

HISTORY OF TRADE UNIONS IN COLOMBIA, LAWS AND SOCIAL IMPACT

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RESUMEN

This article analyzes the trade union movement from its origins in the phenomenon of industrialization, where there was an increase in the number of workers having among their ranks men, women and children alike, who would be exploited indiscriminately. The union movement was born at that time to enforce the rights of workers and regulate the conditions to which they were subjected. It is there, where the union is positioned as an association of salaried or salaried workers, permanent and autonomous, non-profit, for the representation and defense of their collective interests, however, the arrival of the union movement in Latin America did not have the best reception, facing various problems and showing a significant gap between private and public sector unions. Methodologically, a bibliographic review was applied and hermeneutics was used for the analysis of the postulates, as well as the contrast of several articles, books, journals and surveys recovered from virtual libraries, a detailed analysis was made regarding the positions of the authors who have made significant contributions on public and private sector unions, making a historical retrospective of their origin and how this labor movement arrived in Latin America, as well as an approach to trade unionism in Colombia, the problems it faces and the impact caused.

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Thus, concluding that unions have been exposed to environments of inequality, State interference, lack of cohesion from the workers' base and several critical moments since their creation, as well as the main differences between the public and private sectors, causing distortions in the right to strike and negotiation, and serious and irreconcilable wage gaps that are nowadays significant.

Keywords: Unions, public sector, private sector, inequality.

INTRODUCTION

The history of the trade union movement was born from the phenomenon of the industrialization of the European continent, the number of workers required increased with the arrival of the steam engine, the introduction of women and children in the industrial activity developed in the countryside, the textile factories and the construction of locomotive rails, it was an unprecedented economic explosion, the steel mills needed huge amounts of personnel and this inevitably brought labor problems, almost immediately the first national unifications of workers began, and the first steps of trade unionism in the world. On the other hand, even in those moments, new technologies and also the opening of a new and much larger market had an impact, as a consequence of the opening of trade towards new geographical dimensions, product of the exchanges and new connections provided by the railroad, according to Zapirain, Zubillaga & Salsamendi (2016).

For their part, Zapirain, Zubillaga & Salsamendi (2016) insist that the origin of the trade union movement is linked to the profound changes that shook the pre-capitalist societies of Western Europe, mainly Great Britain, Germany and France, as a consequence of successive and accelerated transformations that led to radically modify the mode of production and exchange. (p. 10).

At that time its immediate antecedents were the mutual aid societies and the resistance societies; associative experiences that arise in the early days of the workers' movement. *"The trade union today is understood as an association of salaried workers or employees, permanent and autonomous, non-profit, for the representation and defense of their collective interests being the historical consequence of a slow and non-linear process, during which the working class struggled to organize and free themselves from political and legal ties"* that submerged vast numbers of workers in the pauperization and moral degradation of unworthy wages. (p. 12)

In Latin America the first workers' societies seem to have been founded first in Argentina with the Buenos Aires Society of Typography and then in Chile in 1847, under mutualist forms that were later transformed into trade unions, grouping shoemakers, typographers and carpenters according to Cordova (1995) and (Zapata, 2013) points out that the transition from craftsmen

to skilled workers and their consequent organization according to their trades, is one of those transformations that influenced the history of Latin America. The first workers' organizations in the continent emerged in the enclaves, which adopted the name of "*resistance societies*" and laid the foundations for the development of a class identity among their members.

On the other hand, the mixture of the indigenous and the peasant in these contexts marked the type of working class that would be built in Latin American countries, less educated and trained, but with needs that make them want to better themselves. This process of organization and its struggles found in the Marxist discourse of ideologues such as Luis Emilio Racabarren and Jose Carlos Mariategui the coherence and meaning they required. (p. 51)

Meanwhile, Espinosa (1981) states that, in Colombia, the first union was founded at the dawn of 1847 by the Society of Artisans of the city of Bogota, whose purpose was to press for a rise in customs duties so that their products could compete on equal terms with those brought from other countries (p. 5).

However, historically, some of the difficulties in the country for union members have to do with dismissal by company owners, as well as the fragmentation of the labor movement in the regions, which has discouraged the formation of unions (Garay, 1996).

DISCUSSION

In 1847 the first trade union was created in Colombia, taking the structure of a mutual society, this due to the creation of the society of artisans in Bogota; the foundation of this society was given with the purpose of achieving an increase in customs taxes, so that local products could compete with imported ones. This ended badly for the artisans' society, because its manifestations took the form of violence, which led to a civil war that took the lives of many Colombian peasants.

It was not until after the Second World War that the country saw union groups again, because it was at this time that industry arrived in Colombia, which led to the creation of several unions. Because at this time there were no laws to defend them, the government did not take their protests and complaints seriously, they turned a deaf ear to all their complaints; this led to many union members being arrested or losing their jobs. It was not until August 10, 1935, in the government of Alfonso Lopez Pumarejo, that the government began to support the actions of the unions, giving them the right to protest (Espinosa, Justiniano, 1981).

LEGAL HISTORY IN COLOMBIA

In 1931 the first law which defends the rights of workers' groups was decreed: Law 83 of 1931 was the first to protect the right to strike of workers and others. This law guaranteed workers the freedom to organize, the right to form unions, and also incorporated certain restrictions, for example: unions must have a minimum of 25 workers to be able to organize and become a union organization according to Olaya (1931) quoted by Betancur (2014).

