



## The Right to Work in International and National Law in the Time of Globalization

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### Abstract

Work is not a commodity like all other commodities, but it is an emanation of the human person. For this reason, its value is higher than all other things. With the beginning of industrialization, in addition to state measures for the protection and education of work, the workers joining forces in mutual unions have done everything to oppose the inferiority of the labor factor to capital. It should be emphasized that the right to work is not a subjective right that you can claim in court in case of non-realization, but it is a principle that the State through policies must be committed to create conditions for everyone to be employed. In the time of economic and financial globalization that today's society is experiencing, the right to work is not regulated only in national legislation, but also in international legislation and collective contracts. In this work, the sources of international labor law approved by the ILO, the UN and some regional organizations such as the Council of Europe and the European Union will be explained first. It is very important to know the international sources for labor law because they occupy a privileged position in the hierarchy of sources of law in the Republic of Albania, which are often overlooked by law enforcement officers. After exhausting the sources of international labor law, the national sources will be treated with a focus on our Constitution. A special place in this work will be occupied by trade union freedom and the right to strike according to domestic law, which have historically represented the basic means to protect the rights of women workers. At the end of the report in this conference, we will briefly dwell on the impact of globalization on labor law.

**Keywords:** international law, national law, the right to work, globalization, the Constitution

### 1. Instead of Entering

International labor law aims to help improve domestic legislation, by defining general principles and guidelines, and not to replace it. Before dealing with the sources of international law for labor law, it should be noted that international law has a privileged position in the hierarchy of sources of law in our country. The Constitution, in the part of the basic principles,<sup>1</sup> provides that *the Republic of Albania applies international law binding on it.*<sup>2</sup> More specifically, at the head of the sources of law is the Constitution as the law with the highest legal power in the Republic of Albania.<sup>3</sup> International law (treaties, conventions, agreements) ratified by the highest representative body of the people's sovereignty, the Parliament, is listed

<sup>1</sup> The fundamental principles represent the basis of our company and its objectives.

<sup>2</sup> Neni 5, Kushtetuta e Republikës së Shqipërisë, miratuar me Lgjin nr.8417, datë 21.10.1998, e ndryshuar.

<sup>3</sup> Neni 4/2 Kushtetuta e Republikës së Shqipërisë, miratuar me Lgjin nr.8417, datë 21.10.1998, e ndryshuar parashikon se: The Constitution is the highest law in the Republic of Albania.

immediately after the Constitution.<sup>4</sup> The European Convention on Human Rights makes an exception, regarding the limitation of basic human rights and freedoms, which has the same legal force as the Constitution.<sup>5</sup>

International law, after being ratified in the Parliament, has a higher legal power than national law, with the exception of the Constitution.<sup>6</sup> As regards the place where International law takes place, in the field of labor law, object of analysis, the Labor Code of the Republic of Albania stipulates that it respects the ratified international Conventions and is based on the generally accepted norms of international law.<sup>7</sup> The second article of the Labor Code determines that Albania respects not only the international acts ratified by the Assembly but also the generally accepted norms of international law,<sup>8</sup> regardless of their ratification by our State. Whereas, Article 11 of the Labor Code, in the first paragraph, provides that the ratified International Conventions come immediately after the Constitution regarding the regulation of rights and obligations in labor relations.<sup>9</sup> Whereas, in the first part of the third paragraph of Article 11, it determines that any norm that violates a norm of a higher power is invalid.<sup>10</sup> Exceptions to this rule are only those rates in favor of the weaker party, i.e. the employee.<sup>11</sup>

## 2. The Right to Work in International Law

The Constitution of the Republic of Albania, unlike some Constitutions of the European Union, does not provide for any specific provision that gives international importance to the protection of employment, regardless of the fact that this is easily achieved by the provisions mentioned in the introduction part of this paper. One of the main sources of the right to work at the international level is undoubtedly the Constitution and the Conventions of the ILO. Albania is part of the International Labor Organization (ILO), founded in 1919 with the main aim of promoting a work regime in accordance with the needs of workers for a dignified life by all member countries. The ILO is a specialized agency of the United Nations, whose main function is to draft international labor standards in the form of Conventions, recommendations and protocols that determine the minimum conditions of protection at work and to ensure their implementation.<sup>12</sup>

