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Legal Aspects of Membership in a Trade Union: A Case Study of Lithuania

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The aim of this article is to address the questions of how the principle of freedom of association and the prohibition of discrimination on the basis of trade union membership are understood and to identify legal obstacles for an effective implementation of the right to join trade unions. International, EU regional and Lithuanian national legislation, as well as the case law of the European Court of Human Rights, the Court of Justice of the European Union and Lithuanian courts have been explored to carry out the current study. The results confirm that membership can be interpreted broadly; therefore, members of a trade union may be required to possess certain working and legal capacities, as well as meet other requirements related to the trade union's objectives, which are sometimes unreasonable. Due to possible exceptions, various members may be subject to different collective rights, for example, certain officers may not be permitted to strike, and some may not even be allowed to join associations.

Keywords: trade unions, freedom of association, discrimination, collective bargaining, collective agreements.

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Introduction

Equality is one of the principles of social partnership. Because an employee is considered the weaker party¹ to the employment relations, not only because he is economically dependent on his employer, but also because the employee is legally subordinate to the employer,² such inequality can be addressed in two ways: by establishing the entirety of the guarantees and rights granted to employees by regulatory acts, or by enabling them to assert their rights and interests through collective bargaining.

The International Labour Organisation's (hereinafter – ILO) fundamental conventions No. 87 and 98 were designed to implement the principle of “Freedom of Association and Collective Bargaining”. As a result, the countries are laid under an increased obligation to implement this principle. What does this principle mean? What are the benefits of being a member of the association? How is the right to collective bargaining understood? In other words, what can an employee gain from negotiations performed through representatives in addition to the benefits already provided by laws or employment contracts? Do these benefits depend on membership status, the outcome of collective bargaining or the contractual level? Are there restrictions or membership requirements?

Workers can be represented by trade unions or elected workers' representatives (i.e. work councils or employee trustees in Lithuania). In this article, the meaning behind the term “employee” is construed in a broad sense, i.e. it denotes not only employees working under an employment contract, but also civil servants, officers and other individuals. However, the question is whether they can all join organisations and ask them to represent their interests, enter into collective agreements and request additional guarantees.

T. Davulis noted that because of their special status and field of activities, trade unions are more privileged in terms of competence and legal safeguards.³ The trade union, as an organisation, has its own statute, governing bodies, a settlement account, and operates independently of the employer whose employees it represents. According to *Eurofound*, there are different practices regarding the application of the collective agreement and its extension to non-members,⁴ which raise concerns about the benefits of such membership.

¹ This doctrine is also recognised by the courts: “The legislator, taking into account the unequal economic and social status of the employee and the employer, has established certain characteristics related to the examination of labour cases. These characteristics have been established in order to better protect the interests of the employee as an economically and socially weaker party to the employment relations.” See Decisions of 28 February 2005 of the Supreme Court of Lithuania in a civil case D. D. v. UAB „V-supis“. Available: <https://www.teisesgidas.lt/modules/paieska/lat.php?id=27823> [last viewed 04.05.2024]. See: *Nekrošius, I. et al.* Darbo teisė [Labour Law]. Teisinės informacijos centras: 2008, p. 238; *Ambrazevičiūtė, K.* Darbuotojo ir darbdavio interesų derinimas nutraukiant darbo sutartį Lietuvos teismų praktikoje [Balance of Interests Between Employer and Employee Terminating Employment Contract in Lithuanian Case Law]. Jurisprudencija, Vol. 22, issue 1, 2015, pp. 64–83. DOI: 10.13165/JUR-22-29-2-03

² *Zekić, N.* The Normative Framework of Labour Law. Law and Method, Vol. 9, issue 2, 2019, p. 8. DOI: 10.5553/REM/000044

³ *Davulis, T.* Savarankiškai dirbančių asmenų teisė į kolektyvines derybas ir teisė į streiką [The Right to Collective Bargaining and the Right to Strike of Self-Employed Persons]. In: Darbo teisės iššūkiai besikeičiančiame pasaulyje: For Liber Amicorum et Collegarum professor Genovaitė Dambrauskienė [Darba tiesību izaičinājumi mainīgajā pasaulē: Liber Amicorum et Collegarum profesorei Genovaitei Dambrauskienē], *Mačernytė-Panomariovienė, I.* (ed.). Mykolas Romeris University, 2020, p. 48.

⁴ Eurofound (2022). Extension of collective agreements, European Industrial Relations Dictionary, Dublin. Available: <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/extension-of-collective-agreements> [last viewed 04.05.2024].

The aim of this article is to address the questions of how the principle of freedom of association and the prohibition of discrimination on the basis of trade union membership are understood, and to identify legal obstacles for an effective implementation of the right to join trade unions. In order to accomplish the aforementioned aim, it was sought to determine who may form or join professional associations (including trade unions and other elected workers' representatives) for the protection of social, economic and professional interests, as well as whether all members are subject to the same collective rights. International, European Union regional and Lithuanian national legislation, as well as extensive case law of the European Court of Human Rights, the Court of Justice of the European Union and Lithuanian courts were examined, and the content of randomly selected Lithuanian collective agreements and the statutes of Lithuanian trade unions was then analysed and summarised.