Union ethics and social mobilization refer to all human activity aimed at ensuring the harmony of principles and rights that society has historically achieved in terms of its stability and quality of life within a territory. To understand these concepts, it is necessary to refer to the concept of society from the point of view of Spencer (2004) who indicates that it is a collective name that represents a group of individuals, with similar interests, with permanence in time, that as it grows is structured in its form and organization; whose respect for its identity is given to the extent that its members adopt the rules and ethical principles of its existence.

In this order of ideas, as a product of the division of labor analogous to the thought of Adam Smith (1977), social groups dedicated to specific activities such as farmers, fishermen, seamstresses, blacksmiths, manufacturers, carpenters and other trades that needed each other for their survival and growth began to emerge; that is, they satisfied the needs of products, services and labor for the benefit of society. This boom in social growth and the emergence of market demand and supply led to the emergence of companies and the formalization of the hiring of people to perform productive tasks within the corporate purpose of the companies.

In Colombia, trade union movements, in spite of the Republican, guerrilla and paramilitary violence, have survived and formalized in various trade unions and workers' unitary centers that promote worker protection and intervene in the social control of government policies.

According to data from the Institute of Intercultural Studies, Pontificia Universidad Javeriana de Cali, in School for Trade Union Leadership (2015); since 1906 unions began to be formalized in Colombia and in 1919 the first law related to the functioning of unions was issued. Law 78 on strikes. Subsequently, in labor matters, the State began to define, by means of regulations, the field of action and limits of trade unionism. Within this legislation, the following stand out:

Labor legislation that facilitates negotiation between employers and unions at the company level (Law 6 of 1945), and the approval in 1951 of the Substantive Labor Code that consigns: (a) the non-reference to class struggle; (b) the definition of labor statutes; (c) the differences between

private, official and public workers; (d) the regulation of prohibitions to unions; and (e) the reduction of union action to collective bargaining. This regulation brought with it some negative factors for unionism, such as a high level of state intervention in labor conflicts, the elimination of union autonomy and restrictions on union privileges (Page 17).

The emergence of the National Front as a form of government of alternation between Liberals and Conservatives limited social participation; however, peasants, indigenous people, students and workers through their collective actions did not let social participation and vindication of rights for the less favored be extinguished. In this regard, as of 2021, according to the Union and Labor Information System SISLAB, Subsystem Union Census, fed with information provided by the Ministry of Social Protection, CUT and Unions, there are 597 unions, which bring together approximately 5.9 million workers.

Trade union and social movements have been a reflection of the efforts to rebuild social ties through new forms of organization. The visibility of these movements and their growing legitimacy, as well as their expansion and their mechanisms of reciprocal articulation have been a plus for them to gain strength at the global, national and regional levels. With regard to trade unions worldwide, according to the ILO (1997)

In the last decade, the number of unionized workers has declined considerably, reaching levels below 20 percent in 48 out of 92 countries surveyed, says the International Labor Office in its annual report on the state of the labor market. According to sentence 18, of 2015 of the Constitutional Court, the right to union association, is relative to the right to negotiate which, according to the court, is “*consubstantial*” since it allows the union organization to fulfill the mission that is proper to represent and defend the common interests of its members, to which we can say that the right to union association is of a fundamental nature and is acquired when it implies the threat or violation of the right to work for all people in general.

In many cases, employers’ and workers’ organizations have played an important role in the democratic transformation of their countries Yanes & Noroño (2022), however, making respect for this fundamental human right a reality throughout the world is not easy, In some countries, the right to freedom of association is denied to certain categories of workers; workers’ and employers’ organizations are subject to illegal suspensions or suffer interference and, in some extreme cases, trade unionists are imprisoned or killed. (ILO, 1996).

Taking notes made by the (ITUC, 2019), it is concluded that the Middle East and North Africa

(MENA) region remains the worst in the world in terms of fundamental rights at work. Egypt dissolved all independent trade unions and Saudi Arabia continues to hold millions of migrant workers in modern slavery. Trade unionists were murdered in 10 countries: Bangladesh, Brazil, Guatemala, Honduras, Italy, Pakistan, the Philippines and Turkey; and workers were exposed to violence in 52 countries. Worldwide, 53 trade unionists were killed in 2018.

Similarly, (Marin, 2013), cites in his work the 2012 Report on Violations of Trade Union Rights, which highlights in relation to Latin America, that the continent continues to be an adverse scenario for the enforcement of trade union freedoms in 2011. It is noted in this report that violence and impunity for crimes against trade unionists was the common factor in many of the countries of the continent.

Ermida (2012) states that the weaknesses affecting most Latin American trade union organizations have exogenous and endogenous causes, i.e. causes imposed from outside and others that are inherent to some characteristics of trade unionism in the region. Among the external or exogenous causes, we should mention in the first place, of course, the restrictive regulation of the union and the political control that the State tends to exert over it.

On the other hand, trade unionism in Colombia has been a defender of human rights, with the understanding that this would be a favorable scenario for the exercise of trade union freedom, the strengthening of democracy, the guarantee of human and labor rights, as well as the dignity of work. Likewise, in the face of a profound practice of persecution and violence that has not been experienced by any other trade union movement in the world, Colombian trade unionism has sustained a tireless struggle for the defense of human rights, the demand for guarantees for trade union freedom, the overcoming of anti-union violence, the satisfaction of the rights of individual and collective victims, including truth, justice and comprehensive reparation in consideration of Torres (2016).

