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# Workers' representatives in Montenegero

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# ▶ Introduction

The basis for trade unions and other means of association is established in the Constitution of Montenegro, which in article 53 guarantees the freedom of political, trade union and other association and action, without approval, by registration with the competent authority.[1] Joining a trade union organization is voluntary. The Labour Law does not define the conditions for joining a trade union but rather defines the conditions under which someone can become a member of a trade union or an association of employers as provided by the internal acts of those associations (usually by statute). The Labour Law does not envisage a minimum number of members for the establishment of these organizations, but this issue is also regulated by their internal acts. However, there are limitations regarding the affiliations of persons who can hold office in trade union bodies because the positions in trade union bodies are incompatible with positions and membership in political organizations and government bodies. Thus, the Law on Trade Union Representativeness (*Official Gazette,* No. 12/2018) in article 9, as one of the general conditions for trade union representativeness (regardless of the level at which the trade union is organized), provides for independence from state bodies and political parties. In addition, it was specified that the precondition of independence will be unfulfilled if the trade union representative is a member of a political party or on the electoral list as a candidate of a political party.

In accordance with the provision of article 53 of the Constitution of Montenegro, which provides for protection against forced membership of an association, the Labour Law in article 189 further guarantees protection against unfavourable treatment either due to membership or non-participation in trade union activities.

In addition, article 13 of the Labour Law specifically prohibits discrimination in terms of the trade union right to organize, which in practice would mean that an employee, as a trade union member, cannot be disadvantaged in terms of membership or exercise of rights as a trade union member on any grounds of discrimination listed in article 7 of the Labour Law. This provision is related to the right to trade union organization, which in its positive meaning implies the freedom of an employee to choose whether to be a member of a trade union or not and of which trade union. Trade unions also cannot put their members at a disadvantage in relation to any personal characteristic, either in terms of access to the organization or in terms of the benefits it provides for its members.

In Montenegro, there is no special law on the organization of workers and employers, but their organization and operation are regulated within the Labour Law. It follows from the above that the work of employers' and employees' organizations cannot be banned, nor can these organizations be dissolved by a decision of an administrative body, because that would be contrary to the essence of their freedom of organization guaranteed by the Constitution of Montenegro.

# ▶ 1. Participation of elected workers` representatives

The obligation of the employer to provide employees with the free exercise of trade union rights, as well as to provide conditions for efficient performance of trade union activities that protect the interests and rights of employees, includes the creation of material and technical conditions and the obligation to inform and consult trade unions.

Article 192 of the Labour Law stipulates the obligations of the employer related to informing and notifying the trade union, that is, shop stewards (in the case a trade union is not organized with an employer), specifying in which cases the employer informs the shop steward and in which cases the employer has an obligation to notify them. The difference between these two employer obligations is that information is shared at least once a year and notifying is done as needed (if a new act is adopted, changes in health and safety at work measures or new work technologies, changes in the exercise of employees' rights and so forth). Thus, an employer is obliged to inform a trade union at least once a year on a wide range of issues: business development plans and results, their impact and any changes in salary policy; the list of employees, their status, working hours for which employment contracts have been concluded and the qualification structure; total gross and net salaries, including contributions for compulsory social insurance and the amount of average salaries and overtime; recorded work injuries and improvements in working conditions; and any other issues important

1 Montenegro has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), as well as the Right to Organise and to Collective Bargain Convention, 1949 (No. 98) .

for the financial and social security of employees. An employer also notifies the trade union about its general acts; health and safety measures; introduction of new technology and organizational changes; working hours, night work and overtime; measures to address any redundancies and the time and manner of payment of salaries. The obligation to inform a trade union also exists in the event of a change in ownership as stipulated in article 110 of the Labour Law. Here, the aim is to mitigate the consequences of a change of ownership. In such a case, the employer must inform and consult their employees (Kovačević 2017, 63–91). The current employer is obliged to inform either a trade union no later than 30 days before a change in ownership (any trade union organized within an employer, regardless of whether it is representative) or shop stewards (if no trade union is organized at the employer). The information is provided in writing and should contain the date of the change in ownership; the reasons for and legal, economic and social consequences of a change in ownership for employees; and envisaged measures for employees whose employment contracts are to be transferred to the new entity.

