



## Controls for exercising the right to unionize in light of the developments in Law 23-02

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### **Summary:**

*The new law relating to trade union work No. (23-02) introduced radical changes in trade union work in terms of raising the representation of workers in trade union organizations, as well as new provisions that must be included in the laws of terminated organizations, in addition to strengthening mechanisms for separating trade union work and political work, and learning about The reasons for dissolving and suspending trade union organizations, not to mention the measures taken to protect public employees in various sectors and provide them with criminal protection.*

*The importance of the topic is highlighted by studying the new Law No. 23-10 regarding the exercise of the right to trade unions, which is considered one of the most important rights and freedoms affirmed by various international charters and national legislation, and by showing the most prominent new additions brought by the law.*

**Keywords:** *trade union organizations, freedoms, trade union work, criminal protection*

## **Contrôles pour l'exercice du droit syndical à la lumière des développements de la loi 23-02**

### **Résumé :**

*La nouvelle loi relative au travail syndical n° (23-02) a introduit des changements radicaux dans le travail syndical en termes d'augmentation de la représentation des travailleurs dans les organisations syndicales, ainsi que de nouvelles dispositions qui doivent être incluses dans les lois des organisations dissoutes, outre le renforcement des mécanismes de séparation du travail syndical et du travail politique, et l'apprentissage des raisons de la dissolution et de la suspension des organisations syndicales, sans oublier les mesures prises pour protéger les employés publics dans divers secteurs et leur fournir une protection pénale.*

*L'importance du sujet est soulignée par l'étude de la nouvelle loi n° 23-10 relative à l'exercice du droit syndical, qui est considéré comme l'un des droits et libertés les plus importants affirmés par diverses chartes internationales et législations nationales, et par la présentation des nouveautés les plus marquantes apportées par la loi.*

**Mots clés :** *organisations syndicales, libertés, travail syndical, protection pénale*



## Introduction

Seeking Algeria LI Developing, the national legislative system to contribute to strengthening public rights and freedoms and Especially those related to it for Exercising the right to unionize, as successive constitutions stipulated the guarantee of exercising the right to unionize. Starting with constitution **1963** Which granted the General Union of Algerian Workers the right to practice union activity as the only union , then Followed by the constitution year **1976** Which recognized the right to join a union without establishing it, meaning that the General Union of Algerian Workers remains the only union authorized to practice union work.

With the approval of the Constitution **1989** The right to establish and found trade union organizations and the freedom to join them was recognized, as represented by the issuance of Law No.**1490** Related By exercising the right to unionize, many laws were issued related to labor relations, union freedoms, and strikes, and emphasized the importance of union work and the establishment of unions of various types to defend the interests of workers..

and It is considered constitution **1996** Guaranteeing union freedoms and union work practices with its various amendments, especially the latest amendment of the year**2020**Which is stated in its article**69**The right to unionize is guaranteed and exercised freely within the framework of the law, and in an effort by the Algerian legislator to regulate union practices through Law No.**23-02**Given the absence of an effective role for unions in recent years, and the strengthening of effectiveness Trade union organizations

and attempts to gather them into federations, And confederations, and the abolition of some provisions that hinder the exercise of the right to unionize, such as the open union mandate.

Where he confirmed Law No.23-02 Related to the practice of union work On restriction Some practices Cal Mixing political and union work, prohibiting union organizations from receiving any support from political parties, in addition to raising representation rates. Trade union right.

The research aims to study the phenomenon of union work through the new provisions of the law **23-02** From increasing the percentage of worker representation in trade union organizations to the new provisions that must be included in the laws of dissolved organizations, to identifying the mechanisms for separating union work from political activity, and examining the reasons for the dissolution and suspension of trade union organizations, not to mention the measures taken to protect public employees in various sectors and the criminal protection they receive.

The importance of the subject is highlighted by studying the new law No **23-10** Related to the practice of union rights, which is considered one of the most important rights and freedoms emphasized by various international conventions and national legislation, and showing the most prominent new additions brought by the law, and studying the problems related to some practices. Trade union work added by the legislator through this law.

And accordingly, we propose we raise the following problem:

**What is it the most important developments Which is approved by Law No. 23-02?**



## 1. Updates Cannabis Rights Exercise Law 23-02.

Law No.23-02<sup>1</sup> relating to the exercise of the right to vote want a sentence Among the new legal texts and provisions, some relate to the representative standards of professional organizations, through which the percentage of representation in elections and joining professional organizations was raised, and the foundations for establishing federations and confederations were established. It also highlighted the most important additions that professional organizations must emphasize in their internal regulations, and increased some procedures. Related to trade union representation procedures

### 1.1. New representational standards in trade union organizations:

The legislator raised through Law No.23-02 Relating to the exercise of the right to unionize, some representative percentages of workers in trade union organizations to 25%After it was in the old repealed law No.90-14 Percentage 20% This is achieved through elections or accession. The law also clarifies the procedures for establishing federations and confederations and the new conditions related to them.