In the midst of this panorama, Vidal (2012) contributes to the information by saying: There are several aspects that are important to highlight when analyzing the situation of unions in Colombia. First, it is important to note that the trend recorded in recent years points to a decrease in the number of unionized workers, accompanied by a dynamic of stagnation in the number of unions, in which the new unions, especially company unions, come to compensate for the departure of traditional unions that have been disappearing in recent years as a result of privatization processes, mergers, labor flexibilization and harassment of their union work.

In the meantime, addressing labor rights and freedom of association from a human rights perspective allows us to have a broad vision in order to attack the macroeconomic problems that prevent the enjoyment of these rights, such as the structural adjustment policies promoted by the International Monetary Fund and the World Bank, which condition the States, justify domination and deny human development, is an impressive decrease in health budgets, in the cutback of public services, in more than 1 million people living in extreme poverty and suffering from hunger every day in the opinion of Alvear (2005).

For the author Alvear (2005) the most important challenge for Colombian workers is to promote the associative forms of workers and collective bargaining in the face of the dismantling of labor rights, that is, it is required that the rights that were granted were enshrined in labor laws and are gradually being eliminated, are reconquered in collective bargaining that makes that in a context such as Colombia's, the fight for Trade Union Freedom is a priority and an immense effort is made to eliminate all obstacles and attacks on the rights of association, bargaining and strike.

Trade union rights are recognized as fundamental rights in the Political Constitution of Colombia of 1991, in its article 39 defines trade union rights as the protectors of workers and employees, so that they can enjoy their benefits in the different organizations. In most of the States, the trade union right as a human right in the world is shown as an essential tool with which favorable solutions are reached between the existing relationship between the employer - worker, because, with this the diverse interests of the different parties are satisfied, besides promoting a peaceful, integrating and democratic participation in consideration of Santos (2003).

We can also say that trade union rights are an effective form of self-defense and social surrender to mistreatment and labor exploitation in the pragmatic and utilitarian world disguised as liberalism at the service of the company and individual power that we have experienced throughout history. Trade union rights are reflected in labor experiences of strikes, urban and rural workers in resistance, groups of women workers demanding equality, among others, that is, all groups of employed people fighting for their proletarian demands and social justice (Santos, 2003).

From the perspective of Persiani & Lunaradon (1992), trade union law deals with the activity and life of trade unions, and therefore with the traditional paradigmatic groupings of workers and employers, both in terms of the negotiation and signing of collective bargaining agreements, as well as the proclamation by workers of the right to strike or other forms of union struggle and resistance.

WHAT ARE TRADE UNION RIGHTS IN COLOMBIA?

The protection of union rights enshrines the right of workers' and employers' organizations to organize their administrators and activities, where they formulate their program of action. It can be seen that the purpose of such organizations is to promote and defend the interests of workers or employers. According to the Committee on Freedom of Association has recognized on many occasions the right to strike as a fundamental right of workers and have determined the scope in which they should frame their exercise where to develop a body of principles on the right to strike, however, the group of workers supports the approach of the Committee of experts on the right to strike where they consider it as a deduction of the right of association Gernigon et. al (2000).

It is known that freedom of association has been recognized as one of the fundamental rights where the universal instruments of human rights recognize the regulation of freedom of association where it is assumed that in the current period of legal thinking of such freedom where it is categorized as inherent to the human person, i.e., by having an individual rank against the powers of the State. According to the constitutional texts in Article 23, it recognizes in the terms indicated human rights and union rights, where nothing can go against them (Leon, 2002).

Thus, *“The advantage of human labor rights in relying on the theory of needs, in which «work» is placed as a neuralgic point of its formulation, allows to present in a universal way the consequences of the dissatisfaction of needs as a generalized damage, regardless of the social, cultural or economic context in which it occurs”*. Likewise, the specificity of needs in the world of work requires precise and specific legal responses, which makes labor human rights a group whose holders enjoy a greater determination 2009 p. 436).

Considerations on trade union freedom in Colombia have been characterized by a deepening of the economic and social transformations, product of the neoliberalism of globalization, under the criteria that the free market would lead to a better society, since such mechanism appears as neutral to the economic and social issues Angel (2015). The legal discourse regulating the Colombian trade union organization does not allow conceiving it as an exclusive product of the social struggle. In our country, the union organization was born and developed in a different way, a product of the social discourses of the traditional political parties in electoral moments, completely removed from the socioeconomic context.

As for social movements, according to Martinez (2001), they are collective action phenomena that bring together complex and heterogeneous social phenomena characterized by thought and action on reality, with the aim of transforming it, which leads to emphasize: Humanistic values:

dignity, equality, autonomy, sensitivity, freedom, otherness, etc. Orientation to social change. The aim is to encourage participation and strengthen the role of civil society. Great importance is given to social communication, not mere information.

In this sense, democratic culture, freedom of expression and the defense of human rights are promoted. The manipulation of information is criticized and informative dialogue is promoted, in which the community media play an important role. Harmonization between man and nature. Denouncement of economic pressures and social and labor inequalities: incitements to consumerism, marginalization, bureaucratic abuses, etc. Challenges to elites or authorities, generally in cultural or political aspects (p. 64).