The obligation to consult, provided in paragraph 2 of this article, should be distinguished from the obligation to inform, which should not have the expected consequence of submitting opinions or proposals of trade unions (shop stewards). Both the old and new owners have an obligation to consult with trade unions organized within that employer. However, this obligation only applies if they have new measures in relation to their employees. They are obliged to consult with a trade union (shop stewards) about these measures in a timely manner. So, in this case, the role of a trade union (shop stewards) is more active in relation to the previous case – which refers to sharing information. The aim of the consultation is to reach an agreement to mitigate the socioeconomic consequences for employees. This means that a trade union or shop stewards submit their proposals and opinions. Although reaching an agreement is not imperative, an employer's relationship with a trade union (shop stewards) cannot be reduced only to "submitting proposals and opinions" but also can entail a discussion to be conducted in good faith – with the aim of reaching an agreement (see also Simović-Zvicer 2002, 282).

In addition, a trade union may submit initiatives and proposals to an employer as they relate to the relevant issues on the agenda as well as any occupational health and safety matters. This avenue is restricted to a trade union and does not extend to shop stewards. Here, an employer is obliged to inform the trade union in writing about the meeting at which its initiatives or proposals will be discussed and to submit the appropriate materials.

The Labour Law also regulates consultation in the following ways:

- consulting on all important issues concerning the professional and economic interests of employees such as measures to mitigate socioeconomic consequences from a change of ownership;
- informing and consulting a trade union in a case of collective redundancies or if an employer intends to carry out redundancies for at least 20 employees within a period of 90 days;
- consulting on drafts of the act on systematization: in this case an exception is made in relation to other general acts of an employer, on the occasion of which an employer has only an obligation to inform a trade union. With the adoption of an amendment to the Act on Systematization, an employer has an obligation to request and consider the nonbinding opinion of a relevant trade union regarding the plans ahead. However, non-compliance with the obligation to consult a trade union results in liability for the misdemeanor, in accordance with article 209 of the Labour Law.

In all these cases, there is an obligation by an employer to notify a trade union in a timely manner, and no later than five days before the meeting at which its proposals and recommendations will be considered. The relevant materials and agenda also must be submitted before a meeting.

Additionally, a trade union may be involved in the process of determining the disciplinary responsibility of employees. Specifically, article 147 of the Labour Law stipulates that a trade union member may be supported by their union during a disciplinary hearing. Article 193, paragraph 3 of the Labour Law also provides for a solution that empowers a trade union to initiate proceedings to protect the rights of its members. This refers to the submission of an initiative for the protection of rights to the Labour Inspectorate, an initiation of proceedings for the peaceful settlement of labour disputes (before the Agency for Peaceful Settlement of Labour Disputes or the Centre for Alternative Dispute Resolution) and the initiation of proceedings for the protection of rights before the courts.

The role of trade union representatives in the consultation process regarding collective redundancies is important. Namely, the Labour Law foresees the employer's obligation to inform and consult the union, that is, employees or representatives of employees,

in a collective redundancy procedure.[2] Consultation with employees' representatives is provided only in the event that an employer does not have a union. The law does not regulate the method to elect employees' representatives in situations where the employer does not have an organized union, so it is up to employees themselves to decide how to go about it. Moreover, if the employer has no organized trade union, the obligation to inform and consult applies to one, and not several, employee representatives.

In this case, the employer's obligation applies equally to each trade union (organized within that employer) that is registered in the national trade union register, regardless of whether it is representative or not. Informing and consulting the trade union, or the employee representatives in case no trade union is organized at the employer, are two separate processes, which (together with other legal aspects) are a condition for the legality of the procedure. The difference between these two processes is in the periods of their implementation. Namely, in accordance with article 167, paragraph 1 of the Labour Law, an employer must first inform a trade union about planned dismissals and publicize it with the necessary information internally before making a decision, while observing exhaustive criteria as listed in the Law, including the total number of employees, criteria applied for redundancy, workplace systematization data on job numbers, descriptions and functions, severance pay calculation, opportunities for professional retraining or reassignment in accordance with contractual terms or collective agreement, assignment to another job or another employer), in which case the employer may terminate their employment contract without obligation to pay severance.,

After submitting the above information, a consultation with trade union or employee representatives follows. Notably, this is done at the initiative of an employer, who is obliged to seek the opinion of a trade union no later than 90 days before the planned redundancies, while the consultation phase cannot be shorter than 30 days (within the aforementioned 90-day period, at least 30 days must be committed to the consultation procedure). During the consultation phase, the active role of trade unions, that is, employees and employee representatives, is understood through dialogue with an employer, which aims to prevent layoffs or mitigate the consequences. For this purpose, a trade union or employee representative submits opinions and proposals during the consultation, either verbally in meetings with an employer[3] or in writing. An employer is obliged to answer with a written explanation in relation to each proposal (regardless of whether the proposal is accepted or not). This obligation applies only to proposals aimed at preventing or mitigating the consequences of layoffs. The aim of the consultation process is to reach an agreement between employer and trade union or employee representatives. However, reaching an agreement is not imperative: if no agreement is reached, the employer has fulfilled its legal obligation to conduct a consultation, so the absence of an agreement cannot affect the legality of cancellation of employment in such a case.