1. Restrictions on the application of freedom of association

According to the provisions set down in Article 6 of ILO Convention 98, a state must guarantee the right to form or join organisations to everyone, including civil servants, with the exception of public servants engaged in the administration of the state.⁵ In Lithuania, workers can form trade unions, elect works councils (must be concluded at the initiative of the employer when the average number of employees of the employer is twenty or more⁶) or a trustee (may be elected if the average number of employees of the employer is less than twenty⁷) to defend and represent their rights.⁸

As noted by T. Davulis the Labour Code of the Republic of Lithuania (2017) [hereinafter – LabCod] “has *de lege* extended the application of certain legal regulations governing collective employment relations to include not only employees *stricto sensu* (as specified in Article 32⁹), but also non-employees, i.e. persons working on the basis of legal relations deemed the equivalent of employment relations”¹⁰. These could include civil servants, officers, military personnel, judges, diplomats, working convicts and members of various commissions. Having examined Lithuanian legislation, it was found that internal service officers,¹¹ prosecutors,¹² judges,¹³ and civil servants¹⁴ are allowed to form or join trade unions or other organisations representing their interests.

⁵ Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Available: https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_Ilo_Code:C098. [last viewed 04.05.2024].

⁶ Labour Code of the Republic of Lithuania (14.09.2016), Article 166. Available: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89> [last viewed 04.05.2024].

⁷ Ibid., Article 177.

⁸ Ibid., Article 165.

⁹ Labour Code of the Republic of Lithuania (14.09.2016). Available: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89> [last viewed 04.05.2024].

¹⁰ Davulis, T. Savarankiškai dirbančių, p. 47.

¹¹ Lietuvos Respublikos vidaus tarnybos statuto pakeitimo įstatymas [Statute of the Internal Service of the Republic of Lithuania] (2023-12-19). Art. 62. Available: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/07a8f3509ff911ee8172b53a675305ab?jfwid=1bwlwada9> [last viewed 04.05.2024].

¹² Lietuvos Respublikos prokuratūros įstatymas [Law on the Prosecution Service of the Republic of Lithuania] (13.10.1994). Art. 21. Available: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.5956/asr> [last viewed 04.05.2024].

¹³ Lietuvos Respublikos teismų įstatymas [Law on Courts of the Republic of Lithuania] (31.05.1994). Art. 44(3) and 115. Available: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.5825> [last viewed 04.05.2024].

¹⁴ Lietuvos Respublikos valstybės tarnybos įstatymo Nr. VIII-1316 pakeitimo įstatymas [Republic of Lithuania Civil Service Law no. Act to amend VIII-1316] (08.05.2023). Para. 4 of Art. 17(1). Available: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/45f12782ed6711edb649a2a873fdbdf> [last viewed 04.05.2024].

Attention should also be paid only to other entities representing employees – works councils. The case law indicates that the courts have questions in this regard. For example, the position of the Supreme Administrative Court of Lithuania (hereinafter – SACL) stated that “works councils are exclusively representatives of employees (Article 165 of the LabCod) and have no rights in the legal relations of the civil service”.¹⁵ Such a position of the SACL is difficult to reconcile with the *ex lege* regulation enshrined in the Law on Civil Service¹⁶ and the Statute of the Internal Service,¹⁷ which enshrines the right of representatives of the works council to participate in the activities of selection and evaluation commissions as observers,¹⁸ and should be adjusted in the light of the case law of this Court.¹⁹

According to the provisions of Article 5 of ILO Convention 98, the states shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention. Exceptions to the application of Convention’s provisions to the police and the armed forces may be created only by laws or other legislation. According to the European Court of Human Rights (hereinafter – ECHR) “police officers must enjoy the main trade union rights, which are the right to negotiate their salaries and working conditions, and freedom of association”.²⁰

ECHR has accepted that trade-union activity has to be adapted to take into account the specific nature of the armed forces’ mission and that even significant restrictions can be imposed on the forms of action and expression of an occupational association and its members. However, such restrictions should not deprive them of the general right of association to defend their occupational and non-pecuniary interests.²¹ A blanket ban on forming or joining a trade union by military personnel encroaches on the very essence of their freedom of association and is as such prohibited by the Convention.²² However, Lithuanian laws strictly prohibit intelligence officers, officers of the Special Investigation Service and servicemen in professional military service from being members of a trade union (forming trade unions, joining them and participating in their activities).

The study showed that there may also be exceptions to restrictions on other persons. For example, the ECHR noted in particular that, like prisoners’ other

¹⁵ Decision of 20 February 2019 of SACL in administrative case R. A., A. D. ir Ž. V. v. The State of Lithuania and the Environmental Project Management Agency of the Ministry of the Environment of the Republic of Lithuania, para. 60.

¹⁶ Lietuvos Respublikos valstybės tarnybos įstatymas [Law on the Civil Service of the Republic of Lithuania] (08.07.1999). Articles 2(2), 25(1). Available: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.84605/asr> [last viewed 04.05.2024].

