the provisions governing trade union participation in union action. Subsequently, It comprise three principals chapters; then the first one aims to give a General Overview of Trade Union Action in Algeria, the second one evaluate the problematic of Effectiveness of Trade Union Action in Algeria: Effective Pluralism or Fake Pluralism?. Finally, the third chapter will define The Impact of the Trade Union Representativeness Clause on Free Access to Trade Union Action?

### **Firstly: A General Overview of Trade Union Action in Algeria**

The right to organize was proclaimed in the first Algerian constitution. Subsequently, the Algerian constitution of February 23, 1989 grants the exercise of the right to organize to all the citizens (art.53 of the constitution)<sup>7</sup>. This marks the advent of trade union pluralism in Algeria; we are no longer talking about a single trade union, but rather about new trade unions: demand trade unions that fight to defend the social and economic interests of their members and all workers.

Thus, we have deemed it useful to give a brief overview of the historical development of trade union action in Algeria as follows:

#### **1. Trade Union Action in Algeria before 1989: Centralized Unit Headed by the G.U.A.W.**

It is obvious that the trade union movement in Algeria, as well as real political activity, did not wait for the 1930s to show vitality and combativeness. It seems that it was in Constantine (a city in Eastern Algeria) that the first Algerian trade union was born in 1880. The European printing workers of this city were therefore the precursors of trade unionism in Algeria. The movement was followed in other cities, always within this corporation, before being extended to other trades in the early 20th century<sup>8</sup>.

Curiously, the Algerian workers discovered the trade union and all the advantages it could provide them during their emigration to France, wich accelerated at the request of France during the WWI.

Algerians who were not allowed to militate, in application of the Code of Indigenous Status, and even less to take responsibilities, were most often excluded from the benefit of the improvements that occurred during this period as a result of the actions of the C.G.T and C.G.T.U unions in which they had participated<sup>9</sup>.

The genocide of May 1945 did not prevent the success of the U.D.M.A and the P.P.A./M.T.L.D in the election of deputies to the French National Assembly and the election of municipal councils and the Djemaa in Algeria. The first M.T.L.D congress gave birth to the Central Commission for Social and Trade Union Affairs headed by Aissat Idir<sup>10</sup>.

The breakup of the first Algerian nationalist party led the C.R.U.A to launch the war of national liberation, causing a complete change in the Algerian situation; In this context the long-planned project and often postponed, by Algerian trade unionists came to fruition: the General Union of Algerian Workers (U.G.T.A), created on February 24, 1956, was the first Algerian trade union to emerge<sup>11</sup>.

The first congress of the G.U.A.W in February 1963 established the control of political power over the trade union center. The 1976 national charter definitively established the G.U.A.W's character as a mass organization<sup>12</sup>.

## **2. Trade Union Action in Algeria after 1989: The Formal Transition from Unity to Pluralism**

Following the events of October 1988<sup>13</sup>, trade union freedoms, like other freedoms, were enshrined in the Constitution. The Algerian constitution of February 23, 1989 overturned the ideas and foundations governing trade union action in Algeria through its Article 53, which stipulated that: "The right to organize is guaranteed to all citizens."

The democratic opening brought about by the 1989 constitution was followed by the promulgation of Law 90-14 of June 2, 1990, on the exercise of trade union rights, amended and supplemented by Law 91-30 of December 21, 1991 and Ordinance No. 96-12 of June 10, 1996, modified later by Law . This Law, which is still in force, regulates trade union life. Its article 2 states in formal terms that: "Salaried workers, on the one hand, and employers, on the other hand, of the same professions, branches or sectors of activity shall have the right to form trade union organizations in order to defend their material and moral interests".

This new situation led to a substantial modification of labour law and industrial relations from June 1990. Algerian workers could henceforth claim their rights and defend their interests under other trade union banners than the G.U.A.W. This free expression of the social partners authorized the creation of autonomous workers' unions, the right to negotiate and the extension of the right to strike to the public sector<sup>14</sup>.

The image of the trade union sphere took on new colours and changed its unitary aspect. It saw the birth of new trade unions with an autonomous nature...it was the passage from centralised unity to trade union pluralism

## **Secondly: The Effectiveness of Trade Union Action in Algeria: Effective Pluralism or Fake Pluralism?**

The advent of trade union pluralism in Algeria was accompanied by wide-ranging legislative and regulatory reforms that irrevocably changed the world of work. Since then, the number of trade unions has increased remarkably. The trade union structures were working hard to make up for lost time.

This quantitative increase posed many problems, including those related to worker representation. The question that arose from then on revolved around the organization of trade union pluralism; should all trade unions be given free access to

dialogue? Or should the exercise of this right be restricted to the oldest or most active trade unions?

Thus, a real legislative mechanism was implemented to regulate the access of trade unions to social dialogue through the regulation of criteria and formalities relating to the granting of trade union representativeness, a prerequisite for access to the right to participate in bipartite or tripartite collective bargaining organized with employers and/or administrative authorities.

### **1. Regulation of Trade Union Rights in Algeria**

Trade union pluralism in Algeria is a recent phenomenon. It was during the events of October 1988, which led to a democratic opening, that trade union pluralism and the right to strike were constitutionally enshrined.

Since the promulgation of Law No. 90-14 on the exercise of the right to organize, salaried workers, on the one hand, and employers, on the other hand, have had the right to form trade union organizations or to join existing trade union organizations freely and voluntarily, on the sole condition of complying with the legislation in force and the statutes of these organizations.

Consequently, the exercise of trade union rights in Algeria was no longer limited to the simple fact of joining a single trade union, but is now based on the principles of pluralism, autonomy and equality. The exercise of the trade union right in Algeria has become a freedom enshrined in the Algerian constitution (Article 69 of the 2020 constitution), in the pacts emanating from the U.N. and in international and regional labour conventions (mainly international labour conventions No. 87 and No. 98 ratified by the I.L.O. member states)<sup>15</sup>.

This raises the following question: what are the conditions laid down by the Algerian legislator for regulating the exercise of trade union rights in Algeria?

#### **1.1. Foundations of Trade Union Rights in Algeria**

On the constitutional level, the right to organize was proclaimed in the first Algerian constitution. Article 19 of the constitution of September 10, 1963 provided that: "The republic guarantees the freedom of the press and other information media, freedom of association"<sup>16</sup>.

Similarly, Article 20 of this Constitution states that: "The right to unionize, the right to strike and the participation of workers in the management of companies are recognized and exercised within the law".