Social movements have always been present throughout history, however, it is necessary to point out that their nature has been changing along with the scenarios and social interests and the influence of changing times. Therefore, nowadays, the scenario where a good part of the mobilizations can be framed is that of an increasingly globalized world. This is why Ibarra (2000) says that a social movement arises because there are structural tensions that generate the violation of certain interests, sometimes very concrete and others diffuse, because the will to confront this violation is not assumed by any of the other existing collective actors. Moreover, social movements also arise because there are certain people who are not satisfied with the existing “new” social order or with how the conflicts that emerge from it are regulated and resolved.

Collective action has acquired a central role in Latin America, to such an extent that it has come to break into institutions and unbalance governmental modalities in some countries; Escobar, Alvarez & Dagnino (2001) point out that these movements “*their participants, their institutions, their processes, their programs and their scope*” are involved in the struggles for the demarcation of the political scenario. Although in general social movements produce demands for recognition by other actors and the political system, in the case of contemporary Latin American social movements they are involved in the production of an alternative conception of citizenship.

In countries such as Colombia, the fact of going out to protest, to mobilize socially is usually an effective method to call the attention of the government so that it agrees to listen to its people, in fact, the inhabitants of cities and rural territories are increasingly making their nonconformities visible, especially against the actions or omissions of the State. During the last few years, mobilizations have increased in Colombia, which is a matter of calling the government’s attention, as more and more citizens are expressing their non-conformities against the government’s negligence.

In this context, Bulla, Gonzalez & Zapata (2017) explain that departmental capitals are the privileged scenarios of social mobilization. This has developed in 32% of the country's municipalities between January 2013 and June 2017. However, the ten municipalities that recorded the most events during the periods 2013-2016 and the first half of 2017 are departmental capitals, which collect 46% and 52% of them, respectively. Bogota, Cali, Medellin, Cartagena, Barranquilla, Bucaramanga, Villavicencio, Pereira, Monteria, Ibaguè, Manizales and Santa Marta enter this top. This shows that these mobilizations in large cities are characterized by bringing together actors and demands from other places in order to achieve greater effectiveness in relation to the centers of power.

Therefore, talking about public service ethics, or the work of public employees from an ethical perspective, is today not only a fashion, but also implies making reference to one of the pillars of the administrative reforms that are underway around the world, before this Rincon (2014) analyzes the application of the different conventions of the International Labor Organization I.L.O. that exist in terms of trade union rights taking into account the pronouncements issued by the Colombian Constitutional Court between the years 1991 to 2015 in order to evidence the existing guarantees in terms of Trade Union Freedom.

Meanwhile, Zapirain, Zubillaga & Salsamendi (2016) point out that the origin of the trade union movement is linked to the profound changes that shake the pre-capitalist societies of Western Europe, mainly Great Britain, Germany and France, as a result of successive and accelerated transformations that led to radically modify the mode of production and exchange. (p. 10)

On the other hand, the union, understood as an association of salaried or salaried workers, permanent and autonomous, non-profit, for the representation and defense of their collective interests is the historical consequence of a slow and non-linear process, during which the working class struggled to organize and free itself from the political and legal ties that plunged it into pauperization and moral degradation. Whose immediate antecedents are the mutual aid societies and resistance societies; associative experiences that arise in the early days of the workers' movement (Zapirain, Zubillaga, Salsamendi, 2016, p. 12).

In Latin America the first workers' societies seem to have been founded in Chile in 1847, under mutualist forms that were then transformed into trade unions, grouping shoemakers, typographers and carpenters. Zapata (2013) points out that the transition from craftsmen to skilled workers and their consequent organization according to their trades is one of those transformations that influenced the history of Latin America. The first workers' organizations in the continent emerged

in the enclaves, which adopted the name of “resistance societies” and laid the foundations for the development of a class identity among their members.

When talking about unions and their presence in the public and private sectors, it should be taken into account that there is more than one legal regime applicable to labor relations in the public sector. As Ledesma (2011) points out, in general terms, the normative situation of the worker in a public company is different from the normative situation of the worker in the public administration.

The labor relationship of the former is usually regulated by general labor legislation, while the latter is subject to a special statute whose labor or administrative nature will depend on the democratic or authoritarian nature of the government in power. In each Latin American country there is a diversity of relations between the legal regimes governing labor relations in the public sector. While in some countries the labor code regulates in a supplementary manner the labor relationship of public administration workers subject to a special statute, in other countries it is expressly excluded from its scope of application (p. 6).

In Colombia, we can observe that the conventional coverage has a very low rate, in contrast to the constitutional recognition of the right to collective bargaining. After highlighting the role of the legislator in terms of the development of the constitutionally recognized right to collective bargaining (Cialti, 2016)

Regardless of whether it is a question of bargaining for public employees or the private sector, a key moment in the bargaining process lies in the determination of the actors who are to negotiate, i.e., in the formation of the bargaining table. On the one hand, bargaining capacity, which can be defined as the “*general and abstract aptitude*” to take part in the negotiation of an agreement in a given area, and, on the other hand, bargaining legitimacy, which “*implies an additional degree of concreteness*” (Agut, 1997, p. 378) and makes it possible to determine the specific actors involved.