¹⁷ Lietuvos Respublikos vidaus tarnybos statuto pakeitimo įstatymas [Law on the Approval of the Statute of the Internal Service of the Republic of Lithuania] (2023-12-19). Art. 28(3), 35(2), p. 61. Available: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/07a8f3509ff911ee8172b53a675305ab?jfwid=1bw1iwa9> [last viewed 04.05.2024].

¹⁸ Lietuvos Respublikos vidaus tarnybos statuto pakeitimo įstatymas [Statute of the Internal Service of the Republic of Lithuania] (2023-12-19). Articles 28(3), 35(2). Available: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/07a8f3509ff911ee8172b53a675305ab?jfwid=1bw1iwa9> [last viewed 04.05.2024].

¹⁹ Krasauskas, R., *Mačernytė Panomariovienė*, I. Social Partnership as a Method of Legal Regulation of Employment Relations: The Case of Lithuania. *Baltic Journal of Law & Politics*, Vol. 15(2), 2022, p. 19.

²⁰ European Council of Police Trade Unions (CESP) v. Portugal, 2002; European Council of Trade Unions (CESP) v. France 2016; European Confederation of Police (EuroCOP) v. Ireland, 2013; European Organisation of Military Associations (EUROMIL) v. Ireland, 2017.

²¹ Judgment of 2 October 2014 of the *Matelly v. France*, 2014, § 71. Available: <https://hudoc.echr.coe.int/fre#%22itemid%22:%22002-10230%22> [last viewed 04.05.2024].

²² *Ibid.*

Convention rights, their right to form and to join trade unions could be restricted for security, in particular, for the prevention of crime and disorder.²³

It should be noted that according to legal regulation of Lithuania, “self-employed persons are not the same as employees the way they are defined in the Law on Employment”.²⁴ It means that collective relations cannot be applied to them, despite the fact that, as T. Davulis points out, both the Committee on Freedom of Association²⁵ and the CEACR recognise (subject to certain conditions) that self-employed persons²⁶ can also fully enjoy freedom of association rights.

According to the Lithuanian Department of Statistics, in 2021, trade union members accounted for only 9.2%, while in 2022 – 8.1 % of the total number of persons employed.²⁷ According to statistics of the ILO, the number of members is gradually increasing in comparison to the previous year (7.3% in 2017 and 7.4% in 2019). Therefore, it cannot be claimed that the number of members has decreased as a result of amendments in the legal regulation.

The authors pointed out that, at the beginning of 2022, around 83.9% of all enterprises operating in Lithuania had less than 10 employees,²⁸ making them subject to fewer requirements in the LabCod, including the process of social partnership. Therefore, there was no need for employees in such enterprises to be represented by trade unions.²⁹ In such a case, the question arises as to whether the legislator can adjust the activities of such enterprises by adding or removing certain powers, imposing requirements on their activities and members (for example, the national-level trade union organisation must consist of at least 15% of all Lithuanian trade union members,³⁰ etc. For example, the amendment to the Labour Code of the Republic of Lithuania on 1 July 2017 stated that work councils are not entitled to conclude collective agreements at the employer level and to initiate a collective labour dispute on any interest, thereby limiting the respective collective rights of employees. Nevertheless, these rights of employees have not been denied, hence, such legal regulation is not contrary to constitutional imperatives and should be regarded as a legitimate instrument of social engineering that the legislator may use to promote social partnership.³¹ In other words, such regulation seeks to strengthen the powers of

²³ Judgment of 7 December 2021 of the Yakut Republican Trade-Union Federation v. Russia. Available: [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-213908%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-213908%22]}) [last viewed 04.05.2024].

²⁴ Davulis, T. Savarankiškaï dirbančių, p. 47.fgv

²⁵ The Committee, therefore, like the Committee of Experts, requests the Government to take the necessary measures, including where necessary, the amendment of the legislation in order to ensure that all workers, without distinction whatsoever, including self-employed workers and those employed on the basis of civil law contracts, enjoy the right to form and join organizations of their own choosing within the meaning of Convention No. 87. In: Reports of the Committee on Freedom of Association – the 363rd Report of the Committee on Freedom of Association, the 313th Session, Geneva, 15–30 March 2012, pp. 292–294. Available: https://www.ilo.org/wcmsp5/groups/public/--ed_norm/--relconf/documents/meetingdocument/wcms_176577.pdf

²⁶ Davulis, T. Savarankiškaï dirbančių, p. 55.

²⁷ Data of the Lithuanian Statistics Department. Available: <https://osp.stat.gov.lt/statistiniu-rodikliu-analize?indicator=S3R335#/> [last viewed 04.07.2024].

²⁸ Data of the Lithuanian Statistics Department. Available: <https://osp.stat.gov.lt/> [last viewed 04.07.2024].

²⁹ Krasauskas, R., *Mačernytė Panomariovienė*, I. Social Partnership, pp. 13. DOI: <https://doi.org/10.2478/bjlp-2022-0008>

³⁰ Labour Code of the Republic of Lithuania (14.09.2016). Article 179(4). Available: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89> [last viewed 04.05.2024].