Albania has ratified 54 ILO Conventions, including 8 Basic Conventions, 4 Governance Conventions and 42 Technical Conventions. In February 2020, our country ratified the Instrument of Amendments to the ILO Constitution, approved in Geneva in 1986, as well as deposited the Instrument of Acceptance at the ILO Secretariat in 2020.<sup>13</sup> States that ratify ILO Conventions are mandatory for implementation according to the constitution of the ILO<sup>14</sup> and will undertake the necessary actions to make applicable the provisions of the conventions. In reinforcement of Article 19, letter d of the ILO Constitution, the Vienna Convention on the Law of Treaties should also be considered.<sup>15</sup> This Convention determines the binding force of treaties for the parties<sup>16</sup> and prohibits the parties from using domestic law as an excuse for non-implementation of a treaty.<sup>17</sup> One of the most important initiatives of the ILO is the 1998 Declaration on Principles and Rights at Work, which prohibits forced labor, establishes freedom of association, collective contracts and prohibits

<sup>4</sup> Shih nenin 116, Kushtetuta e Republikës së Shqipërisë, miratuar me Lgjin nr.8417, datë 21.10.1998, e ndryshuar.

<sup>5</sup> Neni 17, Kushtetuta e Republikës së Shqipërisë, miratuar me Lgjin nr.8417, datë 21.10.1998, e ndryshuar.

<sup>6</sup> Nenet 121 dhe 131, Kushtetuta e Republikës së Shqipërisë, miratuar me Lgjin nr.8417, datë 21.10.1998, e ndryshuar.

<sup>7</sup> Shih nenin 2, Kodi i Punes i Republikës së Shqipërisë, miratuar me Lgjin nr.7961, date 12.7.995, i ndryshuar.

<sup>8</sup> These norms may have to do with the prohibition of discrimination at work, safety at work, freedom of association and the right to strike, etc.

<sup>9</sup> Shih nenin 11, Kodi i Punes i Republikës së Shqipërisë, miratuar me Lgjin nr.7961, date 12.7.995, i ndryshuar.

<sup>10</sup> Neni 11, pjesa e parë e paragrafit 3, Kodi i Punes i Republikës së Shqipërisë, miratuar me Lgjin nr.7961, date 12.7.995, i ndryshuar.

<sup>11</sup> Shih nenin 11, pjesa e fundit e paragrafit 3, Kodi i Punes i Republikës së Shqipërisë, miratuar me Lgjin nr.7961, date 12.7.995, i ndryshuar.

<sup>12</sup> E drejta ndërkombëtare e punës dhe e drejta e brendshme: Manual trajnimi për gjyqtarë dhe praktikues të legjislacionit të punës në Shqipëri, Ekipi i Mbështetjes Teknike të ILO-s për Punën e Denjë dhe Zyra për Evropën Qendrore dhe Lindore (DWT/CO-Budapest), Budapest: ILO, 2021, f.25

<sup>13</sup> Faqja zyrtare e uebit të Ministrisë për Evropën dhe Punët e Jashtme në Republikën e Shqipërisë.

<sup>14</sup> Shih nenin 19, paragrafi 5 shkronja d, Kushtetuta e ILO-s.

<sup>15</sup> The Vienna Convention on the Law of Treaties is an international treaty of customary international law, specifically relating to treaties between states. Albania has acceded to the Vienna Convention "On the Law of Treaties", 1969, and the Vienna Convention "On the Law of Treaties between States and International Organizations and between International Organizations", 1986

<sup>16</sup> Ne nenin 26, Konventa e Vjenës "Për të drejtën e traktateve", 1969, percaktohet se: Any treaty in force is binding on the parties to it and must be performed by them in good faith.