#### 1.1.1. *Theto lift from Percentage of workers' representation in trade union organizations:*

It came in the text The material 73 From Law No 23-02<sup>2</sup>Including amending the law on exercising the right to unionize, stating that:

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<sup>1</sup> Law No.23-02relating to the exercise of the right to unionize, dated25 -04-2023newspaper Official number29 Issued on 2May2023.

<sup>2</sup>Article 73, same source

“At the level of the employing body, every trade union organization of workers that meets one of the following two criteria is considered representative: having a number of members equal to, at least, the percentage of 25% Of the total number of workers covered by its basic law,

Its candidates obtain at least, a percentage 25% Of the number of votes cast on the occasion of employee elections in the user bodies of the economic sector or during elections to establish equal-member administrative committees or equal-member advisory disciplinary committees in institutions My delegates Public Administration<sup>1</sup>.

While the article was considered 74 Representation in the territory of a municipality or several municipalities and at the level of the territory of a state or several states or at the national level, every trade union organization of workers that includes a percentage 25% From the total census of workers active in one of those regions and covered by its basic law, and in the same context, Article 75 Considering the representation at the level of a profession, branch, or several branches, or sector or several sectors of activity, each trade union organization of workers includes 25% of the total census as specified in its basic law.<sup>2</sup>.

The new law also considered the representation of trade union organizations of employees in the territory of a municipality or several municipalities, in the territory of a state or several states, or at the national level, to include 25%

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<sup>1</sup>Article 75 of Law No. 23-02, mentioned above

<sup>2</sup>According to Article 74 of Law No. 23-02, mentioned above.

3-The Materials 76 and 77, of the law same.

4-Materials 35 and 36 and 37, of the repealed Law No. 90-14 Concerning the methods of exercising the right to unionize, dated 02 June 1990 Official Gazette No. 23 Historian in 06 June 1990.



**Soumission : 20/05/2025    Acceptation : 20/06/2025    Publication : 15/07/2025**

of the total number of active employees in one of those territories, who are covered by its basic law, and to be considered representative of employees at the professional level, every trade union organization that includes 25% The total number of employees in the profession, branches or sectors of activity is determined in its basic law.<sup>3</sup>

However, by returning to the texts of Law No 90-14 Regarding the methods of exercising the right to unionize, we find that the representative percentage within the institutions employing the same trade union organizations for workers that include 20% At least of the total number of employees employed by this employing establishment and/or the trade union organizations that have representation 20% At least in the participation committee, if it exists within the user institution concerned, and the same applies to the representation ratio at the municipal, inter-municipal, inter-state or national level, and federations or confederations that include and bring together 20% At least from representative trade union organizations or employees in public institutions<sup>4</sup>.

### ***1.1.2. Procedures Related bit Establish federations and confederations:***

Includes The new law on the exercise of union rights, procedures for establishing federations and confederations, and upon reviewing the provisions of Part One/Chapter Two of the new law, we find that Article Four defines a federation as: “a federation” of grassroots trade union organizations from the same profession, branch, or sector of activities, and the most prominent examples of this are the National Federation of Health Workers, the National

Federation of Textiles and Leather, and the National Federation of Youth and Sports Sector Workers, while defining a confederation as: a federation of grassroots trade union organizations and/or federations from the same profession, branch, or sector of activities, or covering several professions, branches, or sectors of activities."<sup>5</sup>The law also granted, through the text of Article 22 The possibility for legally established trade union organizations of wage-earners and employees to unite in federations And confederations, the most prominent of which are the General confederation of economic operators and the General confederation of employers. the job<sup>1</sup>.

As The material was awarded 23 Trade unions have the right to join existing federations and confederations, provided they comply with their basic laws. Article 24 The mechanism for joining is to be through a written declaration from the relevant trade union organization, and a certificate of this shall be given to it from the competent authority of the federation or confederation, with the necessity of informing the competent administrative authorities of every new joining in a federation or confederation and every withdrawal from it.<sup>2</sup>.

Article 25 affirms that federations and confederations enjoy the same rights and duties applied to grassroots trade union organizations and are subject in the exercise of their activities to the provisions of this law, provided that each federation consists of three (03) At least basic trade union organizations, whether for wage workers or employees,

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<sup>1</sup>Article 04 of Law No. 23-02 mentioned above.