Subsequently, the second constitution of the Algerian state – that of November 22, 1976 – stated in formal terms that: "The right to organize is recognized for all workers, it is exercised within the law"<sup>17</sup>. This was the period of trade union unity in Algeria; the exercise of this right was limited to simple membership of the only union existing until then, the majority trade union in Algeria until today, the G.U.A.W. (General Union of Algerian Workers)<sup>18</sup>.

However, the Algerian constitution of February 23, 1989 attributes the exercise of the right to organize to all the citizens (art.53 of the constitution). This marks the advent of trade union pluralism in Algeria; we are no longer talking about a single

trade union, but rather about new trade unions: the demand trade unions that fight to defend the social and economic interests of their members and all workers.

This was confirmed in subsequent constitutional amendments; Articles 56 of 1996 and 2008 constitutional amendments, as well as Article 69 of 2016 and 2020 constitutional amendments state, as much, that: “The right to organize is recognized to all citizens”.

At the legislative and regulatory level, Article 2 of Law No. 90-14 stipulates in formal terms that: “Salaried workers, on the one hand, and employers, on the other hand, of the same professions, branches or sectors of activity shall have the right to form trade union organizations in order to defend their material and moral interests”.

On the other hand, Article 35 from Ordinance No. 06-03 of July 15, 2006 on the general status of the public service stipulates in clear and formal terms that: “The public officer shall exercise the right to unionize within the framework of the legislation in force”<sup>19</sup>.

Article 36 of the above-mentioned Ordinance states that: “The public officer shall exercise the right to strike within the framework of the legislation in force”.

Similarly, Articles 27, 28 & 29 of the Ordinance confirm that no discrimination may be made between civil servants because of their opinions, sex, origin or any other personal or social condition. Consequently, membership of a trade union organization must not, in any way, affect the civil servant's career, nor may the latter be affected, in any way, by the opinions expressed by the candidate for an elective trade union mandate before or during its mandate.

### **1.2. Conditions for Exercising Trade Union Rights in Algeria**

The analysis of the conditions for the exercise of the right to organize in Algeria leads us to distinguish between the conditions laid down for the constitution of a trade union, on the one hand, and those laid down for membership in the latter, on the other hand.

With regard to the conditions of constitution, Article 3 of Law No. 90-14 states that: “salaried workers, on the one hand, and employers, on the other hand, shall have the right to form trade union organizations or to join existing trade union organizations freely and voluntarily, on the sole condition of complying with the legislation in force and the statutes of these organizations”.

Subsequently, Article 6 of this Law stipulates that the persons referred to above may form a trade union organization, if they fulfil the following conditions:

-Be of Algerian nationality by origin or acquired for at least ten (10) years. It should be noted that this condition was revoke by Law N°22-06 promulgated on 2022; the exercise of trade union right was proclaimed to citizens' workers and foreigners them.

-Enjoy their civil and civic rights,

-Be of legal age,

-Do not behaved in a manner contrary to the war of liberation,

-Carry out an activity related to the purpose of the trade union organization.

These are the substantive conditions to which other conditions of form are added .

Therefore, the trade union is declared to be constituted:

- After filing a declaration of incorporation with the relevant public authority,
- After issuance of a receipt of registration of the declaration of incorporation issued by the relevant public authority no later than thirty (30) days after the filing of the file,
- After completion of the advertising formalities in at least one national daily newspaper, at the expense of the trade union organization<sup>20</sup>.

It should be noted that the trade union organization is constituted at the end of a constituent general meeting bringing together its founding members. According to Article 9 of Law 90-14, the declaration of incorporation – referred to above – shall be accompanied by a file containing the following elements :

- The list of names, signature, marital status, profession, domicile of the founding members and the management and administration bodies,
- Two (2) certified copies of the articles of association,
- The minutes of the constituent general meeting.

This declaration shall be filed, at the behest of its founding members, with:

- The wali of the wilaya where the headquarters are located, for trade union organizations with communal, intercommunal or wilaya vocation.
- The ministry in charge of labour, for trade union organizations with an interwilaya or national vocation.

It should be noted in this regard that, according to the Article 11 of the Trade Union Law, trade union organizations, legally constituted after June 6, 1990, are exempted from the declaration of incorporation of the trade union organization.

With regard to the conditions of membership, and referring to the terms of Article 23 of Law No. 90-14, modified and completed by Law N°22-06, membership of a trade union organization in Algeria is acquired by the interested party signing an act of membership and is attested by a document issued by the organization to the interested party. The latter must acquire the following conditions:

- Enjoying civil and civic rights,
- Reaching the age of majority (defined by the Algerian civil code as 19 years old),
- Exercising a professional activity related to the object of the trade union organization.

Subsequently, and since 1990, the exercise of the right to organize in Algeria has become a freedom attributed to each person holding a post at work, to any organization having the title of a trade union. Thus, the employer must not use any means of pressure in favour of or against a trade union organization. He must not discriminate against a trade union or favour one union over another.

Therefore:

-Any contrary measure taken by the employer is considered abusive. It is punishable by law and may give rise to damages. The employer is prohibited from taking discriminatory measures because of an employee's trade union activity.

-No employee may be sanctioned, dismissed or discriminated against, directly or indirectly, in particular with regard to recruitment, remuneration, training, reclassification, assignment, qualification, professional promotion, transfer or renewal of his/her contract because of his/her trade union activities.

-Any discriminatory action taken by the employer against an employee because of his trade union activities is void. It gives rise to damages and criminal sanctions.

-No one may practice any form of discrimination against a worker in hiring, conduct and distribution of work, career advancement and promotion, determination of remuneration, vocational training and social benefits on the basis of trade union activities.

-No one may exert pressure or threats on workers against the trade union organisation and its activities.

-No trade union delegate may be dismissed, transferred or disciplined by his/her employer in any way because of his/her trade union activities. Faults of a strictly trade union nature are the exclusive responsibility of the trade union organizations.

Moreover, Article 59 of Law N°. 90-14, modified by article 8 of Law N°22-06, provides that: "Any obstruction to the free exercise of the right to organize, as provided for in the provisions of this law, in particular those set out in its Title IV, shall be punishable by a fine of 50,000 to 100,000 DA. In the event of a repeat offence, the penalty shall be 100,000 to 200,000 DA and imprisonment from thirty (30) days to six (6) months, or one of these two penalties only".

## **2. Regulation of Trade Union Representativeness in Algeria**

After the principle of trade union freedom was set out in the Algerian constitution of 1989, the Algerian legislator ensured the implementation of new provisions that changed the labour market. Law No. 90-14, amended and supplemented, sets out the principles and standards constituting the regulatory framework governing trade union life.

