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SOCIAL PARTNERSHIP AS A METHOD OF LEGAL REGULATION OF EMPLOYMENT RELATIONS: THE CASE OF LITHUANIA

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ABSTRACT

This article assesses the significance of social partnership in the regulation of employment relations. It is pointed out that the legal regulation of employment relations in Lithuania lacks stability, and the hypothesis is raised that this situation has been partly determined by the vanishing, negligible role of social partnership. The presumption is put forward that the regulation of employment relations can result in an effective and sustainable balance between the interests of employees and employers only if the possibilities of social partnership are used to their full extent and an optimal balance is achieved between contractual law-making and

state law-making. The Lithuanian social partnership model is defined as gravitating from quasi-partnership towards real social partnership; therefore, ways are still being sought as to how to strengthen the impact of social partnership on the regulation of employment relations by means of legislation and the use of soft law. To reveal the impact of social partnership on the regulation of employment relations in Lithuania, the article identifies and assesses the key indicators revealing the influence of social partnership on the regulation of employment relations and examines the positive legal regulation related to social partnership.

KEYWORDS

Social partnership model, social dialogue, employment relations, legal regulation, freedom of association

INTRODUCTION

Since the restoration of the independence of Lithuania on 11 March 1991, Lithuanian labour law has been undergoing constant transformation through amendments, specifications, codifications, and recodifications of the legal norms constituting this branch of law. The Labour Code of the Republic of Lithuania, which entered into force on 1 July 2017, in its new wording (Labour Code of 2017)[1] put the final touches to the last reform of Lithuanian labour law. The Labour Code of 2017 replaced the Labour Code of the Republic of Lithuania that had been in force since 1 January 2003 (Labour Code of 2003).[2] These constant changes in Lithuanian labour law find their reflection primarily in the dynamics of amendments to the provisions of the Labour Code. The number of such amendments[3] alone, without any assessment of the multiple amendments and specifications in the labour law acts of different levels, leads to the presumption that the regulation of employment relations in Lithuania lacks stability.

Despite this dynamic development of labour law, experts in this field have reasonably raised the question of whether the state's legal regulation of social labour relations has achieved the objectives set for this branch of law, i.e., whether an appropriate balance has been reached between the interests of the two groups of society concerned (employees and employers), given that these interests are antagonistic by their nature. The norms adopted by means of classical law-making in the field of labour law (i.e., the respective rules of conduct laid down in laws and sub-statutory legal acts) have increasingly failed to achieve the objectives of this branch of law. For instance, until the last reform of labour law, Lithuanian labour law experts had rightly pointed to erosion of labour law and the extremely low effectiveness of compliance with labour laws in Lithuania, as well as the weakness of social partners, which renders genuine collective bargaining or industrial democracy in enterprises to be an aspiration at best. Considerations have been voiced that outdated labour law is tending towards self-destruction: it fails to implement social policy objectives, such as job creation and the protection of vulnerable groups of workers, and it no longer ensures any balance between the parties to employment relations.[4]

[1] *Labour Code of the Republic of Lithuania*, Register of Legal Acts (2016, No. 2016-23709).
[2] *Labour Code of the Republic of Lithuania*, Official Journal (2002, No. 64-2569).
[3] In the short period from 1 January 2003 to 1 July 2017, various provisions of the Labour Code of 2003 were, to a differing extent, amended (or specified) as many as two hundred and forty-six times (!). Fifty-nine provisions of the Labour Code of 2017 had been amended (specified) even before this Labour Code came into force, i.e., during the period from its adoption in the Seimas of the Republic of Lithuania on 14 September 2016 until its entry into force on 1 July 2017. Between 1 July 2017 and 7 March 2022, another seventy-three provisions of the Labour Code of 2017 were further amended (or specified).
[4] Tomas Davulis, "The Present-Day Labour Code: To Be or Not to Be," *www.15min.lt* (9 April 2013) // https://www.15min.lt/naujiena/aktualu/nuomones/tomas-davulis-siandieninis-darbo-kodeksas-buti-ar-nebuti-18-324008.

This article raises the hypothesis that instability in Lithuanian labour law is partly due to the negligible role played by social partnership in creating the binding rules of conduct, i.e., the inability to make proper use of the classical mechanisms created by collective labour law for the representation of interest groups (employees and employers) through trade unions, works councils, and employer organisations, as well as the legal institutions of contractual law-making through collective agreements, collective self-defence, etc. For this purpose, the article reveals the specificity of Lithuanian labour law, emphasises the role of social partnership in the regulation of employment relations, and considers what impact social partnership, and, specifically, the social partnership model valid in Lithuania, have on the stability and effectiveness of labour law. The analysis undertaken assesses the Lithuanian social partnership model and the key indicators revealing the impact of social partnership on the regulation of employment relations, as well as examines the positive legal regulation related to social partnership.

The article relies on historical, logical analysis, systematic analysis, linguistic, teleological, comparative, analytical-critical, empirical, and other methods of scientific inquiry.

1. THE DUALITY OF THE LEGAL REGULATION GOVERNING EMPLOYMENT RELATIONS

Labour law has specific objectives and a broad area of social impact. The regulation of employment relations is a permanent process, linked to the necessity of reflecting on changing social relations; therefore, labour law is not and cannot be static, and its constituent legal norms must be periodically reviewed. Such a necessity is linked to the specificities of the object (labour and closely connected social relations) and the involved entities (interest groups) covered by the regulation of labour law. On the one hand, there is a particularly dynamic development of employment relations and the work process itself. On the other hand, one of the targeted social groups which is subject to this regulation, i.e., employees, is the most numerous group (or one of the most numerous) in society, and this group is particularly sensitive to the legal regulation enshrined in the norms of labour law (e.g., norms on safety at work, remuneration, working and rest time directly affect the well-being, social vulnerability, etc. of employees and their family members). It should also be noted that not only the work process but also employees themselves, their attitudes to work (and the processes of work), and those expectations of both employees and employers that are related to the regulation of employment relations are changing over time.

The stability of labour law in the state is not a value that must be artificially fostered *per se*, but the dynamics of employment relations and the sensitivity to change of the involved social groups require adequate responses by lawmakers to constantly improve the regulation governing these relations.

In Lithuania, as in other market-economy states, new issues are being added to the area of the legal regulation of labour law in response to challenges of the market economy and increasingly complicated employment relations. Currently, the area regulated by Lithuanian labour law covers individual employment relations resulting from employment contracts as well as social relations connected with individual employment relations (relations before the conclusion and after the termination of an employment contract, collective labour relations, relations arising in dispute settlements between the participants in employment relations, relations connected with the observance and supervision of the law, and other relations). In the cases specified by the laws of the Republic of Lithuania, labour law regulates social relations that are subject to regulation by means of laws and that arise in the course of professional, official, creative, or other activities of individuals (Article 1 of the Labour Code of 2017).