<sup>2</sup>Zubayri Hussein, The Trade Union Movement in Algeria and the New Emergence of Social Movements, Journal of Social Studies Volume 5 number 13, 2013, p23.



**Soumission : 20/05/2025    Acceptation : 20/06/2025    Publication : 15/07/2025**

legally established. As for the confederation, the law requires the union of two federations.**02)** at least or five (**05**) Grassroots trade union organizations for workers or employees, legally established in accordance with the provisions of this law. It is noted through the new amendment that it strengthens the position of the trade union center to become, over time, greater in importance and more powerful, especially since there are a large number of unions distributed in an unbalanced manner between the various fields. For example, there are: **160** Currently accredited union in Algeria **99** Public Service Union **43** In the education sector, which is a large number compared to other fields.

- **Creating new conditions In the internal procedures of trade union organizations:**

The legislator added many provisions in Law No **23-02** To avoid The Qais Which was included in Law No. **90-14** especially Regarding the new provisions that must be included in the basic law of every trade union organization, it also set certain conditions for the candidate for the position of captain or leader of the trade union organization, and set the term of office at five.**5**Years renewable only once as a form of power transfer and leadership democracy.

- **Increase in the provisions that must be included in the basic law of the trade union organization**

The new law highlighted some provisions that must be included in the basic law of trade union organizations. After it included in Law No. **90-14** Nine basic points stipulated in the article **21** It is as follows:

- The organization's purpose, name, and headquarters
- The method of organization and its regional jurisdiction record,
- Categories of persons, professions, branches or sectors of activity mentioned in its objective,
- Members' rights and duties, conditions of membership, withdrawal or exclusion,
- The electoral method for appointing and renewing the leadership and management body, as well as the term of its membership,
- Rules relating to the summoning and operation of deliberative bodies,
- Rules for managing the trade union organization and procedures for monitoring it,
- Rules of trade union accounting and procedures for their control and approval,
- The rules that determine the procedures for voluntary dissolution of a trade union and the rules that relate to the transfer of property in this the condition<sup>1</sup>

The new amendment added through the text of the article 38 Nine key points on the above-mentioned points It is as follows:

- Territorial jurisdiction of the trade union organization,
- Rules relating to the organization and powers of leadership and management bodies,
- Rules relating to the establishment, organization and functioning of trade union branches, as well as the powers of union branches,

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<sup>1</sup> The material<sup>21</sup>From Law No.09-14, the aforementioned.



**Soumission : 20/05/2025    Acceptation : 20/06/2025    Publication : 15/07/2025**

- Rules for determining the amount of subscriptions required from members,
- How to represent women and youth in the leadership and management bodies of the trade union organization,
- How to appoint representatives of the trade union organization to the trade union council,
- How to resolve internal disputes and deadlocks in the management of the trade union organization.
- General rules for exercising disciplinary authority at the level of trade union structures,
- Procedures for amending and approving the basic law of the trade union organization<sup>1</sup>

The interest in detailing the provisions of the work of trade union organizations is clearly evident, such as clarifying the regional jurisdiction of the trade union organization, the powers of the leadership and management bodies, the rules for establishing, organizing and operating trade union branches, and determining the amount of subscriptions paid by the trade union member to the union, which may be in the form of annual subscriptions, some of which are semi-annual or monthly, and emphasizing the issue of including women and youth in the leadership and management bodies, given the importance of preparing young competencies that serve the interests of the unions in the long term.

Where it excites the material 111The new law clearly raises a problem with the union bearing the worker's wages during the union formation period, as the article states: "The

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<sup>1</sup> Article 38 of the aforementioned Law 23-02.

union formation holiday is considered a period of actual work. The wages due to the worker concerned during the union formation holiday period are the responsibility of the union organization unless the provisions of the collective labor agreements and agreements stipulate otherwise."<sup>1</sup>However, the legislator addressed this problem and the text was amended so that the wage due to the worker concerned would be the responsibility of the employer..

It is worth noting that one of the most important amendments to the law is the addition of Article 52, which states that: "Trade unions must submit annually to the competent administrative authority the moral and financial results approved by the General Assembly, and the financial results must be approved by the auditor."<sup>2</sup>, and that Trade unions are now required to submit annual financial statements so that members and citizens can be informed of the unions' operating mechanisms and the legitimacy of their financial statements. This is particularly true given that many unions have not submitted any annual financial or literary statements for the past several years.

