

## Chapter 68

# Right to Governance and Right to Collective Bargaining: In the Background of the Specified Right to Strike as Fundamental Right and Positive Obligation of the Slovak Republic

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### **ABSTRACT**

*The chapter is devoted to constitutional and general legal enactment of the right to strike in the Slovak Republic. The main point comprises the existing international regulation of a right to collective governance and collective bargaining as well as the essential related freedom of association. The chapter provides a close analysis to the real accessibility of a particular right—the right to strike. The introduction provides a legal definition of the right to strike while it comes out from a normative regulation realised by the Constitution of the Slovak Republic and Law No. 2/1991 of the Coll. on Collective Bargaining. After that, the authors, in compliance with the Constitution of the Slovak Republic, exactly define limitations on the right to strike. Within the final sections, the chapter deals with constitutional guarantees of the right to strike within the regime of Art. 51 para. 1 of the Constitution of the Slovak Republic and positive obligation of the State in relation to right to strike under international conventions.*

### **RIGHT TO COLLECTIVE BARGAINING AND RIGHT TO STRIKE AS INTERNATIONAL LAW TERM**

Freedom of association is closely interlinked with the right to collective governance (or also to bargaining) and collective actions. This fact

was well known in the 20<sup>th</sup> century and nor the present time proves otherwise. Existence of the right to collective bargaining is impossible without freedom of association. The main aim of this part is to point out at the existing legal regulation of the right to collective bargaining and right to strike as the fundamental right, in the context of application of freedom of association.

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Various sources, institutions, and covenants concern the matter and have contributed to development of the right to collective governance. These normative legal systems, which contributed to definition of the right to collective governance, must be seen as the leaving and critical ones. Such are as follows:

1. Conventions of the International Labour Organisation.
2. The European Social Charter and European Convention on human rights and fundamental freedoms adopted by the Council of Europe.
3. The Charter of fundamental rights of the European Union and the Treaty establishing the European Communities, in consolidated wording of the Lisbon Treaty.
4. International covenant on Economic, Social, and Cultural rights adopted by the United Nations Organisation in 1966.

### **Conventions of the International Labour Organisation**

The Slovak republic is a signatory party of various conventions of the International Labour Organisation concerning the collective bargaining. The most fundamental are mainly:

- Freedom of Association and Protection of the Right to Organise Convention of the International Labour Organisation No 87 of 1948 (published as a notice of the Federal Ministry of Foreign Affairs No 489/1990 of Coll. of the laws and point 28 of notice of the Ministry of Foreign Affairs of the Slovak republic No 110/1997 of the Coll. on confirmation of succession of the Slovak republic into obligations from the particular multilateral contractual documents of the International Labour Organisation, the depository of which is

the Director General of the International bureau of labour).

- Right to Organise and Collective Bargaining Convention of the International Labour Organisation No 98 of 1949 (published as a notice of the Federal Ministry of Foreign Affairs No 470/1990 of the Coll. of laws and point 33 of notice of the Ministry of Foreign Affairs of the Slovak republic No 110/1997 of the Coll. on confirmation of succession of the Slovak republic into obligations from the particular multilateral contractual documents of the International Labour Organisation, the depository of which is the Director General of the International bureau of labour).
- Tripartite Consultation (International Labour Standards) Convention of the International Labour Organisation No 144 of 1976 (published as a notice of the Ministry of Foreign Affairs of the Slovak republic No 32/1998 of the Coll.)
- Convention of the International Labour Organisation No 154 on support to collective bargaining.
- Recommendation of the International Labour Organisation No 91 on collective agreement.

The European Social Charter and European Convention on protection of human rights and fundamental freedoms, adopted by the Council of Europe (published as a notice of the Ministry of Foreign Affairs of the Slovak republic No 329/1998 of the Coll.).

The *European Social Charter* was adopted in Turin in 1961. The Charter provides the most detailed and explicit protection of the right to collective action, together with opinions and statements of the Social Committee, established as the supervisory body regarding to the Charter. However, the Social Charter is a non-binding act,

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