



RESEARCH ARTICLE

Protect Representative Organization of Employees from Interference and Manipulation by Employers in Accordance with Current Vietnamese Laws

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ARTICLE INFO	ABSTRACT
Received: May 21, 2024	Protecting the representative organization of employees from interference and manipulation by employers is an important factor to ensure that the activities of the representative organization of employees at the grassroots level take place independently and effectively. This is especially necessary so that the representative organization of employees at the grassroots level can represent the interests of workers fairly and without pressure from other parties. This article analyzes content related to the protection of representative organization of employees at the grassroots; Analyze current Vietnamese legal regulations on protecting workers' representative organizations at the workplace and discuss the issue of improving legal regulations in this field.
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INTRODUCTION

Article 2 of Convention 98 (ILO, 1949.) requires ensuring the complete independence of the representative organization of employees at the grassroots level from the employer in all aspects of organization and operation. Accordingly, the Compendium of the ILO Committee on Freedom of Association, 2006, paragraph 855: Article 2 of Convention No. 98 establishes the absolute independence of representative organizations of workers from employers in the process of carrying out its activities (Commission on Freedom of Association, 2006). Accordingly, the independence of the grassroots representative organization of employees includes two elements: financial independence and the organization's right to self-management and self-determination:

- The first, representative organization of employees at the grassroots needs to have independent financial resources so as not to depend on the employer. This helps avoid financial interference from the employer .
- Second, the representative organization of employees at the grassroots needs to self-manage and decide on its own activities. This ensures that the worker representative organization at the facility is not manipulated by the employer or any other party.

The independence of the representative organization of employees at the grassroots is guaranteed through many contents. Some key aspects ensuring this independence include: The establishment of a representative organization of employees at the grassroots, the implementation of functions and tasks of the representative organization of employees at the grassroots through its work program and activity plan; and the internal management of the representative organization of employees at the grassroots, the most important of which is the autonomy in managing and using the finances of the representative organization of employees at the grassroots.

The Freedom of Association considers that workers' and employers' organizations must have adequate protection against any interference by the other party or other actors in their formation, organizational operations and governance. The employer's intervention in the establishment of representative organization of employees at the grassroots can be carried out through a variety of actions such as: Intervening in the construction process and passing regulations. rules for representative organization of employees at the grassroots; The process of nominating and electing officials to represent workers at the grassroots level. Specifically, it is possible to point out a number of acts such as: The employer's intervention in the development of charters or presence in the organization and activities of the executive committee of the representative organization of employees at the facility; Bribing workers with material benefits or promotions so that workers give up or not join the grassroots employee representative organization, or to create grassroots representative organization of employees "fake" that is not actually an organization of the workers, by the workers and for the workers; offering bribes to union members of the grassroots labor representative organization to leave the grassroots labor representative organization, to make a statement of resignation as well as to try to establish a representative organization at the grassroots level. representative of workers at the puppet establishment; employers covertly sabotage workers' organizations through artificial incentives for workers (Committee on Freedom of Association, 2006).

Intervention acts of employers in the process of building and implementing activities of representative organization of employees at the grassroots level, in the management and use of finances of representative organization of employees at the workplace. can also be implemented in practice in a very diverse and sophisticated way, which can be interventions aimed at hindering and making it difficult to carry out the work of organizing employee representation at the grassroots. , can also be acts aimed at bribing, weakening or paralyzing the representative function of the grassroots employee representative organization, such as financially sponsoring the grassroots employee representative organization. . According to Article 2 of Convention 98, acts of intervention include acts of providing financial or other support to a workers' organization with the purpose of placing it under the control of the employer or the organization. of employers (ILO, 2012). The above interventions seriously affect the implementation of the representative function of protecting and promoting the rights of workers , especially promoting the rights of workers through collective bargaining. The independence of the parties is important in collective bargaining, so negotiations on behalf of workers or their organizations should not be carried out through negotiating representatives appointed by or under the supervision of the parties. influence of the employer or the employer's organization.

In terms of national law, there need to be specific and clear regulations prohibiting acts of interference and manipulation of representative organization of employees at the grassroots level. In compliance with Convention No. 98, Governments should consider the possibility of adopting clear and precise regulations protecting workers' organizations against acts of interference. The law not only regulates the above-mentioned acts of interference and manipulation of representative organization of employees at prohibited establishments, but it also needs to be accompanied by regulations on the order and procedures for resolving problems when problems occur. Intervention and manipulation behavior occurs. The fact that the law has regulations prohibiting the interference

of employer organizations in the affairs of representative organization of employees at the grassroots level is not enough if these regulations are not accompanied by procedural procedures. continue to ensure implementation in practice, and regulations on sanctions are strict enough to deter violations of interference and manipulation of representative organization of employees at the grassroots level. The law must clearly provide for complaints and provide adequate and severe sanctions for acts of interference by employers against workers and workers' organizations (Committee on Freedom of Work) . do association, 2006).