³¹ Krasauskas, R. Lietuvos darbo tarybų teisinio statuso ypatumai [Features of the Legal Status of Lithuanian Works Councils]. *Jurisprudencija*, Vol. 29, issue 2, 2022, p. 229. DOI: <https://doi.org/10.13165/JUR-22-29-2-02>

trade unions, because collective bargaining, the conclusion of collective agreements and the initiation of collective labour disputes on interests are an exclusive right of trade unions. On the other hand, even though works councils were not very widespread in Lithuania and, according to the experts, agreements signed by them had no material effect on the social and working conditions of employees, the introduction of the new legal regulation might reduce collective bargaining coverage even more.³² If this conclusion is accepted, the legal regulation of Lithuania will have to deal with the issues of the representation of employees of small companies and the bargaining power of the collective.

In summary, all persons recognised as employees (except for the employees of special investigation services, servicemen in professional military service and intelligence officers) in Lithuania can join and form associations (trade unions and other organisations), regardless of whether they work in the public or private sector.

2. Functions (rights) of trade unions

An analysis of the laws has shown that the collective rights of certain members may vary. The statutes of organisations also describe functions and obligations of trade unions. Trade unions are primarily established to represent their members, promote partnership, assist in defending the violated rights of their members, educate members and submit proposals for the improvement of legal regulation, etc. One of the most significant functions for which trade unions are established and work councils or trustees are elected is the representation of people both individually and collectively.

The effective defence of their members as well as themselves is another important function of trade unions. In addition, they are subject to additional guarantees. According to ILO Convention No. 135 concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking, (1971) workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, insofar as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements. In other words, it refers to the benefits and guarantees bestowed upon the workers' representatives themselves (both representatives of trade unions and other individuals elected to represent workers and act in accordance with the exclusive prerogative of trade unions) while they are carrying out their duties. This ensures their legitimacy in the organisational structure. In Lithuania, employee representatives (trade unions, work councils and employee trustees) are also granted the guarantees.³³ According to the ECHR, the aim of the guarantee of labour rights (protection of members implementing employee representation from termination of employment relations) is "to provide those members with adequate freedom and independence from the employer, and to avoid potential abuses of the employer's right to dismiss employees, thereby eliminating trade union leaders who are unfavourable to the employer and who are in conflict with him. Consequently, the rules in question

³² Blažienė, I., Kasiliauskas, N. and Guobaitė-Kiršlienė, R. Chapter 18. Lithuania: will new legislation increase the role of social dialogue and collective bargaining? In: *Collective bargaining in Europe: towards an endgame*. Müller, T., Vandaele, K. and Waddington, J. (eds). European Trade Union Institute (ETUI), Vol. II, 2019, p. 387.

³³ Labour Code of the Republic of Lithuania (14.09.2016). Article 165(2). Available: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89> [last viewed 04.05.2024].

provide additional guarantees of rights for the members of elective bodies of trade unions in exchange for the assumed additional risks”.³⁴

The fact that the guarantee in question is not absolute is relevant. The head of the territorial office of the State Labour Inspectorate shall give consent to terminate an employment contract or change indispensable employment contract terms if the employer presents data confirming that the termination of the employment contract or the amendments to the indispensable employment contract terms are not related to the employee representation activities being carried out by the employee and that the employee is not being discriminated against due to his or her employee representation activities or trade union membership.³⁵ The case law demonstrates this as well. In one of the cases, the court ruled that a civil servant applying for a specific position had to meet both general and special requirements outlined in the job description, and that while he had the right of priority as a member of the Work Council to serve as a deputy director, his qualifications did not meet to the proposed position, so his dismissal was lawful.³⁶ The law also granted the employer the right to appeal the decision of the relevant body to refuse to give consent to dismiss a member of the elective body of a trade union operating in the enterprise in accordance with judicial procedure. The court may annul such a decision if the employer proves that the employee has substantially violated his interests.³⁷

In summary, it can be concluded that an organisation can select its members by establishing requirements in its business papers, such as the statute. The main requirement for members is to possess working and legal capacities, regardless of whether they have employment relations or not; hence, both employees who have been dismissed or have retired can be members.

Membership grants various additional employment guarantees, most notably the prohibition on dismissing an employee solely on the basis of his membership. The nature of the guarantees (benefits) depends on the membership status, i.e. the governing bodies have more privileges than an ordinary members. Some Lithuanian laws restrict certain collective rights of some members, for example, internal service officers, prosecutors and civil servants in managerial positions do not have the right to strike.

3. Benefits of collective bargaining with respect to the type of collective agreement

When exercising the right to bargain collectively, the Parties undertake: “to promote machinery for voluntary negotiations between employers or employers’ organisations and workers’ organisations”.³⁸ The European Committee of Social Rights has clarified that if necessary and useful, in particular if the spontaneous development of collective bargaining is not sufficient, positive measures should be taken to facilitate

³⁴ Decision of 25 January 2011 of the Supreme Court of Lithuania in civil case UAB “Eiginta” v. the defendant Kaunas County trade unions.

³⁵ Labour Code of the Republic of Lithuania (14.09.2016). Article 168(3). Available: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89> [last viewed 04.05.2024].

