

LAW ON THE REPRESENTATIVENESS OF TRADE UNIONS

(»Official Gazette of Montenegro« No. 26/10 of 07/05/2010)

I GENERAL PROVISIONS

Subject-matter

Article 1

Employees shall, according to their free will, organize in trade unions (hereinafter: the Trade union).

The representativeness of trade unions shall be determined in accordance with this Law.

Concept

Article 2

Trade union, in terms of this Law, shall be:

- 1) trade union organized at the employer;
- 2) trade union organized within a branch of activity, group or sub-group of activities, and
- 3) trade union organized at the level of Montenegro.

Legal entity status

Article 3

Trade union shall obtain a legal entity status on the day of registration into Register of trade union organizations (hereinafter: the Register), kept by the state administration authority responsible for labor affairs (hereinafter: the Ministry).

The procedure and method of registration of trade union into the Register, change of registration, contents, method of keeping and deletion from the Register shall be prescribed by the Ministry.

Records of representative trade unions
Article 4

The Ministry shall keep the Register of representative trade unions.

The trade union with determined representativeness at the employer shall submit data on representativeness and any changes related thereto to the Ministry for the purpose of keeping records.

The method of keeping, registration and deletion from the Register referred to in Paragraph 1 of this Article shall be prescribed by the Ministry.

Rights of representative trade union
Article 5

Trade union with determined representativeness, in accordance with this Law, shall be entitled to:

- 1) collective bargaining and concluding of collective agreements at the appropriate level;
- 2) participation in the settlement of collective labour disputes;
- 3) participation in the work of the Social Council and other tripartite and multipartite bodies at the appropriate level, and
- 4) other rights, which shall be defined by special laws for authorized trade union organization.

Interested trade union
Article 6

An interested trade union shall be a trade union, which has applied for determination of trade union representativeness and has already been registered in the Register.

II CONDITIONS FOR DETERMINING TRADE UNION REPRESENTATIVENESS

Conditions **Article 7**

The representativeness of trade unions shall be determined according to the general and specific conditions stipulated by this Law.

General conditions **Article 8**

General conditions for determining trade union representativeness shall be:

- 1) that trade union is registered in the Register, in accordance with this Law;
- 2) that trade union does not depend on state authorities, employers and political parties;
- 3) that the trade union is predominantly financed from membership fees and other own sources.

A special condition for determining trade union representativeness at the employer

Article 9

A special condition for determination of representativeness of trade union at the employer shall be that trade union consists of at least 20% of employees of, the total number of employees at the employer.

The total number of employees at the employer shall be determined on the basis of the certificate issued by the employer at the request of an interested trade union.

Determination of the representativeness of trade unions at the branch level

Article 10

Trade union organized at the level of branch of activities (sector), group or subgroup of activities, is deemed representative if, in addition to the general conditions prescribed by this Law, it has at least 15% of employees out of the total number of employees within the branch of activities, group or subgroup of activities.

Determining representativeness of trade unions at the level of Montenegro

Article 11

Trade union, organized at the level of Montenegro, shall be representative if:

- it meets conditions referred to in Article 8 of this Law;
- it consists of at least five trade unions at the level of branch of activities, group or subgroup of activities and
- it includes at least 10% of employees out of the total number of employees in Montenegro.

Determining the number of employees

Article 12

The total number of employees within a branch of activities, group or subgroup of activities, as well as at the level of Montenegro shall, in terms of Articles 10 and 11 of this Law, be determined on the basis of data by the state administration authority responsible for statistics for the year prior to the year in which representativeness of trade union is determined.

More representative trade unions

Article 13

Rights under Article 5 of this Law shall have all trade unions with determined representativeness at appropriate level, in terms of this Law.

Agreed association of more trade unions in order to achieve representativeness

Article 14

Trade unions that do not meet the conditions in accordance with this Law may conclude an agreement on association with other trade unions.

III PROCEDURE FOR DETERMINING THE REPRESENTATIVENESS OF TRADE UNIONS

An authority responsible for determining the representativeness of trade unions at the employer

Article 15

The representativeness of trade union at the employer shall be determined by the Director at the proposal of the Commission for determining representativeness of trade union (hereinafter: the Commission).

The Commission shall consist of two representatives: the employer, representative trade union, if it exists at that employer and interested trade union.

The Commission shall be established by the Director within five days from the date of application for determining of trade union representativeness.