Lithuanian labour law comprises two organic parts, i.e., collective labour law and individual labour law. In this respect, labour law is principally different from other branches of law. The degree of coherent interaction between these two parts of labour law directly affects whether, by regulating employment relations, one of the main objectives of labour law is achieved, i.e., whether the legal regulation provides an optimal balance between the interests of two groups of society (employees and employers), which are usually antagonistic by their nature. The balance between the interests of employees and employers in regulating employment relations is an integral part of the broader phenomenon termed *flexicurity* (i.e., the optimal balance between the flexibility of employment relations and the security of employees). It can be presumed that the regulation of employment relations in an individual state can achieve a balance between the interests of employees and employers so that it would be effective and sustainable only if maximum use is made of the mechanisms created by collective labour law for reconciling such interests.

Due to the duality of the legal regulation of employment relations, labour law presupposes interaction between *contractual law-making* (i.e., the establishment of mandatory (binding) rules of conduct for participants in employment relations by means of collective agreements and arrangements) and *state law-making* (i.e., the regulation of employment relations by means of legal acts that are passed by state authorities and have different legal force [codes, laws, and sub-statutory legal acts]).

These forms of labour law-making of different states can either complement one another, or one can prevail over the other. Examples from individual stages in the development of labour law in certain countries when one of said forms of law-making prevails over the other show that the radical dominance of one of these forms over the other does not create the preconditions for achieving the desired result – the balance of interests. At times, this even becomes detrimental to the interests of the state.

The experience of Great Britain in applying the theory of "collective laissez-faire"[5] and the regulation of employment relations in the states of the Union of Soviet Socialist Republics (USSR), which is one of the most characteristic examples of the total dominance of state law-making in the area of employment relations,[6,7] give the grounds for maintaining that only an optimal balance between *contractual law-making* and *state law-making* provides the preconditions for the maximum

[5] The regulation of industrial relations based on this theory in Great Britain took place between the 1950s and 1970s. This is the best well-known example of the ultimate dominance of contractual law-making in the regulation of employment relations. The essence of this theory is the policy of "non-interference" by the state with the regulation of employment relations. An advocate of this theory Otto Kahn-Freund contended that collective laissez-faire was an ideal for the law to strive towards for three main reasons: (1) legal intervention in employment relations was unnecessary because collective bargaining was an effective way of protecting the rights of workers; (2) the rights of workers were more secure if they were acquired through collective bargaining rather than through constitutional or legislative guarantees; and (3) collective laissez-faire was more flexible than legislation. However, in the 1960s and 1970s, the theory of collective laissez-faire came under severe criticism and was suppressed. This theory failed due to some major faults: (1) trade unions contributed to the discriminatory regulation of employment relations (e.g., in 1967, it was estimated that only 50% of manual workers and 30% of white collar workers were members of trade unions; in 1951, only 27% of women workers were union members, compared with 56% of men; naturally focusing on protecting the majority of their members, trade unions ignored or even denied the claims by women for better work conditions and equal pay regardless of gender); (2) the development of the economy slowed down as the excessively liberal regulation of employment relations and the unbridled freedom of the activity of trade unions (frequent strikes, unreasonable demands for higher wages, etc.) influenced a rise in inflation and thereby impeded economic development (Anne C. L. Davies, *Perspectives on Labour Law* (Cambridge: Printed in the University Press, 2004), 4).

[6] A system of totalitarian socialism did not encourage interest in the legal content of laws, made do with prescribing law as a rule of conduct, gave priority to legality and not to justice, and considered the will of the state as the sole source of law. At the time, employment relations were particularly casuistically governed by binding legal acts passed by the state authorities (institutions). A unique particularity of the then socialist legal system was the common transfer of certain traditional state authority functions to public organisations. Performing the responsibilities entrusted to them, public organisations promulgated various rules and resolutions. In normal circumstances, norms laid down by public (non-governmental) organisations are not considered to be binding legal sources, but as soon as these norms are explicitly confirmed by the state, they are brought to the level of legal rules. Most of the norms created by socialist trade union organisations thus entered the category of legal rules (Egidijus Kūris, "A State under the Rule of Law, the Diversity of Legal Systems and the Tradition of Western Law": XI–VLVII; introduction to: Mary Ann Glindon, Michael Wallace Gordon, and Christopher Osakwe, *Traditions of Western Law* (Vilnius: Pradai, 1993).

[7] In the period in question, contractual law-making in Lithuania (as Lithuania was part of the USSR) was imitated. Collective agreements were merely one of the existing legal sources, deriving not from arrangement between social partners, but from state authority, since: (1) as the totalitarian regime prevailed, i.e., the imperatives of prohibition and order/obligation, no free trade unions could be created in society. Trade unions operating at that time were, in principle, state organisations rather than public organisations – they represented the interests of the ruling state partocracy system rather than the interests of Lithuanian people; (2) as there was no market economy and the national economy was based on the planned economy, competition between employees along with the independent interests of employers and employees were eliminated; the state conflated four free-standing functions: that of an entrepreneur and the largest consumer, as well as those of a judge and the legislator (Rytis Krasauskas, "The Lithuanian Social Partnership Model and its Impact on the Development of Labour Law": 160–161; in: Tomas Davulis, ed., *Labour Law Reforms in Eastern and Western Europe*, Cultures Juridiques et Politiques Vol. 12 (July 2017) // DOI: 10.3726/b11454).

reconciliation of the interests of employees and employers. This balance is determined by the entirety of various significant factors, i.e., the historical development of the state and the existing legal, economic, political, and even psychological background. Therefore, social partnership becomes an inevitable part of the modern mechanism of the legal regulation of labour.

2. THE SIGNIFICANCE OF SOCIAL PARTNERSHIP IN LABOUR LAW

For decades, the international community has been unanimous in agreeing on the fundamental principle of freedom of association based on social cooperation and collective labour relations, and on the necessity and significance of the individual collective labour rights that make it up. This phenomenon and its participants have become an integral part of modern life – a reality, an axiom.[8] Discussions are already taking place on the extension of the institute of collective bargaining to regulate the relations of self-employed persons[9]; however, in Lithuania, the question of collective rights for the self-employed appears to be a grey area as yet.[10]

It is recognised[11] that social partnership is a legal instrument currently used in democratic states governed by the rule of law. This instrument: (1) is the most efficient and necessary means of self-regulation in the labour market to ensure optimal decision-making and compromise resulting from reconciled interests between the parties concerned; (2) is an effective instrument for managing conflicts, allowing them to be resolved by peaceful resolution and compromise reached through making concessions to the claims raised by the parties; (3) reduces hostility since the parties have the opportunity in the course of negotiations to assess the situation, the arguments of one another, and the validity of the claims; (4) reduces social exclusion and secures a decent standard of living; and (5) ensures balanced economic growth. Social partnership in labour law is, in the first place, a method of the legal regulation of employment relations, i.e., a form of activity that contributes to the achievement of the objective of regulating social employment relations between employees (or their representatives) and employers (or their representatives).