## ▶ 2. Role of workers' representatives in collective bargaining

Union representatives have a vital role in the collective bargaining process. Collective agreements are the second most relevant source of labour law in Montenegro. According to the Labour Law, collective agreements can be concluded at three levels: general (national); sectoral (sector, group or subgroup of business activity) or employer (organization). Collective agreements concluded at a certain level apply to all workers at that level of organising, regardless of whether they are members of representative organizations that have entered into such agreements. In addition, the matters regulated by collective agreements are the same, irrespective of the level of collective bargaining.

The conclusion of collective agreements in Montenegro is basically voluntary, but according to the Labour Law, social partners are obliged to negotiate collectively. This is confirmed in article 185, paragraph 1. This obligation of collective bargaining does not always have to result in a conclusion but remains useful because it contributes to an improvement in social dialogue. To be legally binding, a collective agreement must be signed by all parties to the collective bargaining. In case there are several representative trade unions, each must be a signatory to

2 The European Court of Justice also points out the obligation to consult employees, that is, employee representatives if a trade union is not organized with the employer. *The Judgment of the Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland*, C-383/92 of 2 March 1994 (ECLI:EU:C:1994:78) regarding the transposition of EU rules on collective redundancies, the court stated that the duty to inform and consult would be deprived of its full effect if Member States would allow only recognized representatives of employees to be informed and consulted, leaving employees without an organized trade union without the right to information and consultation.

3 If consultations are held at meetings, it is necessary to keep minutes, in which the opinions and proposals of trade unions, or employees and employee representatives may be entered in detail.

the collective agreement.[4] The conditions for acquiring the status of a representative trade union (general and special), as well as the procedure for determining the representativeness of a trade union are defined by the Law on the Representativeness of Trade Unions (*Official Gazette of Montenegro*, No. 12/2018). The general conditions are to be registered in the Register kept by the Ministry of Labour and Social Welfare; to be independent of state bodies, employers and political parties; and to be financed from membership fees and other sources, while special conditions depend on the level at which representativeness is determined.

Special conditions for determining representativeness refer to the percentage of employees who are members of a trade union, and it is determined differently, depending on the level of trade union organization. Thus, representativeness requires that a trade union gather at least 20 per cent of the employees at the employer. That percentage is 15 per cent at the level of branch of activity, group or subgroup, and 10 per cent at the state level . , but with the caveat that at least five representative branch-level trade unions are members of that union. These thresholds were provided for in the previous Law on the Representativeness of Trade Unions (*Official Gazette* Nos. 26/10, 36/13 and 55/16), and the new Law adopted in 2018 specifies the condition of political neutrality. Thus, article 9 of this Law states that if a trade union representative is a member of a body of political parties or on the electoral list as a candidate of a political party, then independence is not fulfilled. It also specifies how general conditions are assessed, namely: confirmation of entry in the Register; a statement by the trade union representative that they are not a member of the body of political parties and that they are not on the electoral list as a candidate of a political party; the statute or the rules of the trade union organization; and a trade union statement on the method of financing.

The professionalization (or formalization) of the position of shop steward is covered by article 195 of the Labour Law. Thereby, professionalization can only refer to a shop steward of a representative trade union (because only a representative trade union can appear as a signatory to a collective agreement). The Labour Law leaves space for a collective agreement to define the details about a trade union position, for example, a steward's rights and obligations on the shop floor, how much time they devote to the union, how much of their salary is paid from trade union funds and their corresponding term.

In case their rights and obligations are suspended, a shop steward has the right to return to "their" former job after the termination of a trade union position or – if in the meantime that job is terminated – to be assigned to a new job corresponding to their level of education or professional qualification. A steward is entitled to paid leave to attend branch and/or national trade union meetings of which they are members), seminars, courses, congresses and conferences in the country and abroad. Thereby, there is no limit to the number of hours or days that a shop steward may be absent from work, and they are entitled to salary compensation for the entire period of absence due to the aforementioned trade union activities. In addition, a part-time shop steward is entitled to an additional 20 hours of absence from work per month to perform other trade union activities (also with salary compensation). In both cases, an employer may not prevent the absence of a shop steward so long as they inform their employer at least three days in advance.