<sup>17</sup> Ne nenin 27, Konventa e Vjenës "Për të drejtën e traktateve", 1969 percaktohet se: A party cannot use the provisions of its domestic law as a justification for not applying a treaty. This rule does not prejudice Article 46.

discrimination at work. The Universal Declaration of Human Rights<sup>18</sup> in the first paragraph of its article 23 provides that:....*Everyone has the right to work, to freely choose a profession, to have favorable working conditions and to be protected from unemployment....* In addition to this provision, this act contains several other specific provisions that apply to labor matters. Here we can list, for example, the right to freedom from slavery,<sup>19</sup> to social security,<sup>20</sup> to form and join unions,<sup>21</sup> the right to rest,<sup>22</sup> etc.

The International Covenant on Civil and Political Rights<sup>23</sup> in Article 8 provides for the right to freedom from slavery and forced labor. Whereas, the International Covenant on Economic, Social and Cultural Rights<sup>24</sup> in Article 6 defines: *The States parties to this Covenant recognize the right to work, which includes the right of everyone to have the possibility of securing a living by working freely accepted work and receive appropriate measures to protect this right....* This provision recognizes the right to work and calls on the Party States to take appropriate measures for the realization of this right, which is so vital for the development of society. The following provisions of this Pact define the rights of women workers, such as safe working conditions, fair wages, equal opportunities, freedom of association and the right to strike.<sup>25</sup>

The Convention on the Elimination of All Forms of Discrimination against Women<sup>26</sup> defines that women are entitled to the right to work, which is the inalienable right of all human beings, to the right to equal employment opportunities, to the right to choose freely profession and place of work, the right to equal remuneration, the right to social security, etc.<sup>27</sup>

The International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families<sup>28</sup> determines that no migrant worker and his family members are held in slavery,<sup>29</sup> migrant workers enjoy the same treatment as citizens of the State where they are employed,<sup>30</sup> enjoy freedom to join unions together with their families.<sup>31</sup> The European Convention on Human Rights<sup>32</sup> in its article 4 prohibits forced labor.<sup>33</sup> The Convention in

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<sup>18</sup> The Declaration was approved by the General Assembly of the United Nations on December 10, 1948. This Declaration, we can say without any doubt that it constitutes the foundation of the new international system that was created after the end of the Second World War. This act gives equal protection to political, civil, economic, social and cultural rights. Although it is not legally binding in itself, it contains principles that are considered legally binding for States, based on customary international law. E drejta ndërkombëtare e punës dhe e drejta e brendshme: Manual trajnimi për gjyqtarë dhe praktikues të legjislacionit të punës në Shqipëri. Ekipi i Mbështetjes Teknike të ILO-s për Punën e Denjë dhe Zyra për Evropën Qendrore dhe Lindore (DWT/CO-Budapest), Budapest: ILO, 2021, f.148.

<sup>19</sup> Neni 4 i Deklarates parashikon: No one shall be held as a slave or in captivity; slavery and the slave trade are prohibited in all forms.

<sup>20</sup> Neni 22 i Deklarates parashikon: As a member of society, everyone has the right to social security and the realization of the economic, social and cultural rights necessary for their dignity and for the free development of their personality, with the help of the state and international cooperation and in accordance with the organization and opportunities of each state.

<sup>21</sup> Neni 23, paragrafi 4, i Deklarates parashikon: Everyone has the right to form a trade union and participate in it for the protection of their interests.

<sup>22</sup> Neni 24 i Deklarates parashikon: Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic paid leave.

<sup>23</sup> Albania acceded to this pact in 1991. This pact was approved by the UN General Assembly on December 16, 1966 and entered into force on March 23, 1976. The body responsible for verifying whether the party states fulfill the obligations arising from where the Act is UN Human Rights Committee. Usually the State submits every four years specific national reports on the measures taken to implement the guarantees provided by the pact.