[8] Daiva Petrylaitė, "The role of social partners for the development of Lithuanian labour law": 177–178; in: Ingrida Mačernytė-Panomariovienė, ed., *Challenges of Labour Law in a Changing World: Liber Amicorum et Collegarum for Professor Genovaite Dambrauskiene* (Vilnius: Mykolas Romeris University, 2020).
[9] Elisabeth Brameshuber, "The 'personal work relationship' in Austria," *European Labour Law Journal* 10(3) (2019); Bas Rombouts, "ICFTU v. Ireland: Expanding the Scope of Self-employed Workers Entitled to Collective Bargaining Rights in Relation to Competition Law Prohibitions," *International Labour Rights Case Law* 5(1) (2019).
[10] Tomas Davulis, "The right to collective bargaining and the right to strike of self-employed persons"; in: Ingrida Mačernytė-Panomariovienė, ed., *Challenges of Labour Law in a Changing World: Liber Amicorum et Collegarum for Professor Genovaite Dambrauskiene* (Vilnius: Mykolas Romeris University, 2020).
[11] Tomas Bagdanskis, Ramunė Guobaitė-Kirslienė, Rytis Krasauskas, and Ingrida Mačernytė-Panomariovienė, *Collective Labour Law. Textbook* (Vilnius: Mykolas Romeris University, 2013), 117–118.

The Supreme Court of Lithuania (SCL) has repeatedly emphasised the importance of social partnership in regulating labour relations and ensuring the interests of the employee as the weaker party in these relations. The SCL, in its order of 21 June 1999, held that in the field of employment relations it is necessary to ensure cooperation between the participants in these relations – the employee and the employer – on the basis of social partnership, since both the sufficient protection of the property interests of the employer and the sufficient protection of the employment rights of the employee constitute essential preconditions for normal economic activity in modern society under market conditions.[12] The SCL has repeatedly noted that it is the duty of the state to ensure, by means of legal regulation, cooperation based on social partnership between the entities involved in employment relations and to protect the rights of the employee as, generally, the economically and socially weaker party in these relations.[13]

The essence of social partnership is to assess the interests of each of the parties, to respect these interests, and to reject the means of force in dealing with the problems encountered in mutual relations. Social partnership forms the foundation for collective labour law; the entirety of the instruments provided for under the norms of collective labour law, as well as the extent to which they are used, determines how much social partnership contributes to the regulation of employment relations. Indeed, it is no coincidence that the activity of the International Labour Organisation (ILO) – one of the most influential and important international organisations in the labour law of each country – is based on the mechanisms of social partnership and the principle of subsidiarity.[14]

As stressed by the European Commission in its Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union, "Member States with a high collective bargaining coverage tend to have a low share of low-wage workers and high minimum wages. Member States with a small share of low wage earners have a collective bargaining coverage rate above 70%. Similarly, the majority of the Member States with high levels of minimum wages relative to the median wage have a collective bargaining coverage above 70%. While all Member States should be encouraged to promote collective bargaining, those who do not reach this level of coverage should, in consultation and/or agreement with the social partners, provide for or, where it already exists, strengthen a framework of facilitative procedures and institutional arrangements enabling the conditions for

[12] *The order of 21 June 1999 in civil case No. 3K-3-293*, the Division of Civil Cases of the SCL.
[13] *The order of 22 June 2000 in civil case No. 3K-3-649,* the Division of Civil Cases of the SCL; *the order of* 19 January 2001 in civil case No. 3K-3-49, the Division of Civil Cases of the SCL.
[14] The principle of subsidiarity is, primarily, a fundamental provision under which decisions must be taken at the level at which they are most effective (Tomas Bagdanskis, Ramunė Guobaitė-Kirslienė, Rytis Krasauskas, and Ingrida Mačernytė-Panomariovienė, *supra* note 11, 129).

collective bargaining. Such framework should be established by law or by tripartite agreement".[15]

Manfred Weiss argues that the stability of collective labour law also guarantees, to a certain extent, the stability of individual labour law.[16] This proposition is best illustrated by the models of labour law in the Nordic states, in particular Denmark, whose model of flexicurity has already become a representative example of the regulation of labour law. In Denmark, collective labour law has for over 100 years been based on the all-embracing national collective agreement (also known as the September Compromise), which is considered to have laid the beginnings and foundations for Danish collective labour law. The Norwegian and Swedish models of collective labour law, in essence, followed the Danish pattern, albeit later and each with their own particularities.[17]

One of the distinctive features of labour law in these states is the effective use of collective labour law in the process of creating, applying, and, where necessary (economic crisis, etc.), reforming the norms of individual labour law. Based on the above-mentioned paradigm formulated by Weiss, as well as the experience of Lithuania, which is also common to many other post-Soviet and Eastern Bloc countries, the conclusion can be drawn that unstable and inefficient collective labour law brings imbalance to the entire system of labour law norms. The weaker and less efficient collective labour law and its legal institutions are in a state, the less room remains for contractual law-making, while the regulation of employment relations is then inevitably left to the legislature (i.e., the interest groups involved are subject to imperatively imposed, "top-down" regulation). The consequence of this purely state-imposed legal regulation is the creation of ineffective rules of conduct that are not accepted by the participants in employment relations and that, ultimately, lead to legal nihilism, i.e., non-compliance with the imposed imperative rules of conduct.

Regardless of the obvious benefits offered by social partnership, it has to be mentioned that, despite the efforts of the ILO and the European Union (EU), attempts to establish industrial bargaining systems in central and eastern Europe were largely unsuccessful.[18] It also seems appropriate to agree with the position that "the reality of the twenty-first century determines new challenges to labour law. Increasing globalisation processes, technological revolution, development of new forms of

[15] *Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union*, Brussels, 28.10.2020, COM(2020) 682 final, 2020/0310 (COD) // https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0682&from=EN, 19.
[16] Manfred Weiss, "Labour Law Reforms in Germany": 84; in: Tomas Davulis, ed., *Labour Law Reforms in Eastern and Western Europe*, Cultures Juridiques et Politiques Vol. 12 (July 2017) // DOI: 10.3726/b11454.
[17] Reinhold Fahlbeck, "Industrial Relations and Collective Labour Law: Characteristics, Principles and Basic Features," *Scandinavian Studies in Law* (2001): 89.
[18] Jeremy Waddington, Torsten Müller, and Kurt Vandaele, "Setting the scene: collective bargaining under Neoliberalism": 26–27; in: Torsten Müller, Kurt Vandaele, and Jeremy Waddington, eds., *Collective bargaining in Europe: towards an endgame*, Volume I (Brussels: European Trade Union Institute, 2019).

employment, business relocation to other countries or continents, and nearly unlimited potential for using information technologies in labour processes – have all formed the preconditions for the individualisation of labour relations."[19] The fact that, recently, the coverage of collective bargaining is not sufficient and that, as a result, it is necessary to take additional measures to ensure the minimum rights of employees (in this case, the minimum wage) by laws, was also emphasised by the European Commission[20]. However, it can be assumed that these new challenges and their solutions should not serve as a basis for refusing social partnership as a method of the legal regulation of employment relations; on the contrary, there should be maximum effort towards strengthening this approach.

Strengthening the role of social partnership in regulating employment relations requires a careful analysis of the social partnership model in each country. This evaluation should identify factors that hinder the achievement of the required effectiveness of national social partnership. Such effectiveness should be pursued both *by means of state law-making* and (mainly) *by means of soft law* through the modification of the essential classic legal institutions of collective labour law. These social engineering instruments – in improving the legal institution of the representation of interest groups (employees and employers) and the legal institution of collective agreements – should respond to, among other things, the needs of Generation Z (it is recognised[21] that representatives of this generation mainly tend to negotiate on their working conditions individually) and the necessity of finding an appropriate balance between the aim sought by the participants in employment relations to ensure the confidentiality of not only individual but also collective agreements, on the one hand, and the publicity of social dialogue, on the other hand.