- **Taking over the leadership of the trade union organization and the term of office In light of the developments in the law:**

The new law grants every member the right to participate in leadership and management bodies and opens the door to women. Young people are entitled to this right in accordance with the following conditions:

- To be a member of the trade union organization,
- To be twenty-one years old<sup>21</sup>) a full year,

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<sup>1</sup> Article 111 of Law 23-02, mentioned above.

<sup>2</sup> The material<sup>52</sup>From the law23-02, the aforementioned.



**Soumission : 20/05/2025    Acceptation : 20/06/2025    Publication : 15/07/2025**

- To enjoy civil and national rights,
- Not to be the subject of a conviction that includes a penalty depriving of liberty,
- To prove union training and/or training in the field of labor law.

The head of the trade union organization must be of Algerian nationality, but the law allows foreign workers or employees who are members of a trade union organization to be members of its leadership or management bodies, within the limits of...**30%** Of its members, if they have been legally residing in Algeria for at least three years, and hold valid work permits, for salaried workers, or documents justifying their industrial, commercial, craft or freelance activity, for employees, issued by the competent public authorities.<sup>1</sup>

The new amendment also set the term of office at five (5) years, renewable once, after the field was open in the repealed law No **90-14** Without specifying a specific period, the new amendment came to specify the term of the term through the text of Article **56** Which stated: "The leadership bodies of the trade union's administration shall be elected and renewed in accordance with the principles of democracy within the time limits specified in accordance with its basic law and internal regulations. The term of office of the members of the leadership and/or administration bodies shall not exceed five (5) years, renewable once<sup>1</sup>). They cannot exercise more than two terms.<sup>2</sup>) Two consecutive or separate union memberships during their union career in the same union organization. The leadership and management

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<sup>1</sup>Article 12 of Law No. 22-02, the aforementioned.

bodies of the union organization are renewed by inspection report prepared by a judicial officer, which enhances democracy in union work and encourages the rotation of leadership and management within union organizations.<sup>1</sup>.

## **2. Restrictions Incoming on the exercise of the right to unionize** **In the shadow of a For the law 23-02.**

Sort chests Law No. 23-02 Many problems related to restricting union freedoms and the practice of union work, especially the political aspect, through emphasizing the independence of professional organizations in their conduct, purpose and name from any political party, and prohibiting them from obtaining financial support or being structurally and functionally linked to political parties, under penalty of dissolution or suspension from work, and from Another side The legislator sought to provide legal protection for salaried workers, contractors, and public employees during and because of their practice of union work, and he added protection to their union work from expected violations by employers, in addition to Customization A comprehensive chapter on the financial and freedom-depriving penalties for violators of union freedom and the practice of union work. Wherein this section, we will address the limitation of political influence, the suspension and dissolution of trade union organizations, and measures to protect the exercise of the right to unionize.

### **2.1. Ban The political role and the suspension and dissolution of trade union organizations:**

Through this law, the legislator sought to differentiate between union work and political work, given the goals and

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<sup>1</sup> Articles 13 and 14 and 15 of Law No. 23-02 The same source.



Soumission : 20/05/2025 Acceptation : 20/06/2025 Publication : 15/07/2025

objectives for which unions were established. Their role is limited to representing the profession and its members and defending their interests.

### **2.1.1. Separation between union work and political work:**

Jurisprudence regarding the practice of political work by unions is divided into two different directions. The first direction sees the necessity of prohibiting the political activity of unions absolutely. It relies on the fact that unions have specific functions addressed by international agreements and domestic legislation, and are limited to defending the material and moral interests of their members. It also believes that opening the field for political work by unions will undoubtedly lead to the transformation of workplaces into arenas for duels between different political movements, which helps to create a spirit of division among workers and disrupt production. The deterioration of work, and the practice of political work by unionists, makes them move away from their goals, which prompts the state to try to contain them and turn them into tools for its benefit.<sup>1</sup> While the second trend went to the point that unions should enter the political arena to defend the interests of the working class, because political and union work are inseparable.<sup>2</sup>

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<sup>1</sup>Abdullah Hanafi, *The Role of Trade Unions in Constitutional Life: A Comparative Study*, Dar Al Nahda Al Arabiya, Cairo, 1998, p. 89.

<sup>2</sup> Muhammad Khalid, *The Trade Union Movement Between Past and Present*, Dar Al-Taawun Printing and Publishing House, Cairo, 1975, p. 347

As for Algerian legislation, the new amendment focused on the complete separation between union work and political work, as it emphasized the independence of unions in their conduct and their distinction in their goals and name from any political party, and prevented their structural and functional connection to political parties, and also prohibited them from obtaining any financial support or other privileges from any political party. In this regard, the third paragraph stated (3) of the material **12** On the prohibition of combining a term in the leadership and management body of a trade union organization with the exercise of a primary legal responsibility or a term in the leadership bodies of a political party.