<sup>24</sup> This pact was also approved in 1966 and entered into force 10 after, 1976. Albania acceded to this Pact with Law 7511, dated 8.8.1991.

<sup>25</sup> Shih nenet 7,8 dhe 9 te Pakti Nderkombetar mbi te Drejtat Ekonomike, Sociale dhe Kulturore.

<sup>26</sup> Approved by the UN General Assembly on December 18, 1979 and entered into force on September 3, 1981. Albania acceded to this Convention with law no. 7767, dated 9.11.1993. This convention not only prohibits all types of discrimination against women, but also obliges the member states to take all measures to guarantee equality between men and women at the political, economic, social and cultural level.

<sup>27</sup> Shih nenin 11, te Konventa për Eleminimin e të gjitha Formave të Diskriminimit ndaj Grave.

<sup>28</sup> It was approved by the United Nations General Assembly on December 18, 1990 and entered into force on July 1, 2003. Albania acceded to this Convention with Law No. 9703, dated July 2, 2007. this Convention aims to protect, regardless of their legal status, migrant workers, men and women together with their families, from exploitation and violations of human rights.

<sup>29</sup> Shih nenin 11 te Konventes Nderkombetare per Mbrojtjen e te Drejtave te te gjithë Punetoreve Migrante dhe Antareve te Familjeve te tyre.

<sup>30</sup> Shih nenin 25 te Konventes Nderkombetare per Mbrojtjen e te Drejtave te te gjithë Punetoreve Migrante dhe Antareve te Familjeve te tyre.

<sup>31</sup> Shih nenin 26 te Konventes Nderkombetare per Mbrojtjen e te Drejtave te te gjithë Punetoreve Migrante dhe Antareve te Familjeve te tyre.

question refers to civil and political rights, but over time, the ECtHR, through interpretation, has also derived rights of a social nature, including the right to work. The European Social Charter (revised), in its second part, the right to work,<sup>34</sup> fair working conditions,<sup>35</sup> safe and healthy working conditions,<sup>36</sup> fair wages,<sup>37</sup> the right to organize<sup>38</sup> and collective bargaining.<sup>39</sup>

### 3. The Right to Work in Albanian Legislation

In the broad sense of the word, work consists in the use of energy to achieve a specific goal, while in the narrow sense of the word, it consists in a human activity that aims to produce a product, including the application of intellectual and manual knowledge, in exchange for compensation of any kind (monetary or not). Human work is taken into account and regulated by the legal system, since it is suitable to produce a useful economic result, and therefore to be the object of an obligation.<sup>40</sup> It should be emphasized that the right to work is regulated in national and international normative acts. In this paper, when we talk about the national right to work, we also mean the rights of employees that embody this sublime right. Regarding the national acts, the Constitution of the Republic of Albania, the law with the highest power in our legal system, provides for the right of everyone to earn the means of earning by work respecting the legislation in force, which the person chooses and accepts himself.<sup>41</sup> The phrase of the constitutional provision, provided in Article 49, *everyone has the right to earn his means of living by legal work, which he has chosen or accepted himself*, strictly prohibits forced labor. This is an innovation of our post-communist Constitution because during the totalitarian regime, work and the choice of profession was *de facto* forced. Here we are not dealing with a right that we can claim in court and realize it, but it should be interpreted as an objective to be achieved through the commitment of the public power to create the necessary conditions for the realization of this right. It is more than clear that in case of non-fulfilment of this commitment, the way to go to court is not open to the citizen, but the way to political judgment (through voting) is opened to those responsible for political-economic decisions.<sup>42</sup>