A distinction can be made between conventional capacity as a “*generic aptitude*” to initiate a negotiation process and legitimization as an aptitude to participate in a specific negotiation (Valdes, 1988). The question of conventional capacity is a prior and necessary step to the assessment of standing. For his part, Cuesta (2005) suggests that the hypothesis is that in Colombia, as in other countries in Europe, North America and Latin America, workers with the same characteristics face wage differentials that favor unionized employees. However, unlike the findings for other countries, this higher wage benefits a group of professional workers, increasing wage inequality among employees and worsening income distribution. (p. 181).

In consideration of the above assertions, the notion of representativeness does not imply a majority requirement, contrary to the notion of legitimacy. We already know that Colombian law is very demanding in this matter and establishes a two-thirds majority for a collective bargaining agreement signed by a union to be generally effective in the company. Given the context of the Colombian labor system, the majority requirement is not essential. Indeed, the signing of a collective bargaining agreement can only constitute an improvement of the existing working conditions which does not necessarily require the respect of a majority requirement. The evolution of the French case is very illustrative in this matter (Cialti, 2016).

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In any case Cialti (2016) points out that one could imagine the possibility of resorting to the figure of the referendum, which would allow the company’s staff to approve a convention signed by

a representative, but not majority union. (p. 15) The international recognition of the right of public workers to organize collectively in order to defend their legitimate rights and participate in the determination of their working conditions was given through the normative instruments generated by the ILO, among them we can mention the following:

- Convention 87 on Freedom of Association and Protection of the Right to Organize (1948).
- Convention 98 on the Right to Organize and Collective Bargaining (1949).
- Convention 135 on Workers' Representatives (1971)
- Recommendation 143 concerning Workers' Representatives (1971)
- Convention 151 concerning Labor Relations in the Public Service (1978)
- Labour Relations (Public Service) Recommendation 159 (1978)
- Collective Bargaining Convention 154 (1981)
- Collective Bargaining Recommendation, 1981 (No. 163) in consideration of Ledesma 2011, (p. 42).

Continuing the above idea, Ledesma (2011) points out that Article 2 of Convention No. 87 establishes that all workers, without distinction of any kind and without prior authorization, have the right to form and join organizations of their own choosing, provided only that they observe the bylaws of such organizations. The only exception in this respect is provided for in Article 9, according to which the Member States shall determine the extent to which the guarantees provided for in the Convention shall apply to the armed forces and the police. (p. 43)

In the preparatory work for Convention No. 87, it was stressed that freedom of association should be guaranteed not only to employers and workers in private industries, but also to civil servants. For this reason, in the report prepared by the ILO on legislation and practice in this area, it was envisaged that the scope of application of the new instrument should include public officials and employees: the guarantee of the right to organize should apply to all public or private employers and workers, and also to civil servants, workers in public services and workers in nationalized industries.

It seems, in fact, that it would not be equitable to establish, from the point of view of freedom of association, a distinction between employees in private industry and workers in public services, since both should have the possibility of defending their interests through organization. (International Labour Conference, 81st Session 1994. Freedom of association and collective bargaining. Report III (Part 4B), p. 24).

During the discussion of the Convention, several government delegates noted that while civil servants should have the right to organize (they are, in effect, covered by Convention No. 87), the same was not true of the right to collective bargaining. Thirty years later, in 1978, the Labour Relations (Public Service) Convention, 1978 (No. 151) takes an important step forward by requiring States to encourage “*negotiation procedures or any other methods which enable representatives of public employees*” to participate in the determination of conditions of employment in the public service.

The right to participation of public servants is thus officially recognized at the international level, with collective bargaining being a specifically mentioned modality. The only categories that may be excluded (apart from the armed forces and the police, as in the previous Conventions) are “*high-level employees who, by reason of their duties, are normally regarded as having decision-making power or holding managerial positions*” and “*employees whose duties are of a highly confidential nature*”.

Finally, the last stage was reached in 1981 with the adoption of the Collective Bargaining Convention, 1981 (No. 154), which includes, along with the private sector, the entire public administration (except the armed forces and the police) and only allows national legislation or practice to establish “*special procedures*” for the application of the Convention. The ratifying State can no longer limit itself to the consultation method, but must «encourage collective bargaining» in order, inter alia, to «fix conditions of work and employment». Gernigon, Otero, and Guido p. 51-52)

Public and Private Sector Trade Unions

Private sector unions are made up of private workers, whose definition is found in the labor code, which establishes that a worker is any natural person who provides material or intellectual services to another person, or both, under an express or implied, verbal or written, individual or collective employment contract. The most striking element within the above concept is the employment contract, and this is important because private sector unions are not only made up of salaried workers, but there are also organizations of independent workers, whose members are not based on an employment contract as such, and use the contract for professional services. (Parrales, O and Solis, J, 2018, p. 90)

In the private sector, the precariousness of economic indices, the decrease in production, and company closures, put the negotiating position of unions at a disadvantage. The changes in the labor market and labor legislation. As a result, they have had an impact on the size of the Colombian

trade union movement and on the sectors of the economy in which it still has a presence.

Toledo et al (2002) states that collective bargaining is one of the few spaces for agreement that has been consolidated with many difficulties in Colombia, weakened by the anti-union culture of employers, governments and high state officials; violence against trade unionists; the absence of labor legislation that includes and applies the ILO's international conventions in a comprehensive manner; the economic recession and neoliberal policies, which advocate a world without unions or norms regulating the labor market.