A request for trade union representativeness at the employer

Article 16

A request for determining representativeness of trade union at the employer shall be submitted to the employer.

In addition to the request for determining representativeness referred to in Paragraph 1 of this Article, the trade union shall submit an evidence on meeting general and special conditions from Articles 8 and 9 of this Law.

Evidence on meeting the special conditions referred to in Paragraph 2 of this Article shall be considered personal signatures of employees on the voluntary acceptance of membership in the interested trade union, with a unique master number.

The Commission's proposal and making decision

Article 17

The Commission shall, within eight days from the day of application for determining representativeness of trade union, make a proposal by majority votes of its members.

The Director shall make a decision on determining representativeness of the trade union within eight days from the day of submitting Commission's proposal.

The method of work and decision making of the Commission shall be regulated in more details by the Rules of Procedure of the Commission.

Protection of determined representativeness at the employer

Article 18

If the interested trade union at employer believes that representativeness of trade union was not determined in accordance with this Law, or if the decision was not submitted to it within eight days from the day of adoption a decision referred to in Article 17 Paragraph 2 of this Law, it shall be entitled to submit a complaint to the Director for reassessment of trade union representativeness.

The complaint shall be submitted within eight days from the day of submitting a decision, i.e. from the day of expiry of the time limit for submission of the decision.

The Director shall bring a decision regarding the complaint within 15 days from the day of submitting a complaint.

Against the decision referred to in Paragraph 3 of this Article a dispute may be initiated before the competent court, within 15 days from the day of submitting a decision.

Authority responsible for determining representativeness of trade union at the branch level and at the level of Montenegro

Article 19

Representativeness of trade union at the level of Montenegro, or branch of activities, group or subgroup of activities shall be determined by the Minister responsible for labour affairs (hereinafter: the Minister), at the Committee's proposal for determining representativeness (hereinafter: the Committee), in accordance with this Law.

The Committee referred to in Paragraph 1 of this Article shall be established by the Minister and it shall include two representatives of each: the Government of Montenegro (hereinafter: the Government), appropriate representative trade unions referred to in Paragraph 1 of this Article, appropriate representative employers' federations and interested trade unions.

The Government's representatives shall be appointed by the Government at the Minister's proposal; trade union's representatives shall be determined by the representative, i.e. interested trade union; and employer's representatives shall be determined by the representative employers' federation, in accordance with its regulations.

Submitting of requests

Article 20

The request for determining representativeness referred to in Article 19 of this Law shall be submitted to the Committee.

In addition to the request referred to in Paragraph 1 of this Article, the trade union shall submit an evidence on meeting general and special conditions for determining representativeness referred to in Articles 8, 10 and 11 of this Law.

Evidence on meeting the special conditions referred to in Paragraph 2 of this Article shall be considered personal signatures of employees on the voluntary acceptance of membership in the interested trade union, with a unique master number.

Consideration of requests

Article 21

In the procedure of determining representativeness of trade union at the branch level and at the level of Montenegro, the Committee shall determine whether the request and the evidence were submitted in accordance with Article 20 of this Law.

If the Committee determines that the necessary evidences were not submitted in terms of Paragraph 1 of this Article, the applicant shall be required to eliminate observed shortcomings, within 15 days from the day of receiving a notice.

The applicant shall, within 15 days, at request by the Committee, submit membership application forms for joining the trade union, i.e. agreements and other evidences on joining the interested trade union.

Bringing a conclusion

Article 22

If the applicant fails to eliminate the shortcomings, i.e. does not submit necessary evidences within the time limit referred to in Article 21 Paragraphs 2 and 3 of this Law, the Minister shall, at the proposal by the Committee, bring a conclusion on rejecting the request.

Against the conclusion from Paragraph 1 of this Article, an administrative dispute may be initiated, within 15 days from the day of submitting a conclusion.

Reassessment of the Committee's proposal

Article 23

The Committee shall submit the proposal on determining representativeness of trade union to the Minister within 30 days from the day of submitting a request.

The Minister may require the Committee to reassess the proposal on determining representativeness, within eight days from the day of submitting a proposal, if he finds that all relevant facts for determining representativeness of a trade union have not been determined.

The Committee shall give its opinion regarding the request referred to in Paragraph 2 of this Article and submit the final proposal to the Minister, within three days from the day of submitting a request for reassessment of the Committee's proposal.