Shop stewards are protected in multiple ways from an employer's punitive action for performing trade union activities during and up to six months after their term. They can be neither made redundant, reassigned, redeployed nor discriminated against for performing trade union activities. In addition, the employer cannot put the shop steward at a disadvantage due to their trade union activities, so long as they fulfil their work obligations.

## ▶ 3. Workers' representatives

The Labour Law provides for representation of employees only through trade unions. In case there is no trade union in the enterprise, employees may elect one or more representatives for representing them in occupational safety and health related matters. A previously valid law[5] provided for the establishment of works councils, but in practice they did not play a significant role in the protection of employees' rights because their powers

4 Such a solution also derives from Article 6 of the Law on Trade Union Representativeness, which, as one of the rights of a representative trade union, provides for the right to collective bargaining and the conclusion of collective agreements.

5 The Labour Law of 2003 (*Official Gazette of the Republic of Montenegro*, No. 043/03) provided for the right of employees to establish a Works Council with an employer with more than 20 employees. The Works Council gave opinions on: significant decisions and acts of the bodies of the employer that affect the position of employees, in accordance with the collective agreement; improving professional rehabilitation; working conditions of older employees and any redundancy program. In addition, the employer was obliged to seek the opinion of the Works Council if at the same time at least ten employees or at least 10 per cent of the total number of employees applied to it for protection of rights from work and on the basis of work.

overlapped with those of trade unions. Currently, there is no provision for the establishment of works councils, therefore the implementation of EU Directive 2009/38/EC on the role of European Works Councils informing and advising employees is not possible.

The role of elected employees' representatives is foreseen only in terms of occupational safety and health. Occupational safety and health are regulated by the Law on Safety and Health at Work which does not provide for an obligation to establish a special body that would play an active role in protecting the rights of employees; however, it does contain provisions relating to elected employees' representatives. An elected employees' representative is a person appointed by employees to represent them in safety and health matters at work. The employer is obliged to inform the shop steward in writing regarding:

- risk, prevention, measures and activities in relation to each type of workplace and/or job;
- the manner of organizing and providing first aid, fire protection, evacuation procedures in the event of serious and imminent danger and assigning persons in charge of implementing these measures.

In addition to the obligation to inform the shop steward, the employer has an obligation to provide them with access to decisions on occupational safety and health measures that must be honoured as well as the means and equipment for personal protection; records and reports on injuries at work, as well as data arising from the measures and actions of inspection and other bodies responsible for occupational safety and health. An employer is obliged to enable a shop steward and a trade union to submit their remarks regarding safety and health at work to a competent inspector during inspection procedures.

The Law on Safety and Health at Work specifies that an employer must provide a shop steward with appropriate forms of training. In addition, the employer is obliged to provide at least one shop steward with adequate paid leave from work of at least five working hours per month and to provide them with all the necessary means to perform work related to safety and health at work. Bearing in mind that shop stewards prominent role in relation to safety and health at work, they cannot be put at a disadvantage due to the performance of tasks that contribute to controlling occupational safety and health.

Employees have the right to elect one or more shop stewards. The selection procedure, the manner of work and the number of employee representatives with the employer, as well as their relationship with the trade union are regulated by a collective agreement.

## ▶ 4. Recent changes concerning trade union' representatives on the national industrial relation system

The manner of electing an authorized trade union representative (shop steward) is regulated by a trade union's own internal rules. A trade union may have one or more representatives at an employer. A few comments are worth making in this regard:

- an authorized shop steward, in accordance with article 5, paragraph 1, item 4 of the Labour Law, can only be an employee;
- the name of the authorized shop steward is entered in the Register of Trade Union Organizations maintained by the relevant ministry;
- the trade union is obliged to inform the employer about the appointment of an authorized shop steward within 15 days from the day of entry of that fact in the Register of Trade Union Organizations.

An employer must allow an authorized shop steward to perform trade union activities without any hindrance according to article 191 of the Labour Law. An employer is also prohibited from obstructing a shop steward from performing their function. Similarly, a shop steward is expected to perform trade union activities in a manner that does not affect workplace efficiency (for example, by modifying the timing and dynamics of their activities or coordinating with their employer so as not interrupt work).