Faced with the challenges of the labour market, the challenges imposed by economic globalisation, in addition to the new challenges imposed by trade union pluralism, the question arises as to the conditions for granting trade union representativeness and their impact on the right to representation.

### **2.1. Criteria for Granting Trade Union Representativeness**

Since 1990, the criteria for granting trade union representativeness have been laid down in the regulations governing the exercise of trade union rights in Algeria. They can be summarized as follows<sup>21</sup>:

**A. Seniority criterion** : according to the provisions of Article 34 of the above-mentioned Law No. 90-14: "Trade unions of salaried workers and employers, legally constituted for at least six (6) months in accordance with the *provisions of the* this



law, shall be considered as representative in accordance with Articles 34 and 37 below<sup>22</sup>.

This is confirmed by provisions of Ministerial Order No. 009 of May 19, 1997 on the representativeness of trade union organisations.

**B.** Numeral criterion: this is the pivotal element on which the granting of representativeness to a trade union is based; the attribution of this status depends on the number of persons belonging to the trade union. In this case, the Algerian legislator sets a rate calculated on the basis of all workers and/or employers, and makes a clear distinction between workers' trade unions and employers' trade unions<sup>23</sup>.

With regard to the minimum rate required for the granting of representativeness status to workers' trade union organisations, the legislator distinguishes between two categories<sup>24</sup>:

-At the communal, inter-communal, wilaya, interwilaya or national level: Article 36 of Law No. 90-14 (amended and supplemented by Ordinance No. 96-12 of June 10, 1996) stipulates that unions, federations or confederations of salaried workers grouping together at least 20% of the representative trade union organisations covered by the statutes of the said unions, federations or confederations within the same territorial district concerned are considered to be representative at that level<sup>25</sup>. For example :

-If the trade union is a communal union, for example: *the U.N.P.E.F.*<sup>26</sup>, and that its main statute covers 130 trade unions at this level, it acquires the status of trade union representativeness if it groups together at least 20% of the total number of trade unions active under its statute, i.e. a number equal to or greater than 26 formally established trade unions active at the communal level.

-If the trade union organisation is a national confederation of 49 trade unions, it is only granted trade union representativeness if it has a minimum number of 10 active trade unions at the national level.<sup>27</sup>

-At the level of the employing organisation: trade union representativeness is attributed according to the total number of members of the union body and their financial contributions and sometimes by the number of employees with representation on the participation committee.

This is laid down in Article 35 of Law No. 90-14 (amended and supplemented by Ordinance No. 96-12 of June 10, 1996). It stipulates that: "Workers' trade union organisations representing at least 20% of the total number of salaried workers covered by the statutes of the said trade union organisations and/or having a representation of at least 20% on the participation committee when the latter exists within the employing organisation concerned shall be considered representative within the same employing body".

This shows that the granting of trade union representativeness to a trade union organisation within a body is based on two main criteria<sup>28</sup>:

A number of workers equal to and/or exceeding 20% of the total number of employees subject to the provisions of its basic statute;

-Effective representation of 20% or more on the participation committee of the employing body.

For an overview, we cite the following examples<sup>29</sup>:

-If the total number of employees in a company (X) is 780, a trade union established and active in the organisation can only claim to be representative if it has a minimum of 157 members under its basic statute who are employees in the same employing organisation. This is confirmed on the basis of the number of employees who are members of the union and their financial contributions.

-If the total number of employees in a company (Y) is 3153, and the number of employees who are members of the union is 610, the union is not considered to be representative unless the total number of its members is 631.

-A final example is the case where the total number of employees in an employing organisation (Z) is 3,000 and the organisation has a trade union and a participation committee. In this case, the trade union becomes representative if its membership totals 600 or more, or if it has a representation of 20% or more on the participation committee. *For example*, if there are 22 representatives on the employee participation committee, the union must be represented by at least five (5) representatives.

In addition to the two criteria mentioned above, the Algerian legislator provides other conditions, of a formal nature, for the attribution of this status. These are summarized in the following points:

• **The formal institution of the trade union body:** with regard to the conditions for the constitution of a trade union organisation laid down in the Trade Union Law, the legislator attributes the status of trade union to any workers' or employers' organisation at the end of a constituent general meeting bringing together these founding members (Art. 7 of Law No. 90-14).

The organisation is declared constituted in accordance with the provisions of Article 8 of this law:

-After filing a declaration of incorporation with the competent administrative authority;

-After issuance of a receipt of registration of the declaration of incorporation issued by the competent authority no later than thirty (30) days after the filing of the file;

-After completion of advertising formalities in a national daily newspaper.

This means that any active trade union that has not acquired a receipt of registration of the declaration of incorporation issued either by the wali or by the minister responsible for labour cannot subsequently avail itself of the rights and prerogatives set out in the Trade Union Law.

-Regularity and conformity of the status of founding and/or adhering members: in this respect, Article 3 of Law No. 90-14 stipulates that: "Salaried workers, on the

one hand, and employers, on the other hand, shall have the right to form, for this purpose, trade union organisations or to join existing trade union organisations, freely and voluntarily...”

It should be noted that while the Algerian legislator has required that the founding members must<sup>30</sup>:

- Be of Algerian nationality by origin or acquired for at least ten (10) years (abrogated by Law n°22-06);
- Enjoy their civil and civic rights;
- Be of legal age;
- Do not behave in a manner contrary to the war of national liberation;
- Carry out an activity related to the purpose of the trade union organisation.

The latter failed to set out the conditions required for founding members; the wording and application of Article 6 of Law N°. 90-14 (amended by Law n° 22-06) only includes founding members, which leads us to ask the question of age arises, here too the legislator has failed to set a precise and determined age; by using the formula “be of legal age”, he makes things more complicated; what is the age of majority designated by the Algerian legislator?

Is it a question of reaching the age of 19 (the age of majority indicated in the Algerian civil code)? Or is it about reaching 18 years old (the age of majority indicated in the Algerian penal code)? Or is it, in fact, a question of reaching the minimum age required for recruitment, i.e. an age equal to or higher than sixteen (16) years<sup>31</sup>?

The question remains open to different interpretations and practices for the benefit of employers and public authorities.

•**Financial autonomy of the trade union organisation:** in this context, Trade Union Law explicitly requires that the trade union organisation has financial autonomy<sup>32</sup>. It must ensure that its budgetary resources are sufficient to enable it to represent its workers in an effective and tangible way. This is set out in Article 35, paragraph 2, of Law No. 90-14, which states that: “Trade union organisations ... are required to communicate at the beginning of each calendar year, as the case may be, all the elements enabling the latter to assess their representativeness...including membership numbers and fees, to the employer or the competent administrative authority”<sup>33</sup>.