3. SPECIFIC FEATURES OF THE LITHUANIAN SOCIAL PARTNERSHIP MODEL[22]

Compared with the social partnership models of western European states, one of the specific features of the Lithuanian social partnership model, which is also partly common to other eastern European countries (first, those that belonged to the former

[19] Daiva Petrylaitė, "The Transformations of Employment Relations. What is the Role of Social Dialogue and Industrial Relations?": 145–146; in: Tomas Davulis, ed., *Labour Law Reforms in Eastern and Western Europe*, Cultures Juridiques et Politiques Vol. 12 (July 2017): // DOI: 10.3726/b11454.
[20] *Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union*, *supra* note 15, 19.
[21] Daiva Petrylaitė, *supra* note 19: 156.
[22] A national social partnership model represents a social partnership system existing in a particular state. Such a system is determined by the historical development of the given state, as well as by the legal, economic, political, and even psychological conditions that have existed there. The development of this system is a dynamic and permanent phenomenon that, to a large extent, indicates the maturity of civil society and reflects the situation of democratic processes (for more, see Rytis Krasauskas, *supra* note 7: 160–161).

Soviet Union), is linked to the not-so-distant past, as well as to the legal consciousness that was formed therein and its still-ongoing transformation, which is proceeding more slowly than perhaps might be expected.

A retrospective look at Lithuanian labour law reveals that its development was and continues to be influenced by two extreme models of social partnership: the quasi-partnership (or formally enforced) model[23] and the real social partnership (or true proactive) model.[24] The first of these models was in force in Lithuania for nearly fifty years; the country has been consistently trying to do away with it from the moment it restored its independence (i.e., since 1990). The second model essentially embodies the method of social partnership that Lithuania has been striving to achieve until now.

The Lithuanian social partnership model can be defined as gravitating from the quasi-partnership model towards real social partnership.[25] In Lithuania, it is publicly declared that social partnership proves to be a fully justified universal and effective means to reconcile the interests of partners, to maintain social harmony and to promote economic and social progress.[26] However, such an approach having been declared by the central government does not in itself mean that the social partnership model in place in Lithuania is functioning without reproach, which directly affects the impact of social partnership on the regulation of employment relations. To assess this impact, the key indicators revealing the impact of social partnership on the regulation of employment relations, as well as the positive legal regulation related to social partnership, are further analysed.

[23] The quasi-partnership (or formally enforced) model was in force in the USSR and occupied Lithuania from 1940 until 1990. Such models of social partnership are typical of totalitarian states with planned economies and are characterised by forced membership in corporations of workers and employers, the dominance of the state in building and implementing quasi-partnership relations, the undivided interests of the employer and the state, and the peculiar role of trade unions, which tend towards exclusivity.

[24] In contrast, the real social partnership (or true proactive) model (which, for example, is established in Denmark) is a humanistic social partnership model oriented towards the balancing of interests, solidarity, subsidiarity, the values of a social contract and a democratic social state governed by the rule of law, and the needs of social partners and their initiative. Tripartite co-operation between trade unions, employer organisations and the state is a very characteristic feature of the Danish labour market model. This constellation has contributed to the establishment of a flexible and well-mediated labour market model based on agreement rather than regulation. Cooperation involving social partners is an integral part of labour market policy. Social partners are consulted in connection with the drafting of legislation that has relevance for the labour market. In many fields, decisions are made by central or local councils in which social partners are also represented. More than 80% of Danish employees belong to a trade union (Jan Hendeliowitz, "Danish Employment Policy. National Target Setting, Regional Performance Management and Local Delivery" (February 2008): 8 // https://www.oecd.org/employment/leed/40575308.pdf).

[25] For more, see Rytis Krasauskas, *supra* note 7: 160–161.

[26] For more, see Rytis Krasauskas, "Some Problematic Aspects of the Promotion of the Regulation of Labour Relations by Means of Collective Agreements," *Jurisprudence* 18(2) (2011): 616.

4. KEY INDICATORS REVEALING THE IMPACT OF SOCIAL PARTNERSHIP ON THE REGULATION OF EMPLOYMENT RELATIONS

There is a large gap in Lithuania between the formally consolidated social partnership system and its actual state; this situation has been determined by *legal*, *economic*, *political,* and *psychological* factors, which have a direct influence on the behaviour (action and/or inaction) of social partners – i.e., employees (or their representatives), employers (or their representatives), and, in individual cases, the state – in balancing the interests of those involved in employment relations.[27]

Based on the example of Lithuania, it can be maintained that the impact of social partnership on the regulation of employment relations is best illustrated by the following indicators: (1) *trade union and employer organisation density rate*; (2) *the spread of social partnership institutions and their influence on decision-makers*; and (3) *collective bargaining coverage rate.*

Trade union and employer organisation density rate. The most telling indicator of the poor status of social partnership in Lithuania is the extremely low trade union density rate. According to the Lithuanian Department of Statistics, in 2021, trade union members accounted for only 9.2%(!) of the total number of persons employed.[28] On the one hand, such low trade union density has a direct impact on employee bargaining power and trust in the existing trade unions (employers and the state and, ultimately, employees themselves begin to lose confidence in them).[29] On the other hand, this allows us to judge how passive Lithuanian workers are when it comes to defending their interests. This also partly explains another development in Lithuania – total passivity in making use of one of the main forms of collective self-defence, i.e., the right to strike. This right is very rarely exercised by employees, and the short duration of announced strikes, as well as the small number of employees involved, shows that there is no real pressure on employers.[30]

[27] For more, see Rytis Krasauskas, *supra* note 7: 170–174.
[28] In 2021, in Lithuania, there were 121,200 registered members of trade unions and 1,316,396 occupied jobs; in 2020, 99,300 registered members of trade unions and 1,276,255 occupied jobs (~7,8%); in 2019, 89,600 registered members of trade unions and 1,286,953 occupied jobs (~7%); in 2018, 86,600 registered members of trade unions and 1,267,003 occupied jobs (~6.8%); in 2017, 92,100 registered members of trade unions and 1,260,687 occupied jobs (~7.3%) (see Statistics Lithuania // http://osp.stat.gov.lt).
[29] The findings of the poll conducted on 25 May–7 June 2017 by the market and public opinion research company *Baltijos tyrimai* revealed that trade unions were trusted by 45% of the respondents, while distrust in trade unions was expressed by 41% (Lithuanian Trade Union Confederation, "Trade unions are trusted more than the Seimas or the Government" (23 April 2016) // http://www.lpsk.lt/2017/07/10/profesiniu-sajungu-ivaizdis-islieka-stabilus/).
[30] In Lithuania, there were 78 strikes in 2014, 296 strikes in 2015, 242 strikes in 2016, 1 strike in 2017, 196 strikes in 2018, and 2 strikes in 2019; the average duration of strikes was 1.08 working days in 2014, 0.34 working days in 2015, 5.66 working days in 2016, 0.25 working days in 2017, 7.16 working days in 2018, and 0.28 working days in 2019; the number of participants in these strikes was 1,591 employees in 2014, 7,126 employees in 2015, 6,295 employees in 2016, 2,205 employees (i.e., 0.16% of all employed persons) in 2017, 4,498 employees (i.e., 0.32% of all employed persons) in 2018, and 6,810 employees (i.e., 0.53% of all employed persons) in 2019 (see Statistics Lithuania // https://osp.stat.gov.lt).