³⁶ Decision of 15 April 2020 of SAČL in administrative case T. R. v. State Consumer Rights Protection Authority.

³⁷ Decision of 25 January 2011 of the Supreme Court of Lithuania in civil case UAB “Eiginta” v. the defendant Kaunas County trade unions.

³⁸ European Social Charter (Revised) (3.V.1996) Article 6 Available: <https://rm.coe.int/168007cf93> [last viewed 04.05.2024].

and encourage collective agreements; however, whatever the procedures put in place are, collective bargaining should remain free and voluntary.³⁹ Attention is drawn to the fact that one of the latest directives of the European Union stipulates that member states with collective bargaining coverage of less than 70% of employees⁴⁰ must take measures to promote the development of collective bargaining. In Lithuania, the coverage of collective agreements has been increasing since 2015 (from 14.8% in 2019, 21.03% in 2020, to 25% in 2021⁴¹), but it does not reach 70%. Therefore, Lithuania will have to continue making more efforts to encourage employees to sign collective agreements, especially, as already mentioned, when solving the issue of collective bargaining of employees of small companies.

From the perspective of employees, the principle of freedom of collective bargaining is one of the most important principles because, typically, a single employee lacks the authority to unilaterally dictate or even request or negotiate improved working conditions; however, by concluding a collective agreement, it becomes possible to establish mutually acceptable conditions that would serve as a satisfactory compromise for both the employees and the employer. Based on the aforementioned agreements, the parties involved in the employment relations may independently establish the regulations of labour law through mutual agreement, taking into account the labour market and other economic and social factors.⁴² According to Zekić, collective bargaining is one of the two main mechanisms⁴³ of self-regulation in labour law, aiming to balance the inequality of bargaining power between workers (i.e. the weaker party to the employment relations) and their employer.

Employees, acting through their designated representatives, have the right to negotiate favourable conditions with their employer in terms of social, labour and economic interests. On the other hand, in the public sector all main employment and working conditions, including remuneration issues, are strictly regulated by national legislation; thus there is little room for manoeuvre for collective bargaining.⁴⁴

Each level (company, sectoral, territorial or national) at which the trade union operates has different set of opportunities or the scope of negotiation. Both employees and employers can act as equal social partners, capable of making social compromises among themselves, as well as with the state, preventing social conflicts and maintaining stability of their ties with one another.⁴⁵ Higher membership level and corresponding involvement should provide more guarantees and, accordingly, more duties for its members to ensure its activities. It is imperative to emphasize the role of social partnership here because “employers’ and employees’ organisations must not avoid their responsibilities to the entire society [...] and must seize opportunities to

³⁹ Petrylaitė, D., *Jaselionytė, V. Kolektyvinės darbuotojų teisės Europos socialinėje chartijoje (pataisytoje) ir jų realizavimas Lietuvoje* [Employees’ collective rights in the European Social Charter (revised) and their implementation in Lithuania]. *Verslo ir teisės aktualijos: mokslo darbai*. Vol. 5, issue 2, 2010.

⁴⁰ 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), Article 4(2). Available: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020PC0682> [last viewed 04.05.2024].

⁴¹ Minimalaus darbo užmokesčio nustatymas: kas keisis ateityje? [Setting the minimum wage: what will change in the future?] (2023-02-22). Available: <https://socmin.lrv.lt/lt/naujienos/minimalaus-darbo-uzmokescio-nustatymas-kas-keisis-ateityje/> [last viewed 04.05.2024].

⁴² Petrylaitė, D., *Petrylaitė, V. Socialinės teisės* [Social Rights]. In: *Krizė, teisės viešpatavimas ir žmogaus teisės* [Crisis, the Rule of Law and Human Rights in Lithuania]. Vilnius University, 2015, p. 290.

⁴³ Zekić, N. *The Normative Framework of Labour Law*, p. 8.

⁴⁴ Blažienė, I., Kasiliauskas, N. and Guobaitė-Kiršlienė, R. Chapter 18, p. 384.

⁴⁵ Petrylaitė, D., *Petrylaitė, V. Socialinės teisės*, p. 289.

build the basis for new quality labour relations”.⁴⁶ As D. Petrylaitė noted more than 15 years ago, “collective labour law faces new challenges because it can no longer be limited to protection of collective rights of employees in a single enterprise or in the field of industrial relations”.⁴⁷ Accordingly, in the absence of powerful trade unions, negotiating traditions and a culture of collective agreements, a much more effective approach is to develop dialogue on a tripartite basis, where the government or its institution may get involved in the negotiations. Such traditions regarding the minimum monthly wage approved upon recommendation of the Tripartite Council have also established in Lithuania, particularly since the new version of the LabCod entered into force on 1 July 2017.⁴⁸