This being said, in the event of irregularity in the payment of annual dues, this will not only affect the union’s budgetary resources, but more importantly, the union’s representative status could be challenged.

The provisions of Article 37a of this law confirm that in the event of failure to produce the information needed to assess the representativeness of the trade union bodies within a period not exceeding the first quarter of the calendar year, the latter may be stripped of their representative status by the qualified authorities and by the employer<sup>34</sup>.

## 2.2.Procedural Formalities Relating to the Granting of Trade Union Representativeness

In this regard, the Algerian legislator has distinguished between procedures relating to workers' trade union organisations and those relating to employers' trade union organisations<sup>35</sup>.

**A. Procedural formalities required for workers' organisations:** a distinction must be made, in this context, between the formalities required within the company and those required outside the employing body:

-Within the company, trade union representativeness is granted on the basis of the following data<sup>36</sup>:

- The respective list of employees belonging to the union;
- The total amount of membership fees;
- The actual number of trade union delegates with representation on the worker's participation committee.

In practice, the criteria and formalities for assessing the representativeness of trade union organisations are defined by means of a collective labour agreement<sup>37</sup> between the employer and the trade union representatives of the employees working in the same body<sup>38</sup>.

-Outside the company, the documents that must be provided for the application for trade union representativeness at the communal, inter-communal, wilaya, inter-wilaya and national levels are defined in paragraph 3 of Ministerial Circular No. 009, and are summarized as follows:

- The list of employing organisations and/or seats of activity;
- The total number of employees who are members of the relevant trade union organisation and who are active at the level of each employing organisation;
- The total amount of fees collected.

The administrative authorities qualified to grant the status of trade union representativeness are the wali, if the application concerns a communal, wilaya or inter-wilaya union, federation or confederation, and the minister responsible for labour, if the application concerns the designation of the most representative trade union at the national level.

**B. Procedural formalities required for employers' organisations:** paragraph 4 of Ministerial Circular No. 009 assigns the competence to grant the trade union representativeness to employers' unions, federations and confederations to the wilaya or ministerial administrative authorities. The documents provided to the authorities must indicate:

- The list of employers who are members of organisations and their business registration number;
- The total number of employees affiliated to the companies concerned;
- The total amount of fees collected.

### Thirdly: The Impact of the Trade Union Representativeness Clause on Free Access to Trade Union Action?

With the advent of the new laws governing trade union activity in Algeria, trade union action took on a new direction and new horizons. *The principle of representation* is nowadays the pivotal element of the regulation of the labour relationship. Consequently, any formally constituted workers' trade union organisation that acquires the status of representativeness enjoys the following prerogatives<sup>39</sup>:

- Participating in the negotiation of conventions or collective agreements;
- Participating in the prevention and settlement of labour disputes and in the exercise of the right to strike;
- Gathering the members of the trade union association in the workplace or in the premises adjoining it;
- Informing the workers' collectives concerned by means of trade union publications or by posting in appropriate places reserved for this purpose.

Moreover, Article 39 of Law No. 90-14 states that: "Within the framework of the legislation and regulations in force, and in proportion to their representativeness, the most representative unions, federations or confederations of employees and employers at the national level:

- Are consulted in the areas of activity that concern them in the preparation of national economic and social development plans;
- Are consulted on the evaluation and development of labour legislation and regulations;
- Negotiate the collective conventions or agreements that concern them;
- Are represented on the boards of directors of social security bodies;
- Are represented on the joint civil service council and on the National Arbitration Commission set up under Law No. 90-02 of February 6, 1990 on the prevention and settlement of collective labour disputes and the exercise of right to strike".

From this fact, we deduce that through the new trade union law, the Algerian legislator has ensured the establishment of the principles of freedom, equality and pluralism in the exercise of trade union rights.

As a result, all trade union organisations legally constituted since 1990 have legal personality and civil capacity<sup>40</sup>, and enjoy, in equal measures, the prerogatives and rights that the law attributes to them.

In terms of social dialogue, the establishment of the principle of trade union freedom, which has been enshrined in the Algerian Constitution since 1990, and in the international ILO's conventions No. 87 (1948) and No. 98 (1949), which have been ratified and adopted by the Algerian government, inevitably requires that all trade unions active nationally have equal access to and participation in social dialogue, whether on an impulsive and/or injunctive basis<sup>41</sup>.

All trade unions may, on an equal basis, participate in negotiations, conventions and collective agreements (Art. 123 of Law 90-11, cited above), participate in the prevention and settlement of labour disputes (Art. 38 of Law 90-14), create trade union structures and elect trade union delegates in order to guarantee the representation of the material and moral interests of its members.

However, an in-depth analysis of the texts governing the trade union representativeness clause in Algeria and a pragmatic exploration of the effective participation of trade unions in social dialogue reveal certain obstacles that hinder the equal access of all trade unions in an effective and efficient manner to social dialogue, either within companies, or at the local level and even at the national and international levels.

After more than thirty (30) years of trade union action, the autonomous trade unions set up in Algeria after 1990 are still claiming their right to represent workers, their right to participate in tripartite meetings, in addition to their right to be represented on the public administration joint committees. They consider that the criteria for granting the status of trade union representativeness are in fact real obstructions to trade union freedom and that the trade union pluralism set out in the 1989 Constitution is only a purely formal principle, so, a fake pluralism.

An overview of trade union action in Algeria reveals a certain monopoly of the right to participate in social dialogue by the General Union of Algerian Workers (G.U.A.W.). The autonomous unions reproach the administrative authorities for the underhanded nepotism they show towards the state union. It is the only union that has the power to represent workers at the national level, particularly if it is a tripartite, and even at the international level.

It also represents all workers, regardless of their trade union affiliation, on joint civil service councils, the national arbitration commission and the boards of directors of social security bodies.

Among the textual obstacles that hinder free access to trade union action in Algeria, and therefore affect its effectiveness and efficiency, we cite:

### **1. Obstacles Relating to the Overall Number of Workers within the Same Employing Organization**

In principle, and under the terms of Law No. 90-14, any representative trade union organization has the right to set up a trade union structure within the employing body, regardless of its nature, size and/or legal status, whether public or private.

This is explicitly stated in Article 40 of this law, which stipulates that: "In any public or private company and in any public establishment, institution or administration, any representative trade union organization within the meaning of Articles 34 and 35 of this law may create a trade union structure in accordance with its statutes to ensure the representation of the material and moral interests of its members".

