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### Need to Amend the Trade Union law in 2012 - Assessment Based on the Compatibility between the 2012 Trade Union Law and The Standards of the International Labor Organization (ILO)

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#### Abstract

This article aims to evaluate the level of compatibility between Vietnam's 2012 Trade Union Law and a number of international labor standards based on ILO international conventions including: Convention on protection and advantages for workers' representatives in industrial establishments, 1971 (Convention No. 135) and ILO

Recommendation 143 and the Convention on the Promotion of Collective Bargaining, 1981 (Convention No. 154). On that basis, this study will evaluate some of Vietnam's requirements in amending the 2012 Trade Union Law to get closer to international labor standards.

**Keywords:** Compatibility, Standards of the International Labor Organization, Trade Union Law

**JEL Code:** K30, K31, K39

#### 1. Introduction

In the period before 2012, Vietnam entered a process of strong economic growth and development, with participation and signing of international treaties. In that context, Vietnam faces requirements to meet international standards and commitments on workers' rights and needs. Up to now, the 2012 Trade Union Law is the most important legal basis for Vietnam Trade Unions to organize and carry out their functions and tasks. After more than 10 years of implementation, the Trade Union Law has revealed its shortcomings. At the request to resolve problems and inadequacies from practice as well as approach and handle newly arising issues that the Law has not yet adjusted in the new situation. The ILO's participation in signing international treaties on international labor standards has created many special changes. Accordingly, the 2012 Trade Union Law needs to be reviewed, evaluated and restructured to ensure compliance with international treaties that Vietnam has recently joined as well as ensure correlation with the 2013 Constitution and other laws. other related majors.

#### 2. Literature review

*Assessing the compatibility of the 2012 Trade Union Law with the Convention on the Protection and Facilitation of Workers' Representatives in Industrial Establishments, 1971 (Convention No. 135) and Recommendation 143 of the ILO*

Convention No. 135 was adopted by the ILO in 1971 to emphasize the protection of workers' representatives from discrimination and ensure they have the necessary advantages to perform their roles effectively your representative. Accordingly, the content of the Convention requires member states to take measures to protect workers from being discriminated against or at risk of losing their jobs due to trade union activities or participation in collective negotiations. Comparing the contents of ILO Convention 135 of 1971 related to the protection and facilitation of employee representatives in industrial establishments with the 2012 Trade Union Law, there are similarities as follows:

##### *Compatibility score*

Essentially, both Convention 135 and ILO Recommendation 143 (1971) emphasize protecting workers' representatives from discrimination and ensuring they have the necessary facilities to exercise their rights effectively and perform their representative role. Accordingly, the content of the Vietnam Trade Union Law 2012 also has regulations designed to provide a legal framework to facilitate the activities of trade unions in Vietnam. In particular, the Law stipulates the protection of trade union participants' legitimate rights and interests so that they can participate in union activities without fear of retaliation or

discrimination, or lose your job specifically:

\*Protecting employment rights, preventing discrimination and illegal dismissal

ILO Convention 135 and the 2012 Trade Union Law prohibit all forms of discrimination against workers because of their participation in union activities or union membership. This regulation is intended to protect the rights of workers to freely participate in union activities without fear of being treated unfairly at work. This content is fully expressed in Article 9, the 2012 Trade Union Law. In addition to the content of protection and anti-discrimination because of trade union activities, the 2012 Trade Union Law continues to recognize additional content on the protection of trade unions to protect employees in case they are fired for participating in union activities. In particular, the prohibition on illegal dismissal of workers participating in union activities is one of the specific and direct regulations aimed at favorably protecting union activists.

▪ Right to access information

The content of ILO Convention 135 and Recommendation 143 both recognize the guarantee of the rights of trade unions and worker representatives to access information related to rights and working conditions as well as ensure "all Facilities must be given to workers' representatives so that they can fulfill their functions quickly and effectively. These adaptive advantages are specified in many aspects in the 2012 Trade Union Law, including:

- Ensure the rights of trade unions and employee representatives to access information related to employees' rights and working conditions. Clause 1,2. Article 14 of the 2012 Law on Trade Unions stipulates that trade union officials can request agencies, organizations, and enterprises to provide information and documents and explain related issues. This includes inspection, examination, and supervision of the implementation of labor policies for employees. Access to information sources is one of the measures that union officials use to represent and protect workers' rights well.
- In addition to "adaptive advantages" regarding access to information, Article 24 of the 2012 Trade Union Law also ensures advantages for trade union officials in terms of operating conditions as well as the time to carry out trade union activities in labor time. This helps them more effectively perform their role of representing and protecting members' interests.