In line With what It was mentioned, the article stated<sup>13</sup>The new law stipulates that: "Founding and leading members of trade union organizations must adhere to neutrality and refrain from declaring their support for political parties or any political figure," as stipulated in Article **14** Provided that: "Trade unions are prohibited from engaging in any form of political activity under penalty of applying the provisions relating to dissolution stipulated in this law." The law obliges trade unions, when preparing their code of ethics, basic laws and internal regulations, to stipulate the separation between trade union activity and political activity and independence from any political party, association or any group. pressure.

As for labor unions, they are: «An organization or group of workers who practice one profession or trade, or who carry out work in one place or on behalf of one establishment, with the aim of defending their economic and



**Soumission : 20/05/2025    Acceptation : 20/06/2025    Publication : 15/07/2025**

social interests. <sup>1</sup>Therefore, there is a clear difference between the way trade unions work, the way they are managed, and the freedom to join and withdraw from them. This means that professional unions are not subject to the provisions of this law and the separation of their work from political work, but rather are subject to the laws of their establishment and their internal regulations.

However, in reality, it is difficult to differentiate between union work and political work due to the overlap between the two fields, especially since the emergence of the union movement in Algeria was linked to political work and had more political goals than demands.

### **2.1.2. Reasons for the suspension and dissolution of trade union organizations:**

Specify the law Procedures and reasons for suspending and dissolving a trade union organization, which can be: The summary is as follows:

- **Suspension of trade union activity:**

The article states:<sup>2</sup>From the new law that Without prejudice to the applicable legislative and regulatory provisions, the activity of a trade union may be suspended for a maximum period of two years (2) Through judicial means before the competent judicial authority at the request of the competent administrative authority, especially in the following cases:

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<sup>1</sup> Yousef Alwan and Khalil Musa, International Human Rights Law, Protected Rights, Part One, Dar Al Thaqafa for Publishing and Distribution, Jordan, 2008, p. 263.

<sup>2</sup>Article 61 of Law No. 22-02 Previous source

- Practicing activities other than those stipulated in this law and its bylaws,
- Failure to respect the applicable legislative and regulatory provisions and the provisions of its bylaws and internal regulations,
- no Requesting prior licenses from the competent administrative authorities,
- Failure to notify the competent administrative authority of amendments to its bylaws and internal regulations.
- The continuation of an internal dispute disrupts the functioning of the trade union.

The article states: **63** <sup>1</sup> From the same law, it states that: “In the event that one of the violations mentioned in Article 10 is observed, **62** Above, the competent administrative authority shall issue a warning to the trade union organization to lift the reservations that were observed within the specified deadlines. In the event that compliance with the warning is supported, the case shall be brought before the competent judicial authority, which shall decide on the suspension with a judgment subject to immediate enforcement, regardless of any appeal. It is concluded from the text of the article **62** Specifically, the third point is the existence of some control by the competent administrative authorities over trade union organizations, as the provision for requesting prior authorization from the competent administrative authorities is considered a condition restricting trade union freedoms and the exercise of the right to organize, and in accordance with the provisions of the International Convention on Freedom of Association and

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<sup>1</sup> Article 63 of Law No. 22-02, same source



**Soumission : 20/05/2025    Acceptation : 20/06/2025    Publication : 15/07/2025**

Protection of the Right to Organize, which stipulates in its second article that workers and employers, without discrimination of any kind, have the right to establish organizations of their own choosing, and they also have, without this being subject to YGY The rules of the organization concerned, the right to join those organizations, without prior authorization.

- **Dissolution of the trade union:**

The new law has determined the mechanisms and methods for dissolving trade union organizations. They can be dissolved either voluntarily by their members who announce their dissolution in accordance with the rules and procedures stipulated in their basic laws, or by... The competent administrative authority that the law has granted the right to request the dissolution of the trade union before the competent judicial authority in Several cases are mentioned below:

- Violation of the provisions of this law relating to its purpose and the rules and procedures related to its operation stipulated in its bylaws,
- Violation of the provisions of this law relating to its relationship with political parties,
- Not engaging in actual activity related to its purpose for a period of three (3) years,
- Exposure to serious and ongoing problems that hinder its progress,
- Committing serious financial violations and harming its property,
- Incitement to violence, threats, or any illegal act that violates or attempts to violate rights workers,

- Refusal to comply with and implement justice decisions,
- Insistence on resorting to illegal strikes that have an impact on the continuity of the public service or biography,
- Repeated violations that have previously been subject to judicial suspension,
- Accepting gifts and bequests, in violation of the provisions of this law.