The Constitutional Court of the Republic of Italy has declared unconstitutional a provision of law no. 6211/1952 that forced agricultural owners to employ workers based on criteria in proportion to the size of the fund, contrary to Article 41 of the Constitution.<sup>43</sup> The right to work provided by Article 49 of the Constitution should be understood as a principle and not as a legal norm. In other words, the State has the duty to create suitable conditions for everyone to work, not the duty to find a job for those who do not have one. We are not dealing with a subjective (positive) right, but the State must be committed to creating conditions for everyone to be employed. The Constitutional Court of the Republic of Albania has stated that the right to work guaranteed by the Constitution in the first paragraph of Article 49 includes the choice of profession, workplace and the system of professional qualification with the aim of securing a legitimate means of living. The right of a person to legal work is also important from a social point of view, the aforementioned Court emphasized, because work as a profession is also valuable for the contribution it brings to society as a whole.<sup>44</sup> While the constitutional doctrine has stated that the intervention of the State for the employment of persons is related to the social nature of the State itself.<sup>45</sup> The second part of the first paragraph, article 49, provides for the freedom of the person to choose the profession, the place of work as well as the professional qualification system. The Constitutional Court has stated that the choice of profession constitutes a right of the individual in the sense that he dedicates himself to an activity

<sup>32</sup> This convention was drawn up by the Council of Europe in 1950 and entered into force on September 3, 1953. This convention differs from other instruments for the protection of human rights by creating the control mechanism, which allows any individual to submit a complaint. in the ECtHR, after having exhausted all internal means, in case of violation of the Convention and Protocols.

<sup>33</sup> Shih nenin 4 te Konventes Evropine per te Drejtat e Njeriut.

<sup>34</sup> Shih nenin 1 te Kartes Sociale Europiane, e rishikuar.

<sup>35</sup> Shih nenin 2 te Kartes Sociale Europiane, e rishikuar.

<sup>36</sup> Shih nenin 3 te Kartes Sociale Europiane, e rishikuar.

<sup>37</sup> Shih nenin 4 te Kartes Sociale Europiane, e rishikuar.

<sup>38</sup> Shih nenin 5 te Kartes Sociale Europiane, e rishikuar.

<sup>39</sup> Shih nenin 6 te Kartes Sociale Europiane, e rishikuar.

<sup>40</sup> Shih ne <https://www.treccani.it/enciclopedia/lavoro/>.

<sup>41</sup> Neni 49, paragrafi 1, Kushtetuta e Republikës së Shqipërisë, miratuar me Lgjin nr.8417, datë 21.10.1998, e ndryshuar.

<sup>42</sup> ANASTASI A dhe OMARI L, E drejta kushtetuese, Shtepia botuese Pegi, Tirane, 2010, fq.188-189; CARETTI P, BARBIERI G, I DIRITTI FONDAMNETALI Liberta e Diritti Sociali, G. Giappichelli, Torino, 2017, fq.507.

<sup>43</sup> Gjykata Kushtetuese e Republikës së Italisë, Sentenza 98/1998.

<sup>44</sup> Gjykata Kushtetuese e Republikës së Shqipërisë, Vendimi 20/2006.

<sup>45</sup> ANASTASI A dhe OMARI L, E drejta kushtetuese, Shtepia botuese Pegi, Tirane, 2010, fq.188.

to ensure the means of living.<sup>46</sup> In this sense, any activity of the state bodies that brings direct consequences in hindering the professional activity constitutes a violation of this freedom of action. The freedom of the profession is not a right to have a job, but it should be understood as a negative freedom that does not allow the intervention or obstruction of the State during its exercise.<sup>47</sup>

The Italian constitutional doctrine has stated that the freedom of profession or the freedom of a work activity (understood as freedom from limitations or unreasonable obstacles for entering the chosen profession) includes the freedom of access to work and the freedom to carry out an activity that corresponds to the choice and his professional skills.<sup>48</sup> This above-mentioned doctrine has been confirmed by the Constitutional Court of Italy by declaring the unconstitutionality of the legal provisions that require the absence of children as a criterion for recruitment into public offices.<sup>49</sup> Moreover, this Court has declared the unconstitutionality of the legal provisions that required quality and good moral behavior to become part of the police or the judicial system.<sup>50</sup> The Constitutional Court stated that the right to work provided by Article 49 has a double meaning: it constitutes a positive obligation that requires the commitment of state structures to create suitable conditions for the realization of such a right, but also a negative obligation of which requires the non-interference of the State to violate this right.