Thus, any professional trade union may freely organize itself at company level in order to be able to ensure effective and efficient representation of the professional

interests of its members. It is only necessary to form a trade union section to exercise the right to organize.

The creation of the section can be decided when there are several members in the company:

- by any trade union that is representative there, or;
- by any trade union affiliated to a representative trade union organization at national and inter-professional level, or;
- by any trade union organization that respects republican values and independence and has been in the company's professional and geographic area for at least 2 years.

It is the existence of the trade union section that allows a section representative to be appointed in the company if the union is not representative, or one or more union delegates if the union is representative.

Independently of the statutes of the trade union organization of the employees concerned, the trade union structure is represented by one or more union delegates elected by the trade union structure in the following proportions:

- 20 to 50 employees: 1 delegate.
- 51 to 150 employees: 2 delegates.
- 151 to 400 employees: 3 delegates.
- 401 to 1,000 employees: 5 delegates.
- 1,001 to 4,000 employees: 7 delegates.
- 4,001 to 16,000 employees: 9 delegates.
- More than 16,000 employees: 13 delegates.

The task assigned to this section is to defend the employees' rights. It is in this interest that it is essential for it to have premises within the company. In smaller companies, a convention or collective agreement may provide for the allocation of premises. It can:

- Collect union fees,
- Display trade union material on signs provided by the employer,
- Organize meetings.

However, an in-depth analysis of the Trade Union Law, specifically, paragraph 2 of Article 42 of the said law, allows us to notice a certain contradiction between the title of Article 42 quoted above and the general principles enacted through Article 3 of the Trade Union Law.

Given that paragraph 2 of Law 90-14, as amended and supplemented, states that: "The representation of salaried workers in organizations employing less than twenty (20) employees shall be ensured by a single representative elected directly by all of employees for the purposes of collective bargaining and the prevention and settlement of labour disputes". This represents a real obstacle to the principle of trade union freedom enshrined in Article 53 of the Algerian constitution of 1989, and also through Article 3 of Trade Union Law No. 90-14.

The latter stipulates that employees enjoy their equal right to form or join trade union organizations on a free and voluntary basis, on the sole condition of complying with the legislation in force and the statutes of these organizations.

By contrasting the two texts, we deduce that the Algerian legislator authorizes the establishment of trade union structures within any free-will employer organization, provided that the number of affiliated employees is not less than twenty (20) persons. This is confirmed in paragraph 1 of the provisions of Article 42 of the Trade Union Law, which stipulates that when no workers' trade union organization meets the conditions laid down in Articles 35 and 40 of this law, the workers' trade union representation shall be ensured by the participation committee, by representatives elected directly by all the salaried workers concerned in the proportions defined above.

In this case, and even if there is a recent doctrine that accepts this restriction and considers it to be a simple regulatory clause, because effective equality cannot really be achieved and it would be unequal to enact similar rules applicable to all organizations regardless of their size or number of employees, the restrictive nature of this clause cannot be denied, nor can its harmfulness and impact on freedom of trade union action and, consequently, on the free access to social dialogue be overlooked.

It should be noted in this regard that workers' representatives are subject to the provisions of Law No. 90-11 on labour relations, their capacity for action is very limited and they do not even enjoy penal protection against any form of harassment, pressure or abuse of authority by their employers. Moreover, they are subject to the employer's hierarchical power on a daily basis, which undermines their autonomy of action.

Therefore, the prohibition of establishing a representative trade union structure in small businesses is currently a real obstacle to free trade union action in Algeria. Faced with the challenges of economic globalization, the informal sector and the new employment markets, the absence of a structured trade union representation within the company directly affects the interests of employees.

The solution approved by the Algerian legislator, i.e. the idea of appointing a workers' representative, does not bring any added value in terms of access to social dialogue, it is, in fact, only a limitation to the action of the trade unions; the elected representative will only have a simple consultative or even mediating role.

And in the absence of new mandatory provisions aimed at granting the right to set up representative trade union structures within any employing organization, regardless of the number of employees, the effectiveness of social dialogue in Algeria cannot be mentioned, as the restriction imposed by the legislator denies many categories of workers, the most deprived, their rights inherent in their labour law, such as their right to equal pay for equal work, the right to rest, the right to preventive medical care, the right to social security, etc., and quite simply, their right to a decent job .



## 2. Obstacles Relating to the Nature of the Employment Contract

Another problem arises with regard to the criteria laid down by the Algerian legislator for granting trade union representativeness. If the latter takes into account the number of salaried workers affiliated to the employing body to decide whether to grant authorization to set up a representative trade union section at this level, does he take into account the quality of the employment contract, i.e. the nature of the employment contract concluded between the employee and the employing body?

This leads us, imperatively, to ask the following questions: who are the workers who have the right to found and/or join a trade union organization? Is this right granted in Algeria to all wage categories without distinction? What about the situation of specific forms of work, such as temporary work, home-based work, part-time work, etc.?

In this respect, the constitutional amendment of 2020 stipulates in its Article 70 that “The right to organize is recognized for all citizens”. Previously, the law No. 90-11 governing individual and collective labour relations, as amended and supplemented, stipulates that: “Under this law, all persons who provide manual or intellectual work in return for remuneration, within the framework of the organization and on behalf of another natural or legal person, public or private, known as the employer, are considered to be employees”.

Moreover, the provisions of Article 11 of the said law state that the employment relationship comes into being written or unwritten contract and that it exists in any case solely by virtue of working for an employer. The Algerian legislator does not require specific procedural formalities for the conclusion of employment contract; the employment contract is established in the form that the contracting parties are free to adopt. The employment relationship can be proven by any available and legal means.

In principle, and according to the provisions of Article 11 of Law No. 90-11, the employment contract is deemed to have been concluded for an indefinite period of time, unless otherwise agreed in writing. The territorially competent labour inspector must ensure that the fixed-term employment contract, whether full-time or part-time, has been concluded for one of the following reasons:

- When the worker is recruited to perform work related to non-renewable contracts for work or service;
- When the worker is recruited to replace the holder of a position who is temporarily absent and for whose benefit the employer is obliged to retain the position;
- When the employing body is carrying out periodic work of a discontinuous nature;
- When there is an increase in workload, or when seasonal reasons justify it;
- When it comes to activities or jobs of limited duration or temporary in nature.

This means that any person who has concluded an employment contract, regardless of its duration, whether fixed or open-ended, and regardless of whether it

is in the public or private sector, can claim the right to take trade union action and/or representation within the company that employs him/her.