The article has been specified 67 How to distribute the assets of the trade union organization, as it stipulated that: "The assets of the trade union organization, which is subject to dissolution, cannot, under any circumstances, be transferred to its members, who can request the return of their real estate contributions in the condition in which they were at the time of dissolution. In all cases, the dissolution of the trade union organization results in the transfer of its other movable and real estate assets in accordance with what is stipulated in its bylaws, unless the law provides for..." The competent judicial authority shall otherwise decide."

## **2.2. Developments Procedures to protect the exercise of union rights:**

The Algerian legislator worked through the Law on the Exercise of Trade Union Rights No.23-02 To strengthen measures to protect the exercise of union rights, by granting wage earners, public employees and contractors the necessary protection. Than The law prohibits the practice of union work and prohibits any punishment related to union affiliations. It also doubles the financial and freedom-depriving penalties for violators of union rights.



Soumission : 20/05/2025 Acceptation : 20/06/2025 Publication : 15/07/2025

### **2.2.1. *Procedures for the protection of wage earners and public employees:***

Dedicated The new law protects workers involved in various types of trade unions, given that some of them are subject to malicious penalties by their employer or the administrative body employing them because of their membership.

Unionist, the article states: **125** Provided that: "Protection due to union membership or activity is guaranteed to every worker who is a member of a union organization, whether it is representative not," the article added.**126** It is prohibited to dismiss or impose any other disciplinary penalty against any member of a trade union organization, if it is related to their union affiliation or activity. It is also prohibited to transfer a trade union representative during their term to a workplace other than the one to which they were elected, or to change their job position.<sup>25</sup>

Protection against dismissal or termination also includes union delegates, representatives directly elected by the workers' group for the purpose of collective bargaining and settlement of collective labor disputes, a qualified union representative of a non-representative union organization, and members of the union council of the employing body. In the event that the employer decides to dismiss or terminate a worker benefiting from protection due to a serious error, he must notify the worker, his union organization, and the regionally competent labor inspector by registered letter with acknowledgment of receipt, stating all the facts justifying the dismissal or termination.

The law divided the protection measures related to workers into two sections, some of which relate to the

protection of wage earners in the economic sector, and some of which relate to the protection of public employees and agents in public institutions and administrations:

### ***2.2.2. Protection of wage workers in the economic sector:***

The law has dedicated protection to the hired worker regarding the decisions taken against him and related to his union affiliation or activity, by submitting a written petition to the regionally competent labor inspector in which he proves direct or indirect discrimination or facts confirming the allegations of obstructing the exercise of union rights, where the inspector undertakes to investigate the petition. If he finds that the complainant's allegations are not founded, he informs the worker and his union organization in writing within a period not exceeding fifteen (15) days, and in this case the worker retains his right to resort to the procedures for settling individual labor disputes after exhausting the procedures of the labor inspector. However, if the labor inspector finds that there is a relationship between the decision being protested and the union affiliation or activity of the aggrieved worker, he shall send a warning to the employer within a period not exceeding eight (8) working days, and in the event of the employee's non-compliance, the labor inspector shall simultaneously issue a report of the violation of non-compliance with the warning, a copy of which shall be delivered to the worker concerned and to his trade union organization for use within the framework of the procedures. Settlement of individual labor disputes.

On the other hand, if the law requires the employer who intends to dismiss a worker who is a beneficiary of protection due to an error to inform the labor inspector by registered letter with acknowledgment of receipt, in which



**Soumission : 20/05/2025    Acceptation : 20/06/2025    Publication : 15/07/2025**

he explains the facts justifying the dismissal and the circumstances of its commission, and may attach any document related to what is attributed to the worker, the inspector shall conduct an investigation within a period of eight (8) working days, to ensure that the reason given to justify the dismissal is purely professional in nature and has no relation to By union affiliation or activity, if it becomes clear to the inspector that the dismissal was issued due to the union affiliation or activity of the protected worker, the employer shall be excused from reversing the dismissal decision and reintegrating the workers into his work position within the limits of eight (8) days, and in the event of the user's refusal, the inspector shall issue a violation report and a non-compliance report within a period not exceeding three (3) working days for their use before the competent judicial authority<sup>1</sup>

If the protected worker is dismissed in violation of the provisions of the law, and after exhausting the preventive measures and settling individual disputes, the worker or his organization shall notify the competent judicial authority, which shall decide within a period of thirty (30) A working day by virtue of a judgment subject to immediate enforcement, regardless of any appeal to cancel the dismissal decision, obligating the employer to reinstate the worker in his job position, without prejudice to compensation for damages that the protected worker or his trade union organization may claim, to remedy the harm that he suffered. The employer shall be subject to a penalty of no less than the monthly amount of the guaranteed national

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<sup>1</sup> AFor the material149From the law23-02, previous source.

minimum wage for each day of delay in implementing the judgment. The worker must be reinstated in the same workplace in the same position or in a position with wages equal to and consistent with his qualifications. In the event of the opposite occurring with non-integration, workers retain the right to financial compensation of no less than the wage or the remainder thereof, which the employer did not pay, for the period during which work was suspended until the date of his actual reinstatement.