In order to guarantee this very important right to a dignified life, the Constitution and legislation in force have provided several guarantees, such as the preservation of the workplace, the right to a sufficient reward to ensure a free and dignified existence, the maximum length of working days, etc. Regarding the limitation of the right to work, the Constitutional Court has implemented the notions of the Federal Constitutional Court of Germany. The latter, dated July 11, 2006, stated that: "According to the doctrine, the exercise of a profession can be limited by reasonable rules that can be attributed to assessments of the general good." "The situation changes when the state returns to the controller of the objective conditions of admission to a workplace. In these cases, restrictions are permissible only for very limited and well-defined conditions. In general, the legislature may set such conditions only when they are necessary to highlight potential dangers that may affect interests of fundamental importance in the community."

#### 4. Union Freedom and the Right to Strike

Trade union freedom and the right to strike have historically represented the basic means to protect the rights of workers. A trade union is a free and spontaneous association that unites members of a category of workers or employers with the aim of protecting their collective professional interests, while a strike is an instrument of trade union struggle that consists of collective abstinence from work, which is generally promoted by trade unions and implemented from the employees.<sup>51</sup> The first trade unions were born after the industrial revolution<sup>52</sup> to protect workers from the human exploitation to which they were subjected. The need to face the excessive power of the employers has made the workers aware that only by joining associations in defense of their rights, they can exert the right pressure for the protection of their demands.<sup>53</sup> With the birth of capitalism and the differentiation between capital and labor in the 18th century, the strike in the modern sense of the term was born. As for Albania, after the second world war, the communist regime was installed, which did not allow the true, real implementation of trade union freedom and the right to strike. Law No. 7491/1991, On the Main Constitutional Provisions, initially did not provide for trade union freedom and the right to strike. Two years later, Law no. 7692/1993, for an addendum to Law no. 7491/1991, on the Main Constitutional Provisions, added the chapter on fundamental human rights and freedoms, where the freedom of association was foreseen in Article 29<sup>54</sup> and the right to strike in Article 30.<sup>55</sup> The Constitution of 1998 in chapter IV of the second part finally provides for trade union freedom

<sup>46</sup> Gjykata Kushtetuese e Republikës së Shqipërisë, Vendimi 20/2006.

<sup>47</sup> Gjykata Kushtetuese e Republikës së Shqipërisë, Vendimi 20/2006.

<sup>48</sup> CARETTI P, BARBIERI G, I DIRITTI FONDAMNETALI Liberta e Diritti Sociali, , G. Giappichelli, Torino, 2017, fq.507-509.

<sup>49</sup> Gjykata Kushtetuese e Republikës së Italisë, Sentenza 332/2000.

<sup>50</sup> Gjykata Kushtetuese e Republikës së Italisë, Sentenza 391/2000.

<sup>51</sup> GIUGNI G, Diritto sindacale, Cacucci, Bari, 2014 f.13-15.

<sup>52</sup> The Industrial Revolution was a long process of productive change that began in Europe in 1780 and ended in 1878.

<sup>53</sup> LA NUOVA UNIVERSITA, LeXikon, Leggere la costituzione Repubblicana, breve commento articolo per articolo, III edizione, Napoli, 2004 fq.47.

<sup>54</sup> LIGJ Nr.7692, datë 31.3.1993, PËR NJË SHTOJCË NË LIGJIN NR.7491, DATË 29.4.1991 "PËR DISPOZITAT KRYESORE KUSHTETUESE", neni 29 percakton: Employees have the right to freely join trade unions for the protection of their interests in the fields of labor and social security.

<sup>55</sup> LIGJ Nr.7692, datë 31.3.1993, PËR NJË SHTOJCË NË LIGJIN NR.7491, DATË 29.4.1991 "PËR DISPOZITAT KRYESORE KUSHTETUESE", neni 30 percakton: The right of employees to strike to improve working conditions, wages or any other benefit from

and the right to strike. So, the post-communist constitution of 1998 recognizes the right of employees to join trade unions in order to protect their work interests, as well as the right to strike as an effective instrument in re-establishing the balance between the employee and the employer.