This is confirmed through Article 5 of this law. The latter attributes to all workers, without distinction, the exercise of union rights, the right of representation, participation in collective bargaining and in the prevention and settlement of labour disputes, i.e. their right to participate in social dialogue.

It should be noted that even the newly recruited worker during the trial period enjoys the same prerogatives and rights as those occupying similar jobs, i.e. his/her right to join a trade union and his/her right to participate and/or be represented in social dialogue. Notwithstanding, the latter only has the right to join a trade union to ensure the defense of his/her professional rights and interests. However, he/she does not have the right to be elected as workers' representative or trade union delegate.

On this point, the Algerian legislation requires, in both cases, a minimum age of 21 years and more than one year's seniority within the employing organization. (Art. 97-3 of Law 90-11 amended and supplemented by Ordinance No. 96-21 of July 9, 1996 and also Article 44 of Law No. 90-14 amended by Law No. 91-30 of December 21, 1991).

Moreover, it should be noted that the Algerian legislator has explicitly required that workers' representatives be among the workers who have been confirmed in their positions after a trial period not exceeding twelve (12) months.

However, as regards the formulation of this condition in the Trade Union Law, Article 44 of the Law No. 90-14 does not expressly mention this clause, but implicitly the legislator has attributed the right to trade union representation only to workers with at least one year's seniority within the employing organization, and this is in fact the maximum length of time laid down in Algerian law for the worker to be confirmed in his/her position.

Similarly, another question arises after reading Article 4 of Law No. 90-14, mentioned above, which states that: "Notwithstanding the provisions of this law and within the framework of the legislation in force, special provisions adopted by regulation shall specify, as far as necessary, the specific regime of labour relations concerning company managers, air and sea transport personnel, commercial and fishing vessel personnel, homeworkers, journalists, artists and comedians, sales representatives, elite and performance athletes and domestic staff".

This question revolves around the right of these specific categories to have a structured and effective representation and/or representativeness.

The answer to this question leads us to consult the regulations governing each area of activity separately. For example:

- The provisions of Executive Decree No. 90-290 of September 29, 1990 on the specific regime of labour relations concerning company managers state that they cannot be either voters or eligible to participate in employee participation bodies.

- Similarly, the Algerian legislator failed to mention its opinion on the issue of representation of homeworkers; none of the provisions of Executive Decree No. 97-

474 of December 8, 1997 establishing the specific regime for labour relations concerning homeworkers mentions the rights attributed to this category with regard to the exercise of their trade union rights, as well as their right to participate in negotiations and social dialogue.

And in the absence of clear and precise social regulations, several categories of workers remain deprived of any means of defending their professional interests in the face of the abuse and harassment that their employers may exert on them.

- However, as far as part-time workers as concerned, the provisions of Article 9 of Executive Decree No. 97-473 of December 8, 1997 on part-time work grant them the same legal and contractual rights as full-time workers. In addition, Article 14 of this decree states that: "A part-time worker who meets the legal eligibility criteria as set out in the legislation in force may be eligible for election to the participation committee".

- Furthermore, public officers benefit from their trade union rights, their right to bipartite and tripartite representation by appeal to the competent authorities (Articles 28 and 35 of Ordinance No. 2006-03 of July 15, 2006 on the general status of the public service).

- In addition, the provisions of Presidential Decree No. 07-308 of September 29, 2007 setting out the terms and conditions of recruitment of contract agents, their rights and obligations, the components of their remuneration, the rules relating to their management as well as the disciplinary regime applicable to them, grant them the right to organize and, in general, their right to have a structured representation with a claim vocation.

### **3. Obstacles to the Sectoral Affiliation of Workers**

In principle, the general rule provides for the freedom to set up trade union structures within any employing organization, whether private or public, in the interest of guaranteeing efficient trade union action based on the principles of equality and freedom. However, the Algerian legislator has introduced another clause which constitutes in itself a real obstacle to trade union pluralism established since 1990.

This is the condition laid down in Article 2 of Trade Union Law No. 90-14, which states that: "Salaried workers, on the one hand, and employers, on the other hand, of the same professions, branches or sectors of activity shall have the right to form trade union organizations in order to defend their material and moral interests".

Article 04 of the same law also stipulates that: "unions, federations and confederations of trade union organizations are governed by the same provisions as those that apply to trade union organizations".

These two articles limit the scope for the constitution of trade union organizations and unions, federations and confederations. They only allow the constitution of trade union organizations of the same professions, branches or sectors of activity. Thus, the constitution of a trade union encompassing all Algerian workers

will not be possible, given its non-compliance with the provisions of Law 90-14 of June 2, 1990.

That means that the establishment of a trade union section within the employing organization and also participation in bipartite and tripartite meetings on the communal, wilaya or national level is only permitted for trade unions affiliated to the same branch of activity, or the same sector. The higher education trade union cannot have representation in institutions affiliated to the education or vocational training and education sector, and so on.

As a result, the G.U.A.W. was still the most representative trade union on a national and even international level, as it is the only trade union entitled to unite workers from all sectors and branches of activity under its umbrella. Subsequently, it is the only union with representative power at all levels, and therefore has a monopoly on access to social dialogue at national, continental and international level.

These same provisions were contrary to the provisions of Article 02 of Convention 87 of the International Labour Organization, ratified by Algeria in 1963. This convention stipulates that: "Workers and employers, without distinction of any kind, shall have the right, without prior authorization, to establish organizations of their own choosing, and to join such organizations, on the sole condition of complying with their statutes".

In principle, by virtue of Article 37 of Law no. 90-14, the representative organizations have the prerogatives to participate in the negotiation of collective conventions or agreements. In accordance with the provisions of Article 39 of the same law, the unions, federations, confederations, in proportion to their representativeness, have the right to be consulted in the areas that concern them during the establishment of national economic and social development plans.

The reality is quite different; none of the trade unions or trade union centers other than the G.U.A.W. are consulted or invited to bilateral negotiations on current issues that affect the future of workers and the country. For the authorities, only the latter is representative, whereas the trade union field is marked by the imprint of other active and representative trade union organizations.

Finally, It must be noted that the condition of the Sectoral Affiliation of Workers was been abrogated by law n°22-06; Nowadays, the trade unions or trade union centers can institute federation or confederation without limits; they also can participate to bipartite and tripartite meetings on the communal, wilaya or national level.