### ***2.2.3. Procedures for the protection of public employees in administrative institutions:***

The legislator has enshrined in law **23-02** legal protection for public employees and agents in public institutions and administrations who exercise a union mandate in accordance with the provisions of the law, by prohibiting the imposition of disciplinary sanctions of the third and fourth degree or dismissal for neglect of duty or termination of the employment contract for the contracted agent before the authority with the powers of appointment has obtained in advance the binding opinion issued, as the case may be, by the equal-member administrative committee or the equal-member advisory disciplinary committee. The law requires the committee to decide within a period not exceeding fifteen days.<sup>15</sup> One working day from the date of notification, after examining the reasons for dismissal, removal, or termination of the contract and listening to the explanations of the employee, contracted employee, or protected public employee, to whom the law provides several legal guarantees, which are as follows:



**Soumission : 20/05/2025    Acceptation : 20/06/2025    Publication : 15/07/2025**

- The law requires the committee to summon the concerned employee within eight working days before the date of Its convening.
- Enabling the concerned party to review the disciplinary file and submit written and oral comments.
- The law allows the employee, contractor or agent concerned to seek the assistance of a lawyer of his own choosing.
- Submitting an administrative grievance and appeal against the administrative decision issued against him.
- Notify the regionally competent labor inspector to prepare a report and inspection report recording the investigation results.
- The law granted the union authority that Belongs to The employee, assistant or contractor may appeal to the competent judicial authority.

The second paragraph of the article states: **146** Provided that: "The judicial authority shall decide within a period not exceeding thirty days."**30** A working day by a judgment subject to immediate enforcement, regardless of any appeal, to cancel the decision of dismissal, removal or termination, obligating the authority with the powers of appointment to reinstate the employee, contracted agent or protected public agent in his job position, without prejudice to compensation for damages that the employee, contracted agent or protected public agent may claim from his trade union organization to compel him to comply with the decision. The cancellation of the decision of dismissal, removal or termination of the contract results in the reinstatement of the

employee, contracted agent or public agent by force of law in his job position, subject to a penalty of no less than the monthly amount of the guaranteed minimum wage for each day of delay in implementing the judgment, effective from the day of notification.

#### ***2.2.4. Double the penalties for violators of union rights procedures:***

The new Trade Union Rights Practice Law No.23-02 Several financial and freedom-depriving penalties for violators of the procedures and instructions related to the exercise of the right to unionize stipulated by the law, as Article 149 The financial penalty is a fine ranging from one hundred thousand dinars **100,000** From 100,000 to 200,000 Algerian dinars **200,000**A fine of 100,000 dirhams shall be imposed on anyone who interferes in the management of a trade union organization by any act intended to undermine the independence of the trade union organization, and an emphasis on the prohibition of combining the exercise of a trade union mandate in a leadership body and/or management of a trade union organization with a mandate in the leadership bodies of a political party. This fine shall also be applied in the event of harm to a wage earner due to membership or the exercise of trade union activity, particularly with regard to employment, promotion, transfer, and vocational training, as well as the granting of social benefits and disciplinary measures. The last paragraph of the article confirmed that the fine shall be doubled in the event of recidivism.

The law also punishes anyone who uses the income associated with the union's activities to achieve purposes contrary to the goals of the union organization as defined in



**Soumission : 20/05/2025    Acceptation : 20/06/2025    Publication : 15/07/2025**

the law with imprisonment from three to six months, and a fine of **50,000** One thousand Algerian dinars to **100,000** One thousand Algerian dinars or one of these two penalties.