In addition, collective bargaining, which is the core activity of the unions, suffers from the spontaneous and unprepared way in which many organizations undertake it, and this neglect is a factor that weakens the position of the workers and affects their results. Colombian labor legislation recognizes three types of collective bargaining agreements: the collective bargaining agreement; the collective bargaining pacts; and the union contract.

Finally, the approval of the 1990 labor reform led to an evident weakening of union action, especially in the private sector, and collective bargaining went into crisis. This crisis manifested itself in the lack of progress in terms of conventional conquests, and in the decrease in the number of collective agreements and in the coverage of workers benefiting from them. (p. 111-112)

CONCLUSIONS

Taking into account the above, it is concluded that from its origin there is a clear inequality between the rights of the employer and the right to unionize in Colombia. The natural inequality of capital is deepened by virtue of the complacency of a State that makes rules more flexible, such situation unbalances this equation, therefore, it is necessary to assert the rights and demand better economic, legal and social situations that protect the worker together with their collective representation organizations.

It is also observed that the main differences between unions in the private sector and the public sector lie in the use of the right to unionize, at the private level union membership is scarce and in the public sector, being the segment where most affiliation is observed, the country is only close to 8% of the working population with union membership while in Colombia there are 19 million workers, This is due in part to the lack of public policy to promote and defend these rights enshrined in the Constitution, the lack of union culture and the aspects of personal insecurity and internal conflict that have been experienced since the 50's of the last century.

It is also observed that, in the public sector, the agreements and main collective bargaining agreements have a very limited range of benefits resulting from the negotiation processes, which has led the members of this sector to adhere to what is established in the national budget laws, almost leaving aside negotiation as an enshrined right. Low wages and poor working conditions have prevailed for a long time for most workers and the fact that in the private sector about 66% are anchored to the minimum wage is a conclusion that evidences the precarious conditions of modern trade unionism in Colombia.

BIBLIOGRAPHIC REFERENCES

- Abreu, J. L. (2014). El método de investigación Research Method. Recuperado de: [http://www.spentamexico.org/v9-n3/A17.9\(3\)195-204.pdf](http://www.spentamexico.org/v9-n3/A17.9(3)195-204.pdf)
- Adam Smith (1970.), *Essays on Philosophical Subjects*, apud Andrew Skinner, ed., Introduction in Adam Smith, *The Wealth of Nations*, Penguin Books, 1970, p. 12.
- Ángel, L. (2015) La libertad sindical en el mundo del trabajo en Colombia. <https://publicaciones.ucatolica.edu.co/pdf/libertad-sindical.pdf>
- Agencia de información laboral [AIL] (2019) <https://ail.ens.org.co/informe-especial/en-2019-siguio-la-violencia-antisindical-en-colombia-estas-son-las-cifras/>
- Agut, C. (1997). El sindicato en la empresa (secciones y delegados sindicales). <https://dialnet.unirioja.es/servlet/tesis?codigo=186804>
- Alvear, J. (2005). Libertad sindical y derechos humanos en Colombia 1. Colectivo de abogados. Recuperado de: <https://www.colectivodeabogados.org/libertad-sindical-y-derechos-humanos-en-colombia/>
- Arismendi, L. (2002). Libertad sindical y elecciones sindicales en la Constitución de 1999. *Gaceta Laboral*, 8(1), 79-98. Recuperado de: <https://www.redalyc.org/pdf/336/33608104.pdf>
- Blasco, J. Mira, E. Pérez, J. Turpín, A. (2007). *Metodologías de investigación en las ciencias de la actividad física y el deporte: ampliando horizontes*. Editorial Club Universitario.
- Betancur, C (2014) ENRIQUE OLAYA HERRERA Y SU EPOCA DESARROLLO POLITICO Y CONSOLIDACION DEL ESTADO COLOMBIANO <https://repository.ucatolica.edu.co/server/api/core/bitstreams/899e5ef1-edce-421f-ab89-fe4b259a67f9/content>
- Bulla, P., González, P. & Zapata, O. (2017) ¿Dónde, ¿cómo, ¿quiénes y por qué se movilizan los colombianos? Preparémonos para una protesta social amplia y menos violenta. <https://cdn.ideaspaz.org/media/website/document/59dc0df5c5cff.pdf>
- Canessa Montejo, M. F. (2009). Los derechos humanos laborales en el derecho