More specifically, trade union freedom is provided for in Article 50 of the Constitution, *which stipulates that employees have the right to freely join trade unions for the protection of their work interests*. The Law on Main Constitutional Provisions, amended as I mentioned above, mentioned the freedom of trade unions in the field of social insurance. The freedom of association provided for by provision no. 50 represents a broader specification of the freedom of organization provided by Article 46.<sup>56</sup> Furthermore, without straining the constitutional text too much, trade union freedom is also recognized in the part of the basic principles of the Constitution. More specifically, it does not foresee only the creation of parties, but also of organizations in general, which must comply with democratic principles.<sup>57</sup> The freedom of association provided for in Article 55 of the Constitution has a double meaning: on the one hand, it is the right of the individual to join an existing union, to create a new one or not to join any union, on the other hand, the unions have the right to carry out their activity freely and without restrictions or controls. The constitution protects the right of employees to join a trade union organization, but the legal basis for the activity of trade union organizations in Albania is the Labor Code.<sup>58</sup>

The amended Labor Code, in chapter XVI, provides for the way of creating trade union organizations, the rights of trade union members, their financing, the prohibition of interventions by state bodies, etc. Since it is a constitutionally protected right, the legislation provides facilities for their creation and organization. Some of the main tasks of the trade unions that emerge from the analysis of the legal provisions of the labor code are: to negotiate wages and working conditions, to negotiate collective contracts with the representatives of the employees at the time of renewal. In general, their duty is to represent categories of workers in the protection of their interests within the workplace. Unions can use the democratic method of protest, the strike, to achieve their goals such as protecting the workplace, improving working conditions and pay. In this case, the strike is used to convince the other party to accept demands regarding wages, hours and working conditions.

The strike can also be used to increase the awareness of the public opinion to renew the collective contracts<sup>59</sup> of different sectors which have expired.<sup>60</sup> The right to strike is provided for by the Constitution of the Republic of Albania in Article 51, which stipulates that: *the right of the employee to strike related to labor relations is guaranteed*. It should be emphasized that the right to strike is a subjective right and the State cannot prohibit it, nor condemn the collective abstention from work, nor allow the dismissal of the person who participated. Based on the constitutional phrase the right of employees to strike, the right to strike is recognized by the individual worker who can exercise it even without the approval of the union. This right belongs to the individual, but it is presented as a collective in terms of its exercise. So, it requires the accession of a number of workers who collectively refrain from performing their duties, in order to achieve the objective through pressure on the employer.

The right to strike, in addition to the Constitution, is also regulated by the Labor Code<sup>61</sup> and Law no. 152/2013,

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*work cannot be limited. The law determines the conditions and rules for the exercise of this right, as well as the guarantees to provide society with the necessary services.*

<sup>56</sup> Neni 46, Kushtetuta e Republikës së Shqipërisë, miratuar me Lgjin nr.8417, datë 21.10.1998, e ndryshuar parashikon se: *Everyone has the right to organize collectively for any lawful purpose. Court registration of organizations or associations is done according to the procedure provided by law. Organizations or associations that pursue unconstitutional goals are prohibited by law. The underlining is the Author's.*

<sup>57</sup> *The Constitution of the Republic of Albania, in the second paragraph of Article 9, provides that: Political parties and other organizations, whose programs and activities are based on totalitarian methods, that incite and support racial, religious, regional or ethnic hatred, that use violence for taking power or influencing state policy, as well as those of a secret nature are prohibited by law. The underlining is the Author's.*

<sup>58</sup> *Miratuar me ligjin nr.7961, date 12.7.1995. i ndryshuar.*

<sup>59</sup> *The collective labor contract is a contract between employers and workers, which has as its object the working conditions and the relations between the contracting parties. Collective contracts are regulated in the Labor Code, Chapter XV.*