The employer organisation density rate indicates involvement by employers in external social partnership processes. Unfortunately, Lithuanian employers have been slow in joining organisations that unite them. For example, at the end of 2021, employer organisations united barely 6.4%[31] of all enterprises. It can be assumed that this passivity on the part of employers is the result of both historical factors and the structure of employers. In this respect, a significant historical circumstance lies in the fact that when Lithuania was part of the USSR, the planned economy prevailed, and the sole employer (with minor exceptions) was the state; therefore, the protection of employers' interests was only imitated, while employer organisations had neither legal nor economic preconditions for their establishment. It was only after the restoration of the independence of Lithuania, i.e., in 1990, that the preconditions were created for the establishment of employers that were independent of the state, as well as for the establishment and operation of employer organisations. The establishment of employer organisations in Lithuania was first and foremost fuelled by employers' aim to protect their business interests, and they saw the Government as their main partner. These circumstances had a direct influence on the ability and disposition of employers to participate in social partnerships; even today, it is not rare that trade unions are viewed by employers as posing a potential threat to, and causing unjustified interference with, their activity.

At the beginning of 2022, around 83.9% of all enterprises operating in Lithuania had fewer than 10 employees; enterprises with 10 to 100 employees accounted for 14.7% of the total number; and enterprises with more than 100 employees accounted for 1.4%.[32] Article 110 of the Labour Code of 2017, regulating the specifics of employment relations for employers employing fewer than 10 employees, provides for exceptions related to the alleviation of administrative burden. These employers are exempt from, among other things, the obligation connected with their participation in the processes of social partnership, i.e., they are not subject to the provisions of this code regarding the duty to provide the employees' trustee with information about the situation of remote work, fixed-term employment contracts, and temporary work at the enterprise, institution, or organisation. It can be

[31] At the end of 2021, in Lithuania, entrepreneur and employer associations united 6,900 members, and the number of registered economic operators was 108,258; at the end of 2020, entrepreneurs' and employers' associations united 8,700 members, and the number of registered economic operators was equal to 107,444 (8.1%); at the end of 2019, entrepreneur and employer associations united 7,600 members, and the number of registered economic operators was 107,444 (~7.2%); at the end of 2018, entrepreneur and employer associations united 13,300 members, and the number of registered economic operators was 104,117 (~12.8%); at the end of 2017, entrepreneur and employer associations united 13,400 members, and the number of registered economic operators was 104,074 (~12.9%) (see Statistics Lithuania // https://osp.stat.gov.lt).

[32] At the beginning of 2022, in Lithuania, there were 93,059 enterprises, 78,098 of which had fewer than 10 employees; 13,670 enterprises with 10 to 100 employees; and 1,291 enterprises with more than 100 employees (see Statistics Lithuania // https://osp.stat.gov.lt/statistiniu-rodikliu-analize?indicator=S8R549#/).

considered that the figures indicated above should also be considered by social partners (in particular, trade unions operating at a level higher than that of the enterprise), who should aim to intensify social partnership processes at a level higher than that of the enterprise, while "small" employers should, accordingly, be more active in joining associated structures and acting through these structures around employment relations.

The spread of social partnership institutions and their influence on decision-makers. Collective labour law entities established based on social partnership, i.e., social partnership institutions, are subjects (actors) of collective labour relations and have certain rights and duties.

The key institution coordinating interests between social partners (trade unions and employer organisations) and the state authorities in Lithuania is the Tripartite Council of the Republic of Lithuania (the Tripartite Council). The Tripartite Council deals with issues and presents conclusions and proposals in the areas of labour, social, and economic policies, and considers matters that must be examined in accordance with the Convention (No. 144) of the International Labour Organisation Concerning Tripartite Consultations to Promote the Implementation of International Labour Standards (Article 185(9) of the Labour Code of 2017). The Tripartite Council is formed for a term of four years and consists of 21 members: seven representatives delegated by national-level trade unions, seven representatives delegated by national-level employer organisations, and seven representatives delegated by the Government of the Republic of Lithuania (Article 185(1) of the Labour Code of 2017). It is acknowledged that, during the 22 years of its existence, the Tripartite Council has established itself in the social life of Lithuania as an important institution, coordinating partners' interests as well as dealing with and solving social and economic problems.[33] At present (in 2022), seven committees and commissions, whose members also include representatives of non-governmental organisations, are operating under the Tripartite Council: the Labour Relations Commission; the Bipartite Commission of Civil Servants; the Committee for Education; the Committee for Monitoring Consumer Rights; the Committee for Energy; the Committee for Promoting Youth Entrepreneurship; and the Committee for Culture.

Under the Labour Code of 2017, based on agreements between social partners, bipartite and tripartite labour and social councils may be established to examine and solve employment, health, safety at work, and other labour and labour-related issues on the grounds of equal social cooperation (Article 184 [1]). Bipartite and tripartite labour and social councils may be established at the sectoral and territorial levels of

[33] The Ministry of Social Security and Labour, "Social Report 2016–2017": 35–37 // https://socmin.lrv.lt/uploads/socmin/documents/files/pdf/13545_social-report-2016-2017.pdf.

social partnership. Depending on the level of social partnership that a labour and social council is established at, the parties thereto may include state and municipal institutions as well as employee organisations and employer organisations operating at the respective level (Article 184 [2]).

A study of the content of randomly selected collective agreements at the employer and branch level concluded in Lithuania on 4 August 2020[34] revealed that in the latter agreements, the social partners, *inter alia*, establish conditions related to the establishment of social partnership institutions and regulation of their activities. However, such practices are quite rare.

Until November 2022, tripartite and/or bilateral councils functioned in twelve Lithuanian city and/or district municipalities.[35] However, it must be recognised that their activities, unlike the activity of the Tripartite Council, were not very visible.

Collective bargaining coverage rate. The effectiveness of social partnership is directly reflected by the collective bargaining coverage rate, i.e., the percentage of employees covered by collectively bargained labour agreements. In this context, the position of the experts of the Ministry of Social Security and Labour of the Republic of Lithuania – that signing a collective agreement represents the end of successful collective negotiations and an achieved compromise between the parties, solves the majority of industrial and social issues, removes any disputes and work obstacles, and indicates that employees feel safer, wages and holidays are guaranteed, etc.[36] – is acceptable. This quantitative indicator (collective bargaining coverage rate) conveys the capacity of social partners and their efforts in balancing interests around employment relations, as well as the resulting effectiveness of these efforts.

According to the statistical data provided by the ILO, the collective bargaining coverage rate in Lithuania in 2019 was estimated at only 7.4%.[37]

For a more comprehensive view of the regulation of employment relations by collective agreements, it is also necessary to assess the qualitative aspect of this regulation, i.e., the content of collective agreements concluded in Lithuania.