The peculiarities of the conditions of collective agreements in the public sector are governed by provisions of the LabCod. Collective agreements give autonomy to both employers and trade unions in respect of decisions taken by governments. The parties may reach an agreement without prejudice to the legislation and the guarantees set forth therein. However, similar to several other post-Soviet countries, the LabCod and other legislation strictly regulate the terms and conditions of employment in Lithuania. Lithuanian social partners have not realized the full benefits of collective bargaining.⁴⁹ For example, the authors note that 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.⁵⁰ However, as stated in the Labour Code of the Republic of Lithuania, negotiations on a national or sectoral collective agreement must be completed before the Ministry of Finance of the Republic of Lithuania begins to draft the law on the approval of financial indicators of the state budget and municipal budgets for the corresponding year. A conclusion must be obtained from the Ministry of Finance of the Republic of Lithuania regarding a draft sectoral (industry, services, professional) collective agreement drawn up and agreed by the parties.⁵¹ Otherwise, it makes no sense because the additional guarantees (not necessarily only for the salary, but also for additional paid annual leave, educational leave, etc.) are linked to additional funding – budgetary expenditures. For example, under the National Collective Agreement, the Government decided to raise the basic rate of salary by 5 euro in 2023, for a total of 186 euro. However, this increase affected not only the members of the trade unions that participated in the negotiations, but all employees in the public sector because the basic rate of salary is determined by a law passed by the *Seimas* of the Republic of Lithuania, and it is evident that such an increase requires budget funds to be planned in advance. On the other hand, the established basic rate only applies to certain employees in the public sector (such as judges, politicians, researchers, etc.). That is contrary to the minimum monthly wage, which must apply to everyone, regardless of their occupational sector and throughout the entire territory of Lithuania.

⁴⁶ Petrylaitė, D. Kolektyviniai darbo santykiai amžių sandūroje: uždaviniai ir galimybės [Collective Labour Relations in the Centuries Crossing: Tasks and Possibilities]. Teisė, Vol. 65, 2007, p. 110.

⁴⁷ Ibid.

⁴⁸ Lietuvos Respublikos darbo kodeksas [Labour Code of the Republic of Lithuania]. (14.09.2016). Article 141(3). Available: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89> [last viewed 04.05.2024].

⁴⁹ Blažienė, I., Kasiliauskas, N. and Guobaitė-Kiršlienė, R. Chapter 18, p. 399.

⁵⁰ Krasauskas, R., Mačernytė Panomariovienė, I. Social Partnership, p. 16.

⁵¹ Labour Code of the Republic of Lithuania (14.09.2016). Article 194(3). Available: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89> [last viewed 04.05.2024].

When analysing national, sectoral or territorial collective agreements, it should be noted that they were concluded after the new version of the LabCod was adopted (i.e. 01-07-2017). The first National Collective Agreement for the year 2020 was concluded on 10 July 2019⁵². It was renewed in subsequent years, since it had a particularly significant impact on the entire public sector because the basic rate of salary was also negotiated.

Upon examination of the content of the National Collective Agreement (from 2023 to 2025), it is apparent that trade union members also receive additional benefits that are inaccessible to employees and civil servants who do not belong to the trade union. The benefits package comprises a provision for 2 extra days of paid annual leave for self-education, 5 extra days for health promotion, and up to 10 days of educational leave for upskilling by paying an employee either the average salary (hereinafter referred to as “the AS”) or 50% of the AS for up to 20 days. However, the additional guarantees outlined in the National Collective Agreement for trade union members “were not applicable to those who became trade union members after signing this agreement”.⁵³ Thus, while the authorities “protected themselves from further expenses”, they also “passed up an excellent opportunity to strengthen trade unions operating in this sector”.⁵⁴

The application of individual provisions of a national (cross-sectoral), territorial or sectoral (industry, services, professional) collective agreement may be compulsorily extended by order of the Minister of Social Security and Labour of the Republic of Lithuania to cover all employers in a certain territory or sector if both parties to the collective agreement submit such a proposal in writing.⁵⁵ A decision to extend the scope of application of a collective agreement shall be valid insofar as the collective agreement itself is, unless otherwise specified in the order of the Minister of Social Security and Labour of the Republic of Lithuania. If such a collective agreement is supplemented or amended, application of the amendments or supplements shall not be considered to be compulsorily extended without a separate order of the Minister of Social Security and Labour of the Republic of Lithuania.⁵⁶ Unfortunately, there is no order to extend the application of the national collective agreement, and it is also clear from the content of the agreement itself that the application of the additional guarantees is limited to trade union members, i.e. the additional guarantees apply solely to trade union members, who work in private sector companies, rather than all trade union members. It means that, with the exception of the agreed basic rate of salary, the national collective agreement did not benefit employees in the public sector. In this instance, trade unions should be more active at the territorial, sectoral, and

⁵² The National Collective Agreement, 2019. Available: <https://socmin.lrv.lt/uploads/socmin/documents/files/veikla/paslaugos/sutartys/kolektyvines/Nacionaline%20kolektyvine%20sutartis2019%2007%2018.pdf>. [last viewed 04.05.2024].