2. MATERIALS AND METHODS

This article built on common research methods in the law sector in Viet Nam such as: empirical legal assessment, empirical legal analysis, and comparative legal research.

3. RESULTS:

Regulations of Vietnamese law on the protection of representative organization of employees at the grassroots level from interference and manipulation by employers

Vietnam's 2019 Labor Code stipulates the concept of "Representative organization of employees " *means an internal organization voluntarily established by employees of an employer which protects the employees' legitimate rights and interests in labor relations through collective bargaining or other methods prescribed by labor laws.* Representative organizations of employees include internal trade unions and internal employee organizations. In Clause 2, Article 3 . In addition, in Article 70, there is an indication of grassroots trade unions and organizations. of workers at the enterprise is an organization representing workers at the grassroots. In particular, Article 175 stipulates prohibited acts for employers related to the establishment, joining and operation of representative organizations of workers at the grassroots: "Intervention, manipulating the process of establishing, electing, developing work plans and organizing the implementation of activities of grassroots representative organization of employees , including financial support or economic measures other to disable or weaken the performance of representative functions of the grassroots representative organization of employees or discriminate between grassroots representative organization of employees " (National Assembly, 2019).

The current regulations of the 2019 Labor Code on protecting representative organization of employees at the grassroots against interference and manipulation by employers are still limited, that is, there is no definition of the concept concept of intervention and manipulation of representative organization of employees at the grassroots. The regulations describing acts of intervention and manipulation of representative organization of employees at the grassroots are very sketchy.

Directly related to the protection of trade unions - representative organization of employees in Vietnam, specialized laws also have regulations, but they are still not specific. According to Clause 3, Article 9 of the 2012 Trade Union Law: "Using economic measures or other measures that are detrimental to the organization and activities of representative organization of employees at the grassroots is a strictly prohibited act" (National Assembly, 2012). Decree No. 88/2015/ND-CP of the Government has an article (Article 24) detailing Clause 3, Article 9 of the 2012 Trade Union Law mentioned above, but most of the specific content is not the acts. interfere with and manipulate the representative organization of employees at the grassroots level, but are discriminatory acts against the representative organization of employees at the grassroots level (Government, 2015).

2012 Trade Union Law and the 2019 Labor Code have no provisions distinguishing between employees and managers, leading to a failure to prohibit employers' representatives from as managers representing the interests of the employer, participating or intervening in the establishment and operation of representative organization of employees at the grassroots level,

including the appointment and election of committees comply with the grassroots trade union. Due to the lack of specific regulations on manipulative intervention, an inevitable consequence is that the law almost lacks provisions on strong enough sanctions as well as measures to overcome the consequences of manipulative intervention. lack of representative organizations for workers at the grassroots level.

Regarding sanctions, Article 36 of Decree No. 28/2020/ND-CP of the Government has regulations on sanctions for violations of regulations on using economic measures or other measures that cause disadvantages to customers. organization and trade union activities accordingly: Fine from 5,000,000 VND (equivalent to 210 USD) to 10,000,000 VND (equivalent to 420 USD) for employers who commit one of the following acts: (1) Do not pay salaries to workers who do part-time union work during union activities; (2) not allowing workers who do full-time union work to enjoy the same collective rights and benefits as other workers in the same organization; (3) implementing economic measures or other disadvantageous measures that affect workers so that they do not join the union or do not participate in union activities. In addition, Article 36 of Decree No. 28/2020/ND-CP of the Government also stipulates remedial measures: Forced payment of salaries to part-time union workers during union activities; Force the settlement of collective rights and welfare for full-time union workers like other workers in the same organization (Government, 2020). The above sanctions provisions do not cover all acts that are considered to interfere and manipulate the activities of representative organization of employees at the grassroots level.

4. DISCUSSION:

The issue of improving legal regulations on protecting representative organization of employees at grassroots level from interference and manipulation by employers in Vietnam

The ratification and implementation of Convention 98 requires Vietnamese law to be amended and supplemented with regulations as stated and analyzed above. Amendments to regulations related to acts of intervention and manipulation of grassroots representative organization of employees will contribute to better protecting the independence of grassroots representative organization of employees. And therefore, strengthen the representative capacity of grassroots representative organization of employees in labor relations. In this study, the author discusses a number of contents, which are:

- Firstly, the 2019 Labor Code needs to supplement regulations defining the acts of interference and manipulation of representative organization of employees at the grassroots. Along with that, it is necessary to regulate some typical acts of intervention and manipulation of representative organization of employees at the grassroots level, specifically some acts of intervention in terms of organization, finance and work plans. of the representative organization of employees at the grassroots level.
- Second, the 2019 Labor Code needs to supplement regulations on dispute resolution related to complaints and lawsuits about acts of interference and manipulation of representative organization of employees at the grassroots. Along with that, it is necessary to review and supplement regulations related to applicable sanctions and remedial measures for acts of intervention and manipulation of representative organization of employees at the grassroots level.
- Third, other legal documents stipulating sanctions also need to be supplemented for other acts of interference and manipulation in the activities of representative organization of employees at the grassroots.

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