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[34] Rytis Krasauskas, "Content of Collective Agreements Concluded in Lithuania: Legal Aspects"; in: Ingrida Mačernytė-Panomariovienė, ed., *Challenges of Labour Law in a Changing World: Liber Amicorum et Collegarum for Professor Genovaite Dambrauskiene* (Vilnius: Mykolas Romeris University, 2020).

[35] See The Ministry of Social Security and Labour // https://socmin.lrv.lt/lt/veiklos-sritys/darbo-rinka-uzimtumas/darbo-teise/socialine-partneryste/socialines-partnerystes-formos/darbo-ir-socialiniu-reikalu-tarybos.

[36] The Ministry of Social Security and Labour, *supra* note 33: 39.

[37] See ILOSTAT // http://www.ilo.org/ilostat. For example, the collective bargaining coverage rate in other countries was as follows: 98% in Austria (2019); 96% in Belgium (2019); 32.1 % in the Czechia (2019); 80.3% in Denmark (2018); 15% in Estonia (2018); 89.2% in Finland (2018); 98% in France (2018); 51.8 % in Germany (2019); 25.8% in Greece (2018); 17.8% in Hungary (2019); 99.0% in Italy (2019); 27.3% in Latvia (2019); 75.6% in the Netherlands (2019); 76.5% in Portugal (2018); 22.4% in Slovakia (2019); 80.1% in Spain (2018); 90% in Sweden (2019); and 26.9% in the United Kingdom (2019).

A study of the content of randomly selected collective agreements at the employer and branch level concluded in Lithuania on 4 August 2020[38] revealed that: (i) because of the current statutory regulation, the Government of the Republic of Lithuania, as a party to collective bargaining at the national level, does not have the real power to negotiate the remuneration of public sector employees; (ii) branch collective agreements have a lot of informational clauses and declarative provisions, and the quality of social partnership in each separate sector differs; and (iii) employer-level collective agreements deal with issues regulating the main labour law institutes and contain many informational clauses and declarative provisions, but there are none of the vague clauses and obviously "fictitious" provisions that were observed in 2007.

To conclude, the impact of social partnership on regulating employment relations in Lithuania is insufficient; this is reflected in the particularly low affiliation of employees and employers with organisations representing their interests (i.e., trade unions and employer associations) and the equally low coverage of collective bargaining. Therefore, in order for the regulation of employment relations in Lithuania to make maximum use of collective labour law instruments for balancing the interests of employees and employers, as well as in order for an optimal balance between contractual law-making and state law-making to be achieved, both the national legislation and soft law should be geared towards improving the said indicators. The indicators revealing the impact of social partnership on the regulation of employment relations reflect the actual situation of social partnership (thus also its actual impact on the regulation of employment relations).

5. LEGAL REGULATION OF SOCIAL PARTNERSHIP AS A PRECONDITION FOR STRENGTHENING THE IMPACT OF SOCIAL PARTNERSHIP ON LITHUANIAN LABOUR LAW

The current system of social partnership in Lithuania is sufficiently clearly established in the Lithuanian legal acts in force.

The Constitution of the Republic of Lithuania[39] *expressis verbis* guarantees to citizens the right to freely form associations, i.e., citizens are guaranteed freedom of association in all areas of social activity (Article 35); a concrete type of association is provided for – trade unions – and the areas of their activity are defined. It is stipulated that, while operating in the area of labour and related social relations, trade unions defend the professional, economic, and social rights and interests of

[38] Rytis Krasauskas, *supra* note 34.
[39] *The Constitution of the Republic of Lithuania*, Official Journal (No. 220; 1992, No. 33-1014).

employees (Article 50). It is also prescribed that, in defending their economic and social interests, employees have the right to strike (Article 51).

Various aspects revealing the content of these constitutional provisions have been developed by the Constitutional Court of the Republic of Lithuania in the official constitutional doctrine, which, among other things, contains the principal provision that freedom of association is a constitutional value, as well as that the right to form associations, or freedom of association, as consolidated in the Constitution, is one of the guarantees for civil and political action. The official constitutional doctrine also reveals certain aspects of the principle of the autonomy of trade unions with respect to the state and its institutions, as well as the dual mission and function of trade unions (first, primarily, to represent their members and to defend them; and, second, in the cases and by means provided for by law, to defend all employees of a particular enterprise, establishment, or organisation).[40]

Regulating employment relations through the application of social partnership mechanisms is a commitment undertaken by Lithuania at the international level. The fundamental social partnership framework is laid down in international legal acts adopted by the United Nations Organisation and ratified by Lithuania and forms an inseparable part of the national law[41] and the conventions and recommendations of the ILO.[42] It is also present in acts adopted by the Council of Europe,[43] the implementation of which is ensured by the European Court of Human Rights and the European Committee of Social Rights. The mechanisms forming the basis of social partnership and the basic rights and duties of social partners and states are also laid down in EU legal acts (i.e., a range of regulations, directives, and other legal acts) that are binding on Lithuania.

Under the Constitution, international treaties ratified by the Seimas are a constituent part of the legal system of the Republic of Lithuania (Article 138[3]) and have the force of a law[44]; compliance with voluntarily assumed international obligations, in addition to respect for universally recognised international legal principles (including the principle of *pacta sunt servanda*), implies that, in those cases

[40] Rytis Krasauskas, "Some Aspects of Constitutionalisation of Collective Labour Law," *Bulletin of the Constitutional Court of the Republic of Lithuania Constitutional Jurisprudence* No. 3(7) (2007).
[41] *Universal Declaration of Human Rights*, Official Journal (2006, No. 68-2497); *International Covenant on Civil and Political Rights*, Official Journal (2002, No. 77-3288); *International Covenant on Economic, Social and Cultural Rights*, Official Journal (2002, No. 77-3289).
[42] Lithuania became a member of the ILO in 1921; its membership was renewed in 1994 (*Resolution (No. 1058) of the Government of the Republic of Lithuania of 3 November 1994 on procedures for representation in the International Labour Organization and for the provision of information on the implementation of the conventions of the International Labour Organization to the International Labour Office*, Official Journal [1994, No. 86-1633]). Lithuania has ratified, among other things, the key conventions of the ILO regarding freedom of association and the right to organise, collective bargaining and participation of employees (i.e., ILO conventions Nos 87, 98, 135, 144, 154).
[43] *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Official Journal (1995, No. 40-987); *European Social Charter*, Official Journal (2001, No. 49-1704; 2001, No. 53).
[44] *The ruling of the Constitutional Court of 17 October 1995 "On the Law "On International Agreements of the Republic of Lithuania"*, Official Journal (1995, No. 86-1949).

where national legal acts (among others, laws or constitutional laws, except for the Constitution itself) establish a legal regulation that competes with a legal regulation established in an international treaty, the international treaty takes precedence in application.[45] In its final acts, the Constitutional Court referred on more than one occasion to the harmonisation of international and national law, e.g., the Convention for the Protection of Human Rights and Fundamental Freedoms in the Lithuanian legal system. In this way, it ensures the implementation of international obligations assumed by the state, the force of international treaties and EU legal acts in the Lithuanian legal system, the case law of the European Court of Human Rights, and the Court of Justice of the European Union and the Court of First Instance as sources for the interpretation of law, as well as guaranteeing the recognition of international legal principles and norms by the state of Lithuania. Thus, it is obvious that, having ratified international legal acts and assumed membership in the EU, Lithuania took on the commitment to ensure that the obligations undertaken in relation to social partnership and the relevant mechanisms are implemented and fulfilled in reality rather than only formally.