⁵³ *Krasauskas, R.* Lietuvoje sudaromų kolektyvinių sutarčių turinys: teisiniai aspektai [Content of Collective Agreements Concluded in Lithuania: Legal Aspects]. In: *Darbo teisės iššūkiai besikeičiančiame pasaulyje: For Liber Amicorum et Collegarum professor Genovaitė Dambrauskienė* [Darba tiesību izācinājumi mainīgajā pasaulē: Liber Amicorum et Collegarum profesorei Genovaitei Dambrauskienei], *Mačernytė-Panomariovienė, I.* (ed.). Mykolas Romeris University, 2020, p. 143.

⁵⁴ *Ibid.*

⁵⁵ Lietuvos Respublikos darbo kodeksas [Labour Code of the Republic of Lithuania] (14.09.2016). Article 198(1). Available: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89> [last viewed 04.05.2024].

⁵⁶ Lietuvos Respublikos darbo kodeksas [Labour Code of the Republic of Lithuania] (14.09.2016). Article 198(6). Available: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89> [last viewed 04.05.2024].

institutional levels in order to negotiate better conditions. Moreover, the extension of the Collective Agreement of the National Health System (2018) stipulated that the collective agreement between institutions could permit the application of the provisions outlined in the said collective agreement to all employees within institution and that certain clauses of this agreement should be applicable to all employees of the institutions, who had entered into such an agreement, regardless of their membership status. It is also important to highlight an unusual provision, which stipulates that “in the event that a trade union of an institution agrees to extend the application of the provisions outlined in the collective agreement to all employees, the employer may agree to transfer an administration fee of the collective agreement to the trade union for the performance of its activities”.⁵⁷ The aforementioned regulation imposes a burden on the employer to pay membership fees to the trade union on behalf of those, who have not yet joined a trade union but seek to acquire additional guarantees that have been negotiated by a trade union.

One of the most important features of the lowest-level collective agreements is that they can agree on specific economic and other occupational conditions for the employees, which typically apply only to trade union members, who have entered into a collective agreement and are binding on the employer. Although collective bargaining coverage is generally low, collective bargaining and collective agreements are usually in place in companies with unionized workers.⁵⁸ On the other hand, although the LabCode provides for an exception allowing for the application of collective agreement provisions to trade union members, who have not concluded such an agreement, subject to certain conditions, this does not imply that such application may alter the provisions of the collective agreement negotiated by the parties to the social partnership, or that the negotiated differentiated benefits can be applied to all employees rather than a clearly defined group of entities. The contrary interpretation would deny the principle of freedom of collective bargaining.⁵⁹

The subject matter of negotiations between the employees and their employer can be revealed by analysing the content of these agreements. It can be noted that the content of the agreements has slightly changed compared to the previous regulation of the LabCode – the initial agreements were primarily composed of provisions that were transferred from the legislation; meanwhile, the current agreements are regularly supplemented by new, additional guarantees (benefits) compared to the existing legal regulation. Collective agreements concluded by employers in the private sector, with certain exceptions, contain far more reference conditions than those concluded by employers in the public sector. Collective agreements⁶⁰ often contain provisions aimed at improving working conditions for employees, such as employee promotion, extended periods of leave, leave for the improvement of qualifications, expenses of educational leave; additional rest days, and occupational health and safety (for example, insurance coverage, vaccination paid by employer, reimbursement for expenses related to the treatment of disabled children of employees), shorter working

⁵⁷ Lietuvos Respublikos darbo kodeksas [Labour Code of the Republic of Lithuania] (14.09.2016). Article 167(2).

⁵⁸ *Blažienė, I., Kasiliauskas, N. and Guobaitė-Kiršlienė, R.* Chapter 18, p. 386

⁵⁹ Decision of 16 December 2020 Supreme Court of Lithuania of in civil case joint stock company “Lietuvos Geležinkeliai” v. T. Ž.. Available: <https://www-infoplex-lt.skaitykla.mruni.eu/tp/1953588> [last viewed 04.07.2024].

⁶⁰ Lithuanian Register of Collective Agreements. Available: <https://socmin.lrv.lt/lt/paslaugos/administracines-paslaugos/kolektyviniu-sutarciau-registras-ir-kolektyviniu-sutarciau-registravimo-tvarka?lang=lt> [last viewed 04.07.2024].

hours, teleworking arrangements, etc.⁶¹ Particular attention should be paid to issues of remuneration⁶². It should be noted that the LabCode⁶³ does not provide an obligation for the employer to conduct collective negotiations regarding the wage system in the workplace, when there is no collective agreement in the company, institution or organization, even if a trade union is elected in the organization. Information and consultation procedures must be carried out before the payment system is approved or changed. This provision does not meet the expectations of the new Directive.⁶⁴ Therefore, the provisions of the LabCode in Lithuania will have to be revised to oblige the employer, in the absence of a collective agreement in the enterprise, institution or organisation, to adopt the pay system by collective bargaining with all workers' representatives, unless the employees has delegated this right to a higher level trade union.