Committee's methods of work

Article 24

The Committee shall decide by majority votes of its members.

The method of work and decision making of the Committee shall be regulated in more details by the Rules of Procedure of the Committee.

Administrative-expert affairs for needs of the Committee shall be performed by the Ministry.

Decision making

Article 25

The decision on determining representativeness of trade union shall be brought by the Minister, within 30 days from the day of submitting Committee's proposal, i.e. within eight days from the day of eliminating shortcomings, in terms of Article 23 of this Law.

Against the decision referred to in Paragraph 1 of this Article, an administrative dispute may be initiated, within 15 days from the day of delivering a decision to the applicant.

IV REASSESSMENT OF DETERMINED REPRESENTATIVENESS OF TRADE UNION

Reassessment of determined representativeness of trade union at employer

Article 26

Reassessment of trade union representativeness at employer may be initiated at request of a trade union at that employer, registered in the Register, or upon an initiative of the employer, but only after the expiry of three-month time limit from the previously determined representativeness.

The request, i.e. the initiative for reassessment of determined representativeness of a trade union at employer, shall be submitted to the Commission.

The request, i.e. the initiative shall contain: name of the trade union; reasons for reassessment of trade union representativeness and evidences related thereto.

The Commission shall, within eight days from the day of receiving a request, i.e. the day of initiating an initiative referred to in Paragraph 2 of this Article, notify the trade union representativeness which representativeness is in question and require from it the evidences on meeting conditions for representativeness in accordance with this Law.

The trade union shall, within eight days from the day of receiving a notification referred to in Paragraph 3 of this Article, submit the evidence on meeting conditions for representativeness.

Reassessment of determined representativeness of a trade union at the branch level and at the level of Montenegro

Article 27

The request, i.e. the initiative for reassessment of representativeness of a trade union at the branch level and at the level of Montenegro may be submitted by a trade union at the level of branch of activities, group or subgroup of activities and at the level of Montenegro for which it is formed and which representativeness is in question, but only after the expiry of two-years time limit from the previously determined representativeness.

The request from Paragraph 1 of this Article shall be submitted to the Committee referred to in Article 19 of this Law and it shall contain: name of the trade union, the level at which it was formed, and reasons for reassessment of representativeness of the trade union and evidences related thereto.

The Committee shall, within eight days from the day of receiving a request referred to in Paragraph 1 of this Article, notify the trade union which representativeness is in question and require from it the evidence on meeting conditions for representativeness, all in accordance with this Law.

The trade union which representativeness is in question shall, within 15 days from the day of receiving a notification referred to in Paragraph 2 of this Article, submit to the Committee the evidence on meeting conditions for representativeness.

The procedure of reassessment of determined representativeness of a trade union

Article 28

Reassessment of determined representativeness of a trade union in terms of Articles 26 and 27 of this Law shall be performed in accordance with provisions of this Law relating to the procedure for determining representativeness of a trade union.

If, in the procedure of reassessment of representativeness of a trade union, it is determined that the trade union is not representative any longer, the Ministry shall delete this trade union from the Register of representative trade unions, in accordance with provision from the Article 4 of this Law.

V TRANSITIONAL AND FINAL PROVISIONS

Adoption of regulations

Article 29

Regulations from Articles 3 and 4 of this Law shall be adopted within 60 days from the day of entering this Law into force.

Time limit for establishment of the Committee

Article 30

The Committee referred to in Article 19 of this Law shall be established within 30 days from the day of entering this Law into force.

Time limit for compliance

Article 31

Trade unions which representativeness has been determined, in accordance with the Labour Law, shall submit request and other necessary documents for determining representativeness in accordance with provisions of this Law, within three months from entering this Law into force.

Trade unions failing to act in accordance with Paragraph 1 of this Article shall not be considered representative in terms of exercising the rights from Article 5 of this Law.

Termination of validity of regulations

Article 32

When this Law enters into force Article 155 Paragraph 2 and 3 and Article 156 of the Labour Law ('Official Gazette of Montenegro', No. 49/08) shall cease to have effect.

Entering regulation from Article 3 of this Law into force the Decree on registration of trade union organizations ('Official Gazette of the Socialist Republic of Montenegro', No. 20/91) shall cease to have effect.

Entry into force

Article 33

This Law shall enter into force on the eighth day from the day of publication in the 'Official Gazette of Montenegro'.