Since 2022, trade union organizations of salaried workers, on the one hand, and of employers, on the other hand, constituted in accordance with legislation in force, shall have the right to form or join unions, federations and confederations, freely and voluntarily, regardless of their sectoral affiliation. The Law N°22-06 is considered such as the veritable beginning of union pluralism.

## Conclusion

At the end of this brief study concerning the compatibility and/or opposition of the trade union representativeness clause to the principle of trade union freedom proclaimed in Algeria since 1989, we conclude that:

- Since the advent of trade union pluralism in Algeria, the configuration of the trade union scene has changed considerably; Law 90-14 of June 2, 1990, although it has the merit of being the first legal text regulating trade union life in Algeria, remains far from the expectations of the world of work.

Most of this legislative acts does not comply with the principle of trade union freedom set out in the Algerian constitution and also with the international conventions of the International Labour Organization No. 87 on trade union freedom and the Protection of the Right to Organize (1948), No. 98 on the Right to Organize and Collective Bargaining (1949), No. 135 on Workers' Representatives (1971), No. 151 on Labour Relations in the Public Service (1978), which have been ratified and adopted by the Algerian government.

- Although the Algerian legislator's intention was to enshrine the principle of trade union freedom and the establishment of trade union pluralism, the wording of the law governing this area is still open to discussion and contains numerous clauses that make it restrictive and/or incomplete. Many of the texts contained in the law are unconstitutional or contradictory, and this directly affects the role of trade unions in making demands through their effective participation in trade union action.

- Therefore, we deduce that even if the trade union representativeness clause was originally a simple regulatory clause used to organize the participation of trade unions in trade union action, it was in fact rather restrictive in nature and had a discriminatory impact.

Therefore, we recommend the amendment of the provisions of the law governing trade union action in Algeria by adopting new provisions in line with the internationally established principles and standards, through:

- Determination of the meaning of the expression "be of legal age", provided for in Article 6, paragraph 3, of the said text, is it a question of reaching 19 years old (age provided for by the civil code), or of reaching 18 years old (age provided for by the penal code) or being 16 years old (age provided for by the labour code)?

- Simplification of the formalities for submitting the file for the constitution of a trade union organization to the determination of the procedures for submitting the files, as well as the restriction of the prerogatives attributed to the public authorities concerned with regard to the issue of the registration receipt for the trade union organization, under penalty of seizing the competent courts;

- Proclamation of new provisions explicitly stating that: "The trade union organization is constituted in view of the law, after issuance of the registration receipt of the declaration of incorporation issued by the competent public authority.

The competent public authorities are prohibited from introducing additional formalities, on pain of nullity";

-Reduction of the procedural formalities provided for the constitution of a trade union organization, in particular those related to the fulfilment of the formalities of publicity in at least one national daily newspaper, at the expense of the trade union organization, provided for within Article 8 of Law No. 90-14.

-Reformulation of the provisions of Article 30 of Law No. 90-14, in force, given the need to clearly determine the reasons that may lead to the suspension and/or dissolution of the trade union organization in order to prevent any abusive or discriminatory measure;

-Repeal of the seniority clause, set out in Article 34 of Law No. 90-14, as a criterion for granting representativeness to trade union structures and organizations. In this case, it is sufficient for the trade union organization to be established in accordance with the law in force.

-Repeal of the numeral criterion provided for by Article 48 of the law in force by attributing the rights to benefit from the means necessary for the holding of trade union meetings and notice boards to any representative union organization;

-Repeal of Article 11 of this law, which exempts the G.U.A.W, the only trade union formed before 1990, from complying with the conditions established by Law No. 90-14. The latter must be subject to conditions of exercise and representativeness similar to those set out for the other trade unions.

-Review and/or rethink the conditions for granting trade union representativeness within the employing organization by adopting new formalities that are flexible and balanced, particularly with regard to the situation of employing bodies with a workforce not exceeding twenty (20) workers. In addition, new provisions should be adopted to guarantee access to negotiations and social dialogue for all categories of fixed-term and indefinite-term workers.

-Enhancing the role of the labour inspector in charge of controlling irregularities and obstacles emanating from the employer or the administrative authorities, while organizing training days for workers and their representatives.

-Prohibition of any action or measure aimed at restricting the exercise of trade union rights and undermining the effectiveness of social dialogue.

-Reflecting really and effectively the principle of the neutrality of the administration and prohibiting any interference by the administrative authorities in the action of trade union organizations.

-Proclamation of new penal provisions against any form of interference or discrimination that would undermine free trade union action and the principle of trade union pluralism.

### **Margins:**

---

<sup>1</sup> Indeed, the Universal Declaration of Human Rights (1948) expressly states in Article 23, paragraph 4, that: "Everyone has the right to form and to join trade unions for the protection of his interests". Similarly, the right to organize was proclaimed by Article 8 of the International Covenant on Economic, Social and Cultural Rights (1966). In:

Blanchard F. (1987), **Freedom of association**, a worker's education manual, 2<sup>nd</sup> edition, I.L.O. ff., Geneva, p.12.

<sup>2</sup> Johnston J.A., (1970), **The international labour organization (its work for social and economic progress)**, Europa Publications, London, p.5.

<sup>3</sup> Law No. 90-11 promulgated on April 21, 1990 on Labour relations, (O.J. N°17, published on April 25, 1990), (amended and supplemented).

<sup>4</sup> Amended and supplemented by:

-Law N° 91-29 promulgated on December 21, 1991 on labour relations (O.J. N°68, published on December 27, 1991);

-Law N° 96-21 promulgated on July 9, 1996 on labour relations (O.J. N°43, published on July 11, 1996);

- -Law N° 22-16 promulgated on July 20, 2022 on labour relations (O.J. N°49, published on July 20, 2022).

<sup>5</sup> Law N° 90-14 promulgated on June 2, 1990, on the exercise of trade union rights (O.J. N°23, published on June 7, 1990), amended and supplemented by Law N° 91-30 of December 21, 1991 and Ordinance No. 96-12 of June 10, 1996, modified later by Law.

<sup>6</sup> Law N° 22-06 promulgated on April 25, 2022, on the exercise of trade union rights (O.J. N°30 published on April 30, 2022, pp. 15-17).

<sup>7</sup> Presidential Decree N° 18-89 promulgated on February 28, 1989, relating to publication of the text of the amendment to the constitution approved in the referendum of February 23, 1989 in the official Gazette of the People's Democratic Republic of Algeria (O.J. N°9 published on March 1, 1989).

<sup>8</sup> Bourouiba B., (2001). **Les syndicalistes Algériens (Leur combat de l'éveil à la libération 1936-1962)**, Alger: Coédition DAHLEB/ENAG, p. 36.