Negotiations must be not only beneficial to trade union members but also appealing to employers. Similarly, responsibilities that pertain to trade unions and are agreed upon through negotiation with employers can be found in national or sectoral collective agreements, for example, regarding the education of their members, the establishment of measures to prevent problematic situations in the workplace, such as the right to disconnect, psychological violence at work, coordination of work and family responsibilities, aspects of gender equality, etc.⁶⁵ Collective agreements concluded at the employer level operating within the private sector contain "far more reference conditions meeting the employer's interests".⁶⁶ Employers frequently include provisions in such agreements that are beneficial for them, such as limitations on overtime hours not exceeding 260 hours per year,⁶⁷ which is more than the maximum of 180 hours per year stipulated in the LabCod; shorter probationary period in certain cases;⁶⁸ a contractual clause regarding learning expenses⁶⁹ (for example, expenses

⁶¹ *Krasauskas, R. Lietuvoje sudaromų, pp. 149–153*

⁶² *Ibid.*, p. 155

⁶³ The labour payment system at the workplace or in the employer's company, institution, or organization is determined by a collective agreement. In the absence of a collective agreement establishing this, in workplaces where the average number of employees is twenty or more, the employer must approve the payment systems and make them available for all employees to familiarize themselves with. See: Labour Code of the Republic of Lithuania (14.09.2016). Article 140(3). Available: <https://www.e-tar.lt/portal/lt/legalAct/f6d686707e7011e6b969d7ae07280e89> [last viewed 04.07.2024].

⁶⁴ 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), Article 4(2). Available: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020PC0682> [last viewed 04.07.2024].

⁶⁵ The National Collective Agreement, 2022. Available: <https://socmin.lrv.lt/uploads/socmin/documents/files/veikla/paslaugos/sutartys/kolektyvines/nacional%20ks2022%2010%2013.pdf>; and the National Collective Agreement, 2023. Available: <https://socmin.lrv.lt/uploads/socmin/documents/files/veikla/paslaugos/sutartys/kolektyvines/nacional%20ks%20su%20parasais2023%2010%2020.pdf> [last viewed 04.05.2024]

⁶⁶ *Krasauskas, R. Lietuvoje sudaromų, p. 155*

⁶⁷ Collective Agreement of Working Belonging to the Trade Union of Lithuanian Furniture and Woodworking Companies, 2019, (15-03-2019). Reg. No. PV3-277. Available: <https://socmin.lrv.lt/uploads/socmin/documents/files/veikla/paslaugos/sutartys/kolektyvines/Lietuvos%20mediena%20ks2019%2004%2010.pdf> [last viewed 04.05.2024].

⁶⁸ Collective agreement of Užvenčio Šatrijos Raganos gymnasium of Kelmė district, Reg. No. PV3-670 (2023). Available: <https://socmin.lrv.lt/uploads/socmin/documents/files/veikla/paslaugos/sutartys/kolektyvines/Kelmes%20Uzvencio%20gimanz%20ks2023%2001%2010.pdf> [last viewed 04.05.2024].

⁶⁹ Collective agreements No. PV3-670 (2023), PV3-217 (2019), PV3-749 (2023) and PV3-187 (2019). Available: <https://socmin.lrv.lt/lt/paslaugos/administracines-paslaugos/kolektyviniu-sutarciu-registrasir-kolektyviniu-sutarciu-registravimo-tvarka/?lang=lt> [last viewed 04.05.2024].

incurred during business trips are not considered reimbursable;⁷⁰ expenses that were necessary for the performance of job functions are not included; expenses are calculated only for the previous year and reimbursed in equal instalments but for no longer than six months after agreement on their amount,⁷¹ etc.

The benefits for both employees and employers are apparent. Notwithstanding strong ideological and dogmatic foundations, certain aspects of collective labour rights cause or may cause tension in modern legislation or case law.⁷² One of the examples is Supreme Court of Lithuania in its ruling of 26 August 2021, where the Supreme Court of Lithuania recognized, that the discrimination on the basis of trade union membership is occurred in such a situation in which a more favourable procedure for granting and calculating leave was approved, by the order of the a director, for non-union members than the one established in the Collective Agreement in force for employees, who are were members of trade union.⁷³ However, there were instances in which the identical problem was solved differently. The judicial panel ruled that the courts acted reasonably in not classifying the provisions outlined in subparagraph 4.9.7 of the collective agreement, providing an added value for members of trade unions, who have signed the collective agreement, allowing them to receive an allowance on the occasion of their anniversary, as a violation of the principle of equal treatment, discriminating against the defendant, who was not a member of the trade unions that signed the collective agreement, in terms of salary.⁷⁴

In conclusion, the essence of collective bargaining and representation of the collective interest of employees lies in the fact that a group of entities possesses significantly greater bargaining power than a single individual, thereby increasing the likelihood of resolving issues that affect them with their employer.

There is also a legal basis for engaging in higher-level negotiations in Lithuania. Members can benefit from them but they must use them wisely in their interests and rights. Providing benefits to everyone (not only to trade union members) burdens the entire society because it is critical to understand that “more guarantees mean more duties”. The outcomes of negotiations are visible, albeit limited in number, but over time a culture, practice and tradition of negotiations will develop, thereby strengthening partnership and improving mutual benefit.

Summary

Workers in Lithuania can be represented by trade unions or elected workers' representatives (such as work councils or employee trustees). In Lithuania, trade unions are formed in accordance with the principle of freedom of association, which