\*Highlight and respect the authority of employee representative organizations

In Section 1, Clause 17, Recommendation No. 143 of the ILO stipulates: "Trade union representatives who do not work at an enterprise but have their own union members working there should be allowed to enter that enterprise." This regulation contributes to expanding the scope of exercising the rights of employee representative organizations to other areas and other businesses within the limits of promptly grasping the needs and problems of workers. Accordingly, it helps to quickly resolve inadequacies and conflicts occurring in labor relations. Thus, empowering employee representatives and regulating the responsibilities of employers is also an effective way to protect employee representatives. That is the legal basis for employee representatives to be able to exercise their rights

without any threat from the employer.

In summary, Vietnam's 2012 Trade Union Law has recognized many regulations to create a fair working environment in which workers' rights are protected, and they can participate in union activities without fear of retaliation or job loss. Therefore, it can be seen that the 2012 Vietnam Trade Union Law reflects many of the principles and objectives of Convention No. 135 and ILO Recommendation No. 143, especially in protecting the rights and interests of workers as well as protecting the rights and interests of workers. As their representative. However, the specific implementation and application of these regulations may vary depending on each country's particular context and conditions.

*Points are not compatible.*

In fact, in principle, the 2012 Trade Union Law rules demonstrate the core contents of Convention 135 and Recommendation 143 of the ILO. However, it may arise from the practical application and enforcement of the law, including the extent to which it effectively protects workers' representatives from discrimination and provides adequate accommodations necessary to carry out their duties.

Regarding guarantees for the organization and operation of employee representative organizations at the grassroots, if compared with international labor standards, the provisions of the 2019 Labor Code still lack a mechanism to ensure the protection of grassroots employee representative organizations from the risk of dissolution by public authorities as well as conflicts over representative authority between grassroots employee representative organizations in the same enterprise. The authority and procedures to resolve complaints about discriminatory acts of interference and manipulation of trade unions are also not regulated by the 2019 Labor Code. Therefore, these are issues that need additional regulations and specific guidance shortly.

***Assess the compatibility between the provisions of the Trade Union Law and the Convention on the Promotion of Collective Bargaining, 1981 (Convention No. 154)***

*Compatibility score*

The primary and most important rights and responsibilities of employee representative organizations are recognized from the perspective of international labor standards under the 1966 United Nations Convention on Economic, Social, and Cultural Rights. Article 8, clause 1 is "promoting and protecting the economic and social interests" of workers. This right is specified in ILO Convention No. 154. International Labor Organization (ILO) Convention No. 154 on the "Promotion of Collective Bargaining," adopted in 1981, aims to promote collective bargaining as an important means of determining conditions of work and wages and resolving issues related to labor relations. Along with emphasizing the importance of representative organizations of workers in protecting and representing the interests of workers, Convention No. 154 also stipulates that representative organizations of workers have the rights and responsibilities Responsible for representing and protecting the rights and interests of workers in negotiations and interactions with employers and the government in an honest, effective and professional manner. It can be seen that many regulations ensure compatibility between the 2012 Vietnam Trade Union Law and Convention No. 154, specifically:

\* For the content of recording the legal framework as well as the content of regulations on legal support to promote Collective Bargaining

Convention No. 154 contains provisions to encourage member states to identify and promote collective bargaining to determine working conditions and wages. These contents have also been fully expressed in the 2012 Trade Union Law, such as Emphasizing the role of trade unions and union representatives in implementing collective bargaining and protecting and representing workers' rights in this process. Along with that are specific regulations to promote and support collective bargaining, including establishing mechanisms to carry out collective bargaining between employees and employers.

▪ Access to Information and Training

Convention No. 154 recognizes the need to provide information and training to parties to collective bargaining to ensure that the bargaining process takes place effectively and informally. Meanwhile, the 2012 Trade Union Law, although not as specific as the Convention in this aspect, still encourages training and education to strengthen the capacity of representatives of trade union officials, thereby indirectly supporting support access to information and training within the framework of collective bargaining.

In summary, the 2012 Vietnam Trade Union Law reflects many of the basic principles of ILO Convention No. 154 on the Promotion of Collective Bargaining by promoting and supporting collective bargaining and creating a legal framework for realizing this activity.

*Points are not compatible*

Although the Trade Union Law 2012 represents an attempt to comply with and reflect the principles of ILO Convention No. 154 on the Promotion of Collective Bargaining. However, due to limitations in the implementation process and the actual situation, there are some areas where the Law's provisions may need to be more consistent or achieve the goals of the Convention. Specifically:

\*Scope of Collective Bargaining

In Convention No. 154, collective bargaining is encouraged at all levels and industries to expand its scope of influence to a large number of workers. Meanwhile, the content of the 2012 Trade Union Law is. There may be limitations regarding the scope and subjects of the application. In the regulations governing this aspect of the Law, it needs to be mentioned or stipulated that collective bargaining at all levels or professions should be encouraged as specified in the Convention.

\*Procedures and Mechanisms to Support Collective Bargaining

In the content of Convention No. 154, points d and e. Clause 2. Article 5 of Convention 154 recognizes that Member States are encouraged to develop procedures and mechanisms to support collective bargaining, including dispute resolution and capacity building. Meanwhile, the 2012 Trade Union Law needs to provide more effective support or dispute resolution mechanisms during the collective bargaining process, and it requires more regulations to encourage an open and equitable bargaining process. class. In practical terms, it can be seen that ensuring the right to freedom of assembly and freedom of collective bargaining contributes to ensuring the effective implementation of collective bargaining, as well as ensuring the best regulations so Workers can freely choose an actual worker representative to represent them during the

bargaining process, which is one of the contents that requires a specific and strict process. However, currently, due to the practical situation, these contents are still under the control of the state and the business owners when selecting employee representatives during the collective bargaining process. The lack of procedural guidance in the 2012 trade union law also makes it difficult to ensure these requirements are the same as those in the Convention.

To improve compatibility between the Vietnam Trade Union Law and Convention No. 154, it may be necessary to consider expanding legal provisions related to collective bargaining, enhancing the freedom and independence of trade unions, and providing more effective support and dispute resolution mechanisms. This would help Vietnam comply with international standards and promote a fair and cooperative working environment at businesses.

### 3. Discussion

It is impossible to deny the values that the 2012 Trade Union Law has brought. However, after more than ten years of implementation, there has been a need to amend and supplement the contents of the Trade Union Law to institutionalize the Party's policies and guidelines on innovating the organization and operations of trade unions. Implement Resolution No. 02-NQ/TU dated June 12, 2021, of the Politburo on innovating the organization and operations of the Vietnam Trade Union in the new situation; meets the requirements of extensive international integration. The purpose and guiding viewpoint of promulgating the Trade Union Law (amended) is to institutionalize the Constitution, the Party's policies and resolutions, especially to be compatible and appropriate in the context of our country participating in new generation Free Trade Agreements, serving the country's international integration task.

In general, it can be assessed that although new-generation free trade agreements have relatively deep intervention in terms of national institutions, the benefits they bring to Vietnam are relatively large, including the following: Aspects such as (1) Export promotion; (2) Reduce production costs of businesses; (3) Improve business environment; and (4) Attract foreign investment. Economic benefits are the driving force behind Vietnam's more and more deep participation in new-generation free trade agreements. However, barriers have arisen due to the incompatibility between institutions and political views between Vietnam and other countries that promote free market capitalism. In particular, all new-generation free trade agreements refer to the ILO's international labor standards. If they cannot be guaranteed, we will no longer receive incentives in international trade.

Therefore, the Trade Union Law must continue to be amended and supplemented to ensure compatibility with international labor standards and Vietnam's commitments to new-generation free trade agreements by international labor standards, socioeconomic conditions, and political institutions of Vietnam. In particular, Resolution No. 06-NQ/TW dated November 5, 2016, of the 12th Party Central Committee on Effectively implementing the process of international economic integration, maintaining political and social stability In the context of our country participating in new-generation free trade agreements, there has been a need to review and complete the legal framework regulating social relations, especially labor relations, and "internalizing

laws" following a roadmap consistent with international treaties to which Vietnam is a member, first of all laws on trade, investment, intellectual property and technology transfer, labor - trade unions".

On that basis, it can be seen that the legislative need is directly related to developing the draft Law on Trade Unions (amended), meeting the requirements for consultation, and selective absorption of international experience in amendments. The Trade Union Law is an urgent need, in order to ensure that the provisions of the Trade Union Law are consistent with Vietnamese reality, gradually consistent and compatible with international labor standards.

#### 4. References

1. Bui Quoc Anh, Doan Van Tinh, Truong Thi Tam. New generation free trade agreement and its impact on labor relations, Proceedings of the National Scientific Conference Promoting harmonious labor relations, stability and progress in Vietnam in the context of international integration. Dan Tri Publishing House, 2003.
2. Doan Xuan Truong. Regulations of the 2019 Labor Code on employee representative organizations at the grassroots, Commentary on new points of the 2019 Labor Code. Labor Publishing House, 2021.
3. National Assembly of the Socialist Republic of Vietnam. Trade Union Law, 2012.
4. National Assembly of the Socialist Republic of Vietnam. Labor Code, 2019.
5. International Labor Organization. Convention on freedom of association and protection of the right to organize, 1948.
6. International Covenant on Economic, Social and Cultural Rights, 1966.
7. International Labor Organization. C135 - Workers' Representatives Convention. 1971; 135.
8. International Labor Organization, R143 - Workers' Representatives Recommendation. 1971; 143.
9. International Labor Organization. C154 - Collective Bargaining Convention. 1981; 154.
10. Pham Trong Nghia. Implementing basic conventions of the International Labor Organization (ILO) in Vietnam - opportunities and challenges. Publishing House. National Politics, Hanoi, 2017.