The social partnership system and its separate elements are established in the Labour Code of 2017 and in laws, sub-statutory legal acts (resolutions of the Government, orders of ministers), and the case law of courts. The Lithuanian social partnership system as consolidated in legal acts contains all of the formal elements of – and, in principle, is in conformity with – the international obligations of Lithuania.

Lithuanian legal acts lay down the following main elements of the social partnership system: 1) *the parties of social partnership;* 2) *forms of the implementation of social partnership;* 3) *levels of social partnership;* and 4) *principles of social partnership.*

Legal acts set out the procedure for the establishment of the parties to social partnership, the scope of their rights and duties, as well as the operating entities. In Lithuania, the following parties operate in social partnership: employee representatives (trade unions, their organisations – association, federation, centre, etc. – works councils, employee trustees, European Works Councils) and employer representatives and their organisations (association, federation, confederation, etc.); employer and employee representatives; the Government of the Republic of Lithuania, or institutions authorised thereby, and municipal institutions, which are considered to be parties of the social partnership when they act as employers or employer representatives, as well as in other cases established by the Labour Code

[45] *The decision of the Constitutional Court of 14 March 2006 "On refusing to interpret the provisions of the Constitutional Court's ruling of 12 July 2001"*, Official Journal (2006, No. 30-1050).

or other laws; and employees, who, in the cases prescribed by legal norms, may participate in social partnership directly.

The legal status of social partnership entities is explicitly enshrined in law and is sufficiently clear. Nevertheless, the case law indicates that the courts have questions in this regard. For example, the position of the Supreme Administrative Court of Lithuania (SACL) set out in the ruling of 20 February 2019 (which was repeated in later rulings) is related to the possibility to elect works councils representing civil servants. In the above-mentioned ruling, the SACL stated that "works councils are exclusively representatives of employees (Article 165 of the Labour Code of 2017) and have no rights in the legal relations of the civil service"[46]. Such a position of the SACL is difficult to reconcile with the ex lege regulation enshrined in the Law on Civil Service[47] and the Statute of the Internal Service,[48] which enshrines the right of representatives of the works council to participate in the activities of selection and evaluation commissions as observers (Articles 11(7), 27(15) of the Law on Civil Service; Articles 28(3), 35(2) of the Statute of the Internal Service), and should be adjusted in the light of the case-law of this Court.

In Lithuania, social partnership is implemented: by forming bipartite or tripartite councils, participating in their activities, and concluding agreements on labour, social, and economic matters; by initiating and conducting collective bargaining and concluding collective agreements; and through information and consultation procedures and participation in the management of the legal entity of an employer (Article 164 of the Labour Code of 2017).

During the implementation of information and consultation, a dispute regarding the binding nature of these procedures arose in Lithuania. In one of these disputes that reached the cassation instance, the Supreme Court of Lithuania (SCL) clarified the content of information and consultation. The SCL emphasised that "the non-conclusion of an agreement, the disagreement of the employees' representatives with the intended decisions of the employer does not in itself mean non-compliance with the information and consultation procedures".[49] At the same time, the SCL noted the position of the Court of Justice of the European Union (CJEU), according to which informing and consulting a trade union is one of the most modest forms of participation in the decision-making process, which, in the light of its objectives, also seeks to reduce the likelihood of errors in the decision taken and to avoid

[46] *The order of 20 February 2019 in administrative case No. A-2045-415/2019*, SACL, para. 60.
[47] *Law on the Civil Service of the Republic of Lithuania*, Official Journal (1999, No. 66-2130; 2002, No. 45-1708), Register of Legal Acts (2018, No. 2018-12037).
[48] *Law on the Approval of the Statute of the Internal Service of the Republic of Lithuania*, Official Journal (2003, No. 42-1927), Register of Legal Acts (2015, No. 2015-10814; 2018 No. 2018-12049).
[49] *The order of 13 January 2020 in civil case No. e3K-3-117-687/2020*, the Division of Civil Cases of the SCL, para. 50 p.

dissatisfaction with the lodging of appeals[50]; the aim is to ensure the fullest and most effective participation of trade unions in consultation.[51]

In Lithuania, social partnership is developed on the following levels: national; sectoral (industry, services, professional); territorial (municipality or county); employer (natural person or legal person or, in the case established in Article 21[4] of the Labour Code, its division [branch or representative office]); and workplace (if this is established under the Labour Code, the provisions of labour law or agreements of social partners) (Article 163 of the Labour Code of 2017).

In Lithuania, all fundamental international social partnership principles are valid, including such essential principles as: freedom of association; the protection of employee representatives; trilateral cooperation; bilateral cooperation; the empowerment of social partners' representatives; bargaining in goodwill and in good faith; the application of conciliation procedures; etc. Article 161(2) of the Labour Code of 2017 prescribes that, in implementing social partnership, the following principles must be adhered to: the equality of arms; goodwill and respect for legitimate mutual interests; the voluntary and independent acceptance of obligations binding on the parties; the real fulfilment of obligations; as well as other principles established under the provisions of labour law, international treaties of the Republic of Lithuania, and human rights standards[52].

The drafters of the Lithuanian social model, recognised by the European Commission as a structural reform, declared that, through the legal regulation consolidated in the Labour Code of 2017, they aimed at the following novelties related to the legal institution and the regulation of collective agreements: (1) making a division between social dialogue and the institution of collective labour relations; (2) liberalising the institution of collective labour disputes; (3) applying collective agreements concluded by trade unions exclusively to members of trade unions, thereby encouraging joining trade unions and seeking better working conditions through collective agreements; (4) transposing effective statutory guarantees and incentives (the priority right to remain at work, additional and extended leave, etc.) to collective agreements; and (5) consolidating the compulsory extension of the validity of collective agreements.[53] Some of the declared aims have been

[50] *Maria Concetta Cerafogli and Paolo Poloni v European Central Bank*, CJEU Case T-63/02 (2003), ECLI:EU:T:2003:308, para. 23, 24.
[51] *Organisation des salariés auprès des institutions européennes et internationales en République fédérale d'Allemagne (IPSO) v European Central Bank*, CJEU Case T-713/14 (2016), ECLI:EU:T:2016:727, para. 146.
[52] *Labour Code of the Republic of Lithuania*, Register of Legal Acts (2016, No. 2016-23709).
[53] "Development of the Lithuanian social model, which includes increasing employment, improving the regulation of labour relations and the sustainability of social insurance" (March 2015) // http://www.socmodelis.lt/wp-content/uploads/Modelis.pdf.

implemented. Upon the entry into force of the Labour Code of 2017, Lithuanian collective labour law have seen the introduction of some significant novelties.

