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FREEDOM OF ASSOCIATION INTO TRADE UNIONS: COMPLIANCE OF CONSTITUTIONAL PRACTICE OF UKRAINE WITH EUROPEAN STANDARDS

Reproducing and specifying rules of international legal instruments, the Constitution of Ukraine in Article 36, together with the general provisions on the right to freedom of association, singles out trade unions among the variety of non-governmental organizations. This separation is made by special instructions that include the right to freedom of association the right to form social organizations, including trade unions. This approach is applied by legislators in Azerbaijan (p. 2 of Article 58), Armenia (Part 1 of Article 28), Georgia (p. 1 Article 26), Germany (Clause 3 Article 9), Russia (p.1 Article 30), San Marino (Article 8), Serbia (Part 1 Article 55), Finland (Part 2 §13), the Czech Republic (Article 27 of the Charter of Fundamental Rights and Freedoms, which is part of the Basic Law), Montenegro (Part 1 Article 53).

The above right in different forms and extent is embodied in the fundamental laws of Albania, Andorra, Belarus, Bulgaria, Greece, Spain, Italy, Latvia, Lithuania, Macedonia, Moldova, Monaco, Poland, Portugal, Slovakia, Slovenia, Turkey, Croatia and Switzerland. However, the most detailed consideration of the issue is observed in the constitutions of Portugal and Turkey.

Thus, based on an analysis of the relevant provisions of constitutions of European countries and Article 36 of the Constitution of Ukraine it is proposed to optimize the formulation of legal constructions of Paragraph 3 of this article and submit it to a separate article (Article 44), which will enable more detailed regulation of the right to freedom of association into trade unions and differentiation of this right from general provisions on the right to freedom of association (Article 36).

Given the aforementioned, it seems appropriate to move provisions of Part 3 Article 36 of the Constitution of Ukraine to Article 44, where the first sentence refers to the subject, the term “citizens” shall be replaced with the term “everyone” that we believe, firstly, is more consistent with international legal acts and international experience; secondly, there will be no conflict with Part 1 Article 26 of the Constitution of Ukraine; and thirdly, it will greatly expand the range of bearers of the right.

Therefore, we present Article 44 as follows:

“Article 44.

Everyone has the right to take part in trade unions with the purpose of protecting their labour and socio-economic rights and interests.

Trade unions unite people bound by common interests by virtue of their activities in enterprises, institutions and organizations regardless of ownership.

Restrictions on membership in trade unions are established by the Constitution and laws of Ukraine.

Those who work have the right to strike. No one can be forced to participate or not to participate in the strike. The procedure and conditions for exercising this right shall be determined by law”.