- internacional. Derecho PUCP, 63, 349. (pág. 436)
- Cialti, PH (2016) Negociación colectiva en Colombia: una visión cruzada entre el sector público y el sector privado http://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S0124-05792016000100006&lng=en&nrm=iso&tlng=es
 - CSI. (2019). Índice global de los derechos de la CSI 2019, los peores países del mundo para los trabajadores. Secretaria general. Recuperado de: <https://www.ituc-csi.org/IMG/pdf/2019-06-ituc-global-rights-index-2019-report-es.pdf>
 - Córdova, E (1995) Los primeros pasos del sindicalismo latinoamericano.
 - Cuesta, L (2005) Impacto de los sindicatos en Colombia: ¿mayores salarios y más desigualdad? <https://revistas.uniandes.edu.co/doi/pdf/10.13043/dys.56.6>
 - De la Garza Toledo, E., Palomino, H., Lucena H., Rosado Duque, J., Pochmann, M. & Hermanson, J. (2005) Sindicatos y nuevos movimientos sociales en América Latina.
 - Escuela para el liderazgo Sindical (2015). Pontificia Universidad Javeriana de Cali, https://www2.javerianacali.edu.co/sites/ujc/files/node/field-documents/field_document_file/m2_sindicatos_s1__11_23_web.pdf
 - Escobar, Arturo, Sonia Álvarez y Evelina Dagnino, (2001) “Introducción: lo cultural y lo político en los movimientos sociales latinoamericanos”, en: Arturo Escobar, Sonia Álvarez y Evelina Dagnino (eds.), Política cultural y cultura política. Una nueva mirada sobre los movimientos sociales latinoamericanos, Bogotá, Taurus/Icanh, pp. 26-31.
 - Ermidia; O. (2012). Crítica de la libertad sindical. Uruguay. PUCP. Recuperado de: <https://revistas.pucp.edu.pe/index.php/derechopucp/article/view/2825>
 - Escudero, C. S, L. Cortez, L. S, A. (2018). Técnicas y métodos cualitativos para la investigación científica. Editorial Machala. Recuperado de: <http://repositorio.utmachala.edu.ec/bitstream/48000/12501/1/Tecnicas-y-MetodoscualitativosParaInvestigacionCientifica.pdf>
 - Espinosa, J (1981). El sindicalismo en Colombia. <https://enciclopedia.banrepcultural.org/index.php/Sindicalismo>
 - Galán Sánchez Javier (2021), La movilización social <https://economipedia.com/definiciones/movilizacion-social.html>
 - Garay, L (1996) Debilidad de movimiento sindical En: Colombia: Estructura industrial e internacionalización. <http://desarrollosindicalpolig.blogspot.com/2017/04/historia-del-sindicalismo-en-colombia.html>
 - Gernigon, B. (2000). Principios de la OIT sobre el derecho de la huelga. International Labour Organization.
 - Gernigon, B, Odero, A y Guido, H (2000). La negociación colectiva. Normas de la OIT y principios. Ginebra: OIT. <https://www.ilo.org/public/spanish/revue/download/pdf/>

gernigon.pdf

- Gómez, Cerda J (2017). Breve historia del sindicalismo internacional. <https://acento.com.do/opinion/breve-historia-del-sindicalismo-internacional-8510077.html>
- Ibarra, P. (2000) los movimientos sociales en un mundo globalizado: ¿alguna novedad?
- Láudano, C. (2017) “Movilizaciones #NiUnaMenos y #VivasNosQueremos en Argentina. Entre el activismo digital y #ElFeminismoLoHizo. <https://d1wqtxtslxzle7.cloudfront.net/65577304/1503871106>
- Ledesma, C (2011) Derechos Sindicales en el Sector Público en América Latina. <http://www.relats.org/documentos/CLATE.Ledesma2011.pdf>
- López-Patrón, J. M. (2008). Los derechos laborales en el Sistema Interamericano de Protección de Derechos Humanos: la protección de los derechos económicos, sociales y culturales. *International Law: Revista Colombiana de Derecho Internacional*, (12), 183-216. (pág. 02)
- Marín, F. (2013). Consideraciones sobre la libertad sindical en América Latina. *V/Lex. Venezuela*.
- Montejo, M. F. C. (2008). Los derechos humanos laborales: el núcleo duro de derechos (core rights) y el ius cogens laboral. *Revista del Ministerio de Trabajo y Asuntos sociales*, 8, 111. (pág. 2-4, 23, 33).
- Molina, A. H (2007). Aproximaciones sobre el derecho al trabajo desde la perspectiva de los derechos humanos. *Estudios Socio-Jurídicos*, 9, 166. (pág. 13)
- Molina, A. H (2007). Aproximaciones sobre el derecho al trabajo desde la perspectiva de los derechos humanos. *Estudios Socio-Jurídicos*, 9, 166. (pág. 22)
- Noroño, Núñez y González (2020). Ética sindical como mecanismo impulsor de competitividad en las pequeñas y medianas empresas. *Utopía y Praxis Latinoamericana*, vol. 25, núm. Esp.3, pp. 154-173, 2020
- Noroño Sánchez, J. G., Baquero Suarez, T. M., Vílchez Pirela, R., & Soto, O. L. (2021). Ética en las organizaciones sindicales venezolanas: una mirada desde lo teórico-legal.
- OIT (Organización Internacional del trabajo) (1997) La OIT subraya los desafíos para el movimiento sindical. https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_008464/lang--es/index.htm
- OIT (Organización internacional del trabajo [OIT], 2000-2010) Libertad de asociación y la libertad sindical y el reconocimiento efectivo del derecho de negociación colectiva.
- Ojeada; A.A. (2007). Ajenidad, dependencia o control: la causa del contrato. *Derecho PUCP*. Lima, Perú. Recuperado de: <https://www.redalyc.org/pdf/5336/533656156013.pdf>
- Parra, C (2010) “Educación inclusiva: Un modelo de educación para todos”. *Revista*