First, a clearer division has been made between the competences of trade unions and works councils: representation and the conclusion of collective agreements are assigned to trade unions, while works councils are involved in information and consultation procedures. Under the legal regulation in force prior to 1 July 2017, trade unions were able to represent and defend the rights and interests of employees in the context of employment relations, while works councils possessed all the rights of the entities of collective representation if there was no in-house trade union operating at the enterprise, establishment, or organisation and if the staff meeting had not transferred the functions of employee representation and protection to the trade union of the relevant economic sector.

Second, collective agreements apply only to employees who are members of the trade unions that concluded these agreements unless, in accordance with the procedure established by law, the trade union and the employer agree on the application of the collective agreement to all employees, or unless, in accordance with the procedure established by law, the scope of the application of the collective agreement is extended (Articles 197[1] and 198). Under the legal regulation in force prior to 1 July 2017, a collective agreement concluded by an enterprise in accordance with the procedure established by law was applied to all employees of that enterprise; there was no possibility of concluding a collective agreement that would be exclusively applicable to the members of the trade union that concluded the collective agreement.

In the event of a dispute over the compliance of the provisions of a collective agreement relating to greater benefits only for trade union members with the principle of non-discrimination, the SCL in its ruling of 16 December 2020[54] held that benefits to trade union members achieved through collective bargaining do not constitute discrimination against other workers (other trade union members and non-trade union members). Instead, they represent the added value gained from participating in trade union activities, especially given that the choice to participate or not to participate in the activities of a trade union, as well as the decision to choose a specific trade union, depends on the will of the employee. In its ruling of 26 August 2021, [55] the SCL recognised that discrimination on the basis of trade union membership occurred in a situation in which a more favourable procedure for granting and calculating leave was approved, by the order of a director, for non-union

[54] *The order of 16 December 2020 in civil case No. e3K-3-348-403/2020*, the Division of Civil Cases of the SCL, para. 60.
[55] *The order of 26 August 2021 in civil case No. e3K-3-227-684/2021*, the Division of Civil Cases of the SCL, para. 51.

members than the one established in the Collective Agreement in force for employees who were members of a trade union.

Third, a rule has been established requiring that a works council be formed on the initiative of the employer when the employer's average number of employees is 20 or more. However, if an employer-level trade union representing more than one-third of all employees is operating at the workplace, no works council is formed; in this case, the operating trade union assumes all powers of a works council and performs all functions assigned to a works council under the Labour Code. If more than one-third of all employees at a workplace belong to in-house trade unions, the functions of a works council are performed by joint trade union representation or the trade union elected by the trade union members (Article 169[1] and [3]). Under the legal regulation in force prior to 1 July 2017, works councils were not mandatory; a works council possessed all the rights of the entities of collective representation if there was no in-house trade union operating at the enterprise, establishment, or organisation and if the staff meeting had not transferred the functions of employee representation and protection to the trade union of the relevant economic sector. Works councils could not perform functions that were recognised under the law as the prerogative of trade unions.

Fourth, employee representatives have been granted the right to participate in the management of the legal entity (Articles 210–212).

Fifth, the institution of information and consultation has been significantly reinforced, i.e., at the request of the works council, an employer employing an average of 20 employees or more: (a) must regularly provide information to and hold consultations with the works council about the current and future activities of the enterprise, as well as the economic situation and the condition of employment relations (Article 205); and (b) must inform and hold consultations with the works council in adopting decisions on the approval or amendment of local regulatory acts (Article 206). This requirement was established to provide information to and hold consultations with works councils in the case of collective redundancy and in the case of the transfer of a business or part of it (Articles 207–208).

Sixth, the announcement of strikes has been made easier: the consent of at least one-quarter of trade union members is enough to announce an employer-level strike. Under the legal regulation in force prior to 1 July 2017, a strike could be announced at an enterprise if this decision was supported via a secret vote by more than half of the employees of the enterprise in the case of an enterprise strike and by more than half of the employees of a department in the case of a departmental strike.

Seventh, lockouts have been legalised: an employer or employer organisation announces the temporary suspension of the employment contracts of employees of a single employer or several employers once said employees go on strike. Such a legal regulation did not exist prior to 1 July 2017.

Paragraph 1 of Article 217 (regulating the competence of the bodies for the resolution of labour disputes on rights) of the Labour Code of 2017 lays down a specific list of decisions that a body for the resolution of a collective labour dispute on rights may adopt. It may decide: (1) to obligate the other party to restore the rights violated due to the non-fulfilment or improper fulfilment of labour law provisions or mutual agreements; (2) to order compensation for material or non-material damage and, in the cases established by labour law provisions or agreements, to impose fines or late fees; (3) to terminate or change the legal relations; and (4) to require that other actions established in laws or labour law provisions be taken. Paragraph 2 of the same article provides for real sanctions for the non-fulfilment, improper fulfilment or violation of obligations arising under collective labour law. It is prescribed that, while resolving collective labour disputes on rights, a labour dispute resolution body has the right to fine the party that violated labour law provisions or mutual agreements up to EUR 3,000, to be paid to the other party. The amount of the fine must be proportionate to the severity of the violation and must discourage future offences. The legal regulation mentioned above is to be seen as a tangible step both towards strengthening respect for the obligations already assumed by social partnership entities (in particular, employers and employer organisations) in the area of collective labour law and towards officially laying down the practical implementation of social partnership principles (such as the voluntary and independent acceptance of obligations binding on the parties, the real fulfilment of obligations, etc.). Prior to the entry into force of the Labour Code of 2017, this was essentially entirely based on the good faith of social partnership entities.

After the Labour Code of 1 July 2017 has sufficiently and explicitly regulated the fundamental social partnership processes at the statutory level, introduced the above-discussed relevant innovations, reinforced control over compliance with existing obligations in the area of collective labour law, and officially laid down the practical implementation of social partnership principles, the positive legal regulation of social partnership and its processes in Lithuania provides all the preconditions for strengthening the impact of social partnership on Lithuanian labour law.

CONCLUSIONS

The Lithuanian case confirms that social partnership plays an important role in the regulation of employment relations, the dynamics and sensitivity to change of which require that state law-making institutions adopt an adequate approach to social partnership as well as the proper engagement and involvement of the interest groups concerned (employees, employers, and their representatives) in contractual law-making processes. Therefore, an optimal balance between contractual and state law-making is necessary to make the regulation of employment relations in each country sustainable.

The Lithuanian social model is regarded as gravitating from the quasi-partnership model towards real social partnership. The particularly low affiliation of employees and employers with organisations representing their interests (i.e., trade unions and employer associations) and the equally low coverage of collective bargaining reveal that the impact of social partnership on regulating employment relations in Lithuania is insufficient.

To enable the maximum use of social partnership capacity, legislation and soft law in Lithuania should be geared towards strengthening employee and employer organisations, as well as towards a gradual decrease in state legal regulation in favour of collective agreements. In Lithuania, it is necessary to seek solutions to strengthen social dialogue at a level higher than that of the enterprise.

Positive legal regulation of social partnership and its processes in Lithuania is sufficiently clear, and provides all of the preconditions for strengthening the impact of social partnership on Lithuanian labour law. The novelties introduced by the Labour Code of 2017 give realistic ground to expect that the impact of social partnership as a method of the legal regulation of employment relations should increase over time in Lithuanian labour law.

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