<sup>9</sup> Ibidem, p. 37.

<sup>10</sup> In : Mohamed Chaboub, Algeria in the Second World War (1939-1945) Political, Economic and Social Study, PhD Thesis, Faculty of Humanities and Islamic Sciences, University of Oran 1, 2009, p. 78.

<sup>11</sup> Bourouiba B., Op.cit., p.39.

<sup>12</sup> Choukroun J., (1972). **Le mouvement national et le syndicalisme en Algérie**, Paris: D.E.S., p.54.

<sup>13</sup> Benamrouche, A. (1994), **Le nouveau droit du travail en Algérie**, éditions Hiwarcom, Alger, p. 4.

<sup>14</sup> Ibidem, 5.

<sup>15</sup> B.I.T., (2004), **Les normes internationales du travail, un patrimoine pour l'avenir (Mélanges en l'honneur de Nicolas Valticos)**, O.I.T., Genève, p. 245.

<sup>16</sup> Constitution of the Democratic Republic of Algeria approved in the referendum of September 8, 1963, (O.J. N°64 published on September 10, 1963).

<sup>17</sup> Ordinance N°76-97 promulgated on November 22, 1976 related to the Constitution of the Democratic Republic of Algeria approved in the referendum of November 22, 1976, (O.J. N°94 published on November 24, 1976).

<sup>18</sup> Choukroun J., Op.cit., p. 51.

<sup>19</sup> Ordinance N° 06-03 promulgated on July 15, 2006 on the general status of the civil service (O.J. N°46 published July 16, 2006).

<sup>20</sup> In: Zakaria Samghouni, Freedom to Exercise the Right to Trade Union, First Edition, Dar Al-Huda, 2013, p. 28.

<sup>21</sup> A. L. Amrani, **Modalité d'exercice du droit syndical**, guide pratique de législation et de réglementation du travail, livret N° 05, Alger, p. 43.

<sup>22</sup> With regard to the conditions of constitution of a trade union organisation laid down in the trade union law, the legislator attributes the status of trade union to any workers' or employers' organisation at the end of a constituent general meeting of its founding members (Article 7 of Law 90-14).

<sup>23</sup> A. L. Amrani, *Op.cit.*, p. 52.

<sup>24</sup> With regard to the representativeness of employers' unions, Article 37 of Law No. 90-14 (amended and supplemented by Ordinance No. 96-12 of June 10, 1996) states explicitly that: **“Employers’ unions, federations or confederations representing at least 20% of the employers covered by the statutes of the said unions, federations or confederations and at least 20% of the related jobs in the territorial district concerned are considered representative at the communal, inter-communal, wilaya, interwilaya or national level”**.

<sup>25</sup> According to Article 36-2 of Law No. 90-14 (amended and supplemented by Ordinance No. 96-12 of June 10, 1996), the above-mentioned trade unions are required to communicate to the competent administrative authority the information needed to assess their representativeness, in particular the number of their members and their members' dues.

Application for assessment shall be submitted either to the wali of the wilaya where the headquarters are located for trade union organisations with a communal, inter-communal or wilaya vocation, or to the minister responsible for labour for trade union organisations with an inter-wilaya or national vocation.

It should be noted that any representativeness assessment file must be accompanied by the following documents:

- The list of names, signatures, marital status, profession and domicile of the founding members and management bodies;
- Two (2) certified true copies of the articles of association;
- The minutes of the constituent general meeting.

<sup>26</sup> **U.N.P.E.F**: Union Nationale des Professeurs de l'Education et de la Formation (National Union of Education and Training Teachers).

<sup>27</sup> Benamrouche, A., *Op.cit.*, p.51.

<sup>28</sup> A. L. Amrani, **Modalité d'exercice du droit syndical**, guide pratique de législation et de réglementation du travail, livret N° 05, Alger, p. 43.

<sup>29</sup> Benamrouche, A., *Op.cit.*, p.55.

<sup>30</sup> Art. 6 of Law No. 90-14, cited above.

<sup>31</sup> Art. 15 of Law No. 90-11 on labour relations, cited above.

<sup>32</sup> The budgetary resources of the trade union organisations are constituted, according to the provisions of Article 24 of Law No. 90-14, by:

- Membership fees;
- Income from their activities;
- Donations and legacies;
- Any state subsidies.

In this regard, Trade Union Law requires that the income from trade union activities be compatible and in conformity with the interests and objectives assigned by the statutes. This is also the case for internal or foreign donations and legacies (Art. 25 and Art. 26 of Law No. 90-14, cited above).

<sup>33</sup> This condition was mentioned several times in Title 3 of the Trade Union Law, entitled **“Representative trade union organisations”**. Like Article 36, paragraph 2, of Law No. 90-14, amended and supplemented by the provisions of Ordinance No. 96-12, cited above.

<sup>34</sup> However, any dispute and/or litigation arising from the application of the criteria and procedures relating to the granting of representative status may be the subject of an appeal to the competent



court responsible for ruling within a period of sixty (60) days, by means of an enforceable decision, notwithstanding opposition or appeal (Art. 37a, para .2 of Law No. 90-14).

<sup>35</sup> Benamrouche, A., Op.cit., p.84.

<sup>36</sup> A. L. Amrani, **Modalité d'exercice du droit syndical**, Op.cit., p. 45. .

<sup>37</sup> Art. 120-13 of Law No. 90-11, cited above.

<sup>38</sup> In the standards, the collective agreement is concluded at the request of the employer and/or a group of employers, the workers' union representatives and/or one or more trade union organisations. The negotiation of these agreements is carried out by joint committees; each of the parties can be represented by three (3) to seven (7) members (Articles 114-123 & 124 of Law No. 90-11, cited above).

<sup>39</sup> Art. 38 of Law No. 90-14, cited above.

<sup>40</sup> Under the terms of Article 16 of Law 90-14, amended and supplemented by Law No. 91-30 of December 21, 1999, any trade union organisation acquires legal personality and civil capacity upon its constitution in accordance with the law. It therefore enjoys the following prerogatives:

- To sue and exercise before the competent courts the rights reserved to the civil party as a result of facts related to its object and having prejudiced the individual or collective, moral and material interests of its members;
  - To represent its members before all public authorities;
  - To conclude any contract, convention or agreement related to its purpose;
- To acquire, free of charge or against payment, movable or immovable property for the exercise of its activities as provided for in its statutes and internal regulations.

<sup>41</sup> Benamrouche, A., Op.cit., p.102.