- ISEES N° 8, diciembre 2010, 73-84. Disponible en: [http://www.Dialnet-EducacionInclusivaUnModeloDeEducacionParaTodos-3777544%20\(1\).pdf](http://www.Dialnet-EducacionInclusivaUnModeloDeEducacionParaTodos-3777544%20(1).pdf)
- Parrales, O y Solís, J (2018) Los Sindicatos en el ámbito privado. <https://ijj.ucr.ac.cr/wp-content/uploads/bsk-pdf-manager/2019/05/Osvaldo-Parrales-Córdoba-Jaclyn-Melissa-Solís-Alemán-Tesis-completa.pdf>
 - Persiani; M, & Lunardon; F. (1992). *Fondamenti di Diritto Sindacale*. Biblioteca Jurídica.
 - Rincón, A (2014) *Sindicatos , Negociación y Unidad Sectorial* <https://media.utp.edu.co/sindicato/archivos/CUADERNOTEMATICO3-SINDICATOS%2CNEGOCIACIONYUNIDADSECTORIAL.pdf>
 - Romagnoli; U & Tomadini; M. (1997). *El derecho, el trabajo y la historia*. Recuperado de: <https://archivos.juridicas.unam.mx/www/bjv/libros/4/1628/13.pdf>
 - Rubén H. Zorrilla. *Origen y desarrollo del sindicalismo*. Revista Libertas: 8 (Mayo 1988) Instituto Universitario ESEADE. https://www.eseade.edu.ar/files/Libertas/43_6_Zorrilla.pdf
 - Sánchez Noroño Gregorio José, Villavicencio Núñez Manuel, Díaz González Ramón Romel (2020), *La ética sindical* <https://www.redalyc.org/journal/279/27963600012/html/>
 - Santos, A. (2003). *Sistema y genealogía del derecho sindical*. SCIELO. México. Recuperado de: http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S00416332003000100005
 - Sentencia 18 de la Corte constitucional. (2015). *Documentos para organización sindical y/o sindicato: Derecho de Sindicalización*. Recuperado de: <https://www.alcaldiabogota.gov.co/sisjur/listados/tematica2.jsp?subtema=31520>
 - Spencer, Herbert (2004). *¿Qué es una sociedad? Una sociedad es un organismo*. *Reis. Revista Española de Investigaciones Sociológicas*, (107),231-243.[fecha de Consulta 26 de Septiembre de 2021]. ISSN: 0210-5233. Disponible en: <https://www.redalyc.org/articulo.oa?id=99717665010>
 - Suyo, G. H. (2019). *El derecho social a la libertad sindical: fundamentos y alcances a nivel constitucional e internacional*. *Revista Argumentum-Argumentum Journal off Law*, 20(2), 831-857. <http://files.pucp.edu.pe/posgrado/wp-content/uploads/2017/05/22162507/LA-LIBERTAD-SINDICAL-EN-EL-PER%C3%A9A-2010-FINAL.pdf>
 - Toledo, E., Palomino, H., Lucena, H., Rosado, J., Pochman, M., Hermanson. (2002) *Sindicatos y nuevos movimientos sociales en América Latina* SBN 987-1183-21-6 Buenos Aires: CLACSO, 2005. <http://biblioteca.clacso.edu.ar/clacso/gt/20101109023754/garza6.pdf>
 - Torres; P. (2016). *Etiqueta: Derechos Humanos*. Escuela Nacional Sindical. Recuperado

- de: <https://www.ens.org.co/tag/derechos-humanos/>
- Ugarte, J (2014). Derecho del Trabajo: invención, teoría y crítica. http://ejcls.adapt.it/index.php/rlde_adapt/article/view/318
 - Urquijo, L. (2000) Ética sindical como mecanismo impulsor de competitividad en las pequeñas y medianas empresas. <https://www.redalyc.org/journal/279/27963600012/html/>
 - Valdés, F. (1998). La legislación laboral negociada. <https://dialnet.unirioja.es/servlet/revista?codigo=1107>
 - Valentín Martínez-Otero Pérez (2001). Movimientos sociales y transformación de la sociedad. *Pulso* 2001, 24. 59 – 72.
 - Vázquez Pasos, Luis A.. (2017). Francisco Zapata, El sindicalismo latinoamericano. *Estudios sociológicos*, 35(104), 457-461. Recuperado en 26 de septiembre de 2021, de http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S2448-64422017000200457&lng=es&tlng=es
 - Velarde (2019) “la vulneración de la libertad sindical de los trabajadores públicos de la municipalidad provincial de Huancavelica – 2018” recuperado de <https://repositorio.unh.edu.pe/bitstream/handle/UNH/3242/TESIS-2019-DERECHO-VELARDE%20ORE.pdf?sequence=1&isAllowed>
 - Vidal, J. (2012). Panorama del sindicalismo en Colombia. FESCOL. Recuperado de: <https://library.fes.de/pdf-files/bueros/kolumbien/09150.pdf>
 - Yanes Montoya , Y. del C., y Noroño Sánchez, J. G. (2022). Influencia globalista frente a las organizaciones sindicales y relaciones laborales en Colombia 2022. *Revista Cathedra*, 1(17), 11–29. <https://doi.org/10.37594/cathedra.n17.665>
 - Zapata, F (2013) El sindicalismo latinoamericano. http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S2448-64422017000200457
 - Zapirain. H, Zubillaga. I, y Salsamendi. G (2016) Historia del Movimiento Sindical. <https://publicaciones.fder.edu.uy/index.php/me/article/view/30>
 - Zorrilla, R. H. (1998) Origen y desarrollo del sindicalismo. Recuperado de <https://www.eseade.edu.ar/wp-content/uploads/2016/08/Zorrilla.pdf>