In Montenegro, no statutory advisory bodies currently exist for representatives of branch-level trade unions and employers' associations. Nevertheless, the possibility to establish these bodies is provided for in branch-level collective agreements, and their role is to provide opinions and interpretations regarding the application of branch-level collective agreements. Thus, the Branch-level Collective Agreement for Education (*Official Gazette of Montenegro*, Nos. 10/2016 and 76/2019), signed by the representative trade union for education in Montenegro and the Government of

Montenegro, stipulates that the Contracting Parties establish a commission for implementation, monitoring, implementation and interpretation of this Agreement, on a parity basis, composed of three representatives of each Contracting Party. This commission makes decisions and gives its opinions regarding the application of this Agreement, provided that its decisions are binding on the Contracting Parties and the employer. The manner of work and decision-making of the commission is regulated by the rules of procedure. Similar provisions are contained in the Branch-level Collective Agreement for Health Care (*Official Gazette*, Nos. 30/2016 and 9/2020), as well as in the Branch-level Collective Agreement for Culture (*Official Gazette*, No. 64/2016), the Branch-level Collective Agreement for Energy sector (*Official Gazette,* No. 69/2016), the Branch-level Collective Agreement for Telecommunications (*Official Gazette*, Nos. 55/2015 and 61/2018), as in other branch collective agreements, except that, instead of a commission, a committee for monitoring, application and interpretation of this collective agreement is envisaged.

Representatives of representative trade unions and employers' associations have their representatives in the management boards of public institutions, which have competencies in the field of labour relations and exercising rights based on work. These are the following institutions: the Agency for the Peaceful Settlement of Labour Disputes, the Labour Fund, the Health Fund, the Pension and Disability Insurance Fund and the Employment Agency. The competencies of these bodies, in addition to the election of the director of the institution, also refer to the adoption of decisions and acts of a general nature, development plans and programs and so forth. In each of the management boards of these institutions, the members include one representative of the representative association of employers and one representative of the representative trade union at the state level. Two representative umbrella associations of employees currently operate in Montenegro, and their membership in these bodies is regulated by the principle of rotation. Namely, article 6 of the Law on Trade Union Representativeness stipulates that if tripartite bodies prescribe the participation of a smaller number of trade union representatives in relation to the number of representative trade unions at the appropriate level, the principle of rotation applies, in accordance with a special agreement.

In addition, representatives of representative trade unions have their representatives in the Committee for Determining the Representativeness of Trade Unions at the National and Branch Level (which makes a proposal for determining representativeness to the minister responsible for labour), as well as in the Committee for Monitoring, Implementing and Interpreting the General Collective Agreement.

Representatives of representative trade unions, according to the principle of rotation, have their representatives in advisory bodies at the state level. One of such bodies is the Council of the Vocational Rehabilitation Fund, which in accordance with article 40 of the Law on Vocational Rehabilitation and Employment of Persons with Disabilities (*Official Gazette*, Nos. 49/2008, 73/2010, 39/2011, 55/2016) monitors the implementation of measures aimed at improving vocational rehabilitation and employment of persons with disabilities as well as the use of the Vocational Rehabilitation Fund.

Representatives of representative trade unions have an important role in the Council for Privatization and Capital Projects which performs management, control and enforcement of privatization and has executive powers determined by the Law on Privatization of Economy, and proposes and coordinates activities on the implementation of capital projects in Montenegro.

The work of the aforementioned bodies is regulated by their internal acts (rules of procedure). In practice, sessions are held live or electronically – via various platforms (e-mail, Zoom, Viber and so on).

## ▶ Conclusions

Trade unions keep the primary role in the information and consultation processes at the company, including regarding collective redundancies. In practice, the elected workers` representatives have only a marginal involvement if any. Moreover, there is no legal provision for the establishment of works councils, therefore the implementation of EU Directive 2009/38/EC on the role of European Works Councils informing and advising employees is not possible. Besides, in Montenegro, no statutory advisory bodies currently exist for representatives of branch-level trade unions and employers' associations.

# ▶ References

Kovačević, Lj. 2017. "Harmonization of Domestic Legislation and Practice with Labour Law of the European Union – An Example of Protection of Employees' Rights in Case of Change of Employer." *Labour and Social Law 21* (1): 63–91.

Simović-Zvicer, Vesna. 2020. "Commentary on the Labour Law." Podgorica: Center for Labour and Business Law, p. 282.

# ▶ Documents

*Official Gazette of Montenegro.* 2008–2020. Podgorica: Government of the Republic of Montenegro.

No. 49/2008
No. 73/2010
No. 39/2011
No. 55/2015
No. 10/2016
No. 30/2016
No. 55/2016
No. 64/2016
No. 69/2016
No. 12/2018
No. 61/2018
No. 76/2019
No. 9/2020

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