The new law increased the fine penalty compared to Law No. **90-14** Regarding obstructing freedom of association and the exercise of cannabis rights, the fine in the old law was according to Article **59** from **10,000** da to **50,000** Algerian dinars to become according to the article **153** From the law **23-02** from **50,000** Dj to **100,000** Algerian dinars, with a penalty increased in the event of a repeat offense to imprisonment of thirty **30** One to six days **6** Months and a fine of **100,000** to **200,000** Algerian dinars or one of these two penalties

The law also imposes a penalty on anyone who continues to manage or hold a meeting for members of a trade union organization that has been subject to a judicial ruling of suspension or dissolution, or who participates in this meeting, in accordance with the text of Article **154** From the law **23-02** Imprisonment for three years **3** months to six **6** months, and a fine of twenty thousand dinars **20,000** to one hundred one thousand Dinar **100,000** DA or one of these two penalties. While the fine was in the provisions of Article 60 of the repealed Law No. **90-14** Ranging between **5000** DA to **50,000** The judicial solution is a procedure taken by the competent administrative court in the event that it is certain that the union has violated the law. This solution is based on a lawsuit from the public authority or another party when the union organization practices activities that violate the laws or those stipulated in its basic law. The effect of this solution is effective from the date of announcing the judicial ruling, regardless of all means of

appeal. That is, the ruling here is preliminary and subject to immediate enforcement.

As for the new articles added in Law No. **23-02** Which confirmed the right to establish and found union boards of directors and their proper functioning, and to guarantee and protect the financial rights of workers. The legislator approved a large financial penalty for every employee who deducts union subscriptions from the worker's salary for the purpose of paying them to the union organization to which he belongs, and prohibited directing any pressure or threat against the union organization, its members and its activity, as Article stated: **156** From the law **23-02** Provided that: "He shall be punished with imprisonment for a period of three years." **3** months to six **6** months, and a fine of fifty thousand dinars **50,000** From one hundred thousand dinars to one hundred thousand dinars **100,000** "Any person who obstructs the establishment or operation of the leadership and/or management bodies of a trade union organization. In the event of recidivism, the penalty shall be doubled," the article states. **157** Provided that: "He shall be punished with a fine of fifty thousand dinars." **50,000** From one hundred thousand dinars to one hundred thousand dinars **100,000** D. Every employer who deducts union subscriptions from the worker's wages for the purpose of paying them to the union organization to which he belongs. In the event of recidivism, the penalty shall be doubled. In this regard, the legislator has set a large financial penalty ranging between **100,000** Dj to **200,000** Anyone who engages in discriminatory practices, pressures, threats or actions against the trade union, its members and its activities, with the intention of obstructing the exercise of the right to unionize guaranteed by the



**Soumission : 20/05/2025    Acceptation : 20/06/2025    Publication : 15/07/2025**

provisions of the law, has been doubled to reach **400,000** Chicken in case of return.

## **Conclusion:**

Finally, we conclude that the legislator Try through the new law No. **23-02** Related to the exercise of union rights, activating the important role of union organizations and union work; by emphasizing the importance of collective union work through federations and confederations so that unions constitute a major force in defending the interests of their members and encouraging workers to join them, in addition to having a major influence within society, especially in light of the To abstain The large number of workers are reluctant to join trade unions. On the other hand, the legislator has restricted the practice of political activity in trade unions and imposed strict penalties on those who practice them, as a form of separation between political and trade union activity, despite the close connection between them. This will create legal and judicial problems when actually implementing the provisions of the new law.

where The research reached a set of results, which we summarize as follows:

- The union mandate was in the law **90-14** Open while it was specified in the new law as five (5) Years, renewable once, which enhances democracy in union work and encourages the rotation of leadership and management within union organizations.
- The new law also strengthens the position of trade union centralism by emphasizing the importance of

union federations and confederations, and promoting the concept of collective union action by unifying union efforts into federations that have greater power and a more influential voice, serving the diverse interests of workers.

- The new law obliges unions through Article 52 By setting the annual financial and literary balance sheet, given that the union has not set its annual financial and literary balance sheet for several years.
- Based on the above, we suggest: Recommendations K the following:
- Reducing the representation rate of 25 to 20 Considering that reaching the percentage 25% As a minimum representation to establish a trade union organization that participates in dialogue sessions with the authorities, a large number in light of the new administrative divisions, and it would have been better to maintain the old percentage 20 Until trust is built between workers and trade unions
- The excessive misuse of union work led to the fragmentation of unions at one stage or another. For example, there was a union for elementary school teachers, a union for middle school teachers, a union for high school teachers, a union for managers, and a union for guides. Therefore, professional organizations with similar and shared goals and objectives must unite in federations and confederations so that they can have a strong and effective influence in society.
- Reducing the requirement of having more than three municipalities to form a local union by reducing it to only two municipalities, Considering that the recently



**Soumission : 20/05/2025    Acceptation : 20/06/2025    Publication : 15/07/2025**

used states do not have a large number of municipal councils.

- The discretionary power of management to determine the nature of a person, whether he is a political leader or not, raises many problems in the practical implementation of leadership bodies in trade union organizations.

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