<sup>60</sup> ANASTASI A dhe OMARI L, *E drejta kushtetuese, Shtepia botuese Pegi, Tirane, 2010, fq.190; CARETTI P, BARBIERI G, I DIRITTI FONDAMNETALI Liberta e Diritti Sociali, G. Giappichelli, Torino, 2017, fq.531.*

<sup>61</sup> *The Labor Code in Article 197 determines that: The right to strike is guaranteed by the Constitution of the Republic of Albania. Unions have the right to exercise the right to strike to resolve their economic and social demands, in accordance with the rules set forth in this Code. Participation in the strike is voluntary. No one can be forced to participate in a strike against their will. Any action involving coercion, harassment or discrimination against employees, due to participation or not in the strike, is prohibited. During the development of the strike, the parties must make efforts, through negotiations, to reach an understanding and sign the agreement.*

dated 30.5.2013 For civil servants, as amended.<sup>62</sup> It should be emphasized that the right to strike is not an absolute right, but like any other right, it can be limited to guarantee the rights of third parties who are not part of the agreement. For this reason, the Constitution provides that: *restrictions for special categories of employees can be established by law to provide society with the necessary services.*<sup>63</sup> The Labor Code<sup>64</sup> and the Civil Servant Law<sup>65</sup> have determined that the strike cannot extend to vital services where the interruption of work endangers the life, personal safety or health of a part or the entire population.

## 5. Conclusions

The right to work is a basic human right regulated not only by national sources but also by international sources of law. In recent years, there is talk not only about economic globalization, but also about the globalization of human rights. The recognition and implementation of international and national resources for the right to work is the starting point to improve working conditions for a more dignified life, besides the fact that work constitutes an essential and inseparable part of the affirmation of other human rights.

The phenomenon of globalization, especially during the last years, has deeply influenced the labor market in the Republic of Albania. Today, Albania is experiencing a great wave of labor force emigration. The effects of this emigration are positive and negative. To see the positive and negative effects of emigration, in the case of Albania, it is enough to take as an example the departure of qualified workers. The host country, foreign, certainly has an advantage, while our country is losing qualified human resources. Seeing that the phenomenon of globalization can negatively affect the conditions of workers, the ILO (International Labor Office) devotes a special section to decent work related to the phenomenon of globalization. Regarding decent work, the ILO states: "Decent work is the key to eliminating poverty." *If people have decent work, they can participate in the redistribution of income from an increasingly globalized international economy. Expanding the opportunity for decent work for all is the essential condition for globalization to be fair and bring about social integration. Therefore, the creation of good working conditions should be the basis of all development policies."*

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<sup>62</sup> *Ligji nr.152/2013, date 30.5.2013 Per nenpunesin civil i ndryshuar, ne paragrafin e pare te nenit 35 percakton: Nëpunësi civil ka të drejtën e grevës, përveçse kur parashikohet ndryshe nga ligji.*

<sup>63</sup> *Shih paragrafin e dyte te nenit 51, Kushtetuta e Republikes se Shqiperise.*

<sup>64</sup> *The labor code in article 197 determines that: 1. The strike cannot be exercised in services of vital importance, where the interruption of work endangers the life, personal safety or health of a part or the whole population. In this case, collective conflicts are resolved in a final and mandatory manner, according to Article 196 of this Code. 2. The following are services of vital importance: a) necessary medical and hospital services; b) Repealed c) Repealed ç) air traffic control services; d) essential fire protection services; dh) necessary services in prisons.*

<sup>65</sup> *Ligji nr.152/2013, date 30.5.2013 Per nenpunesin civil i ndryshuar, ne paragrafin e dyte te nenit 35 percakton se: In any case, the right to strike is not allowed in the field of essential services of state activity, such as transport, public television, supply water, gas and electricity, prison administration, justice system administration, national defense services, emergency health services, food supply services or air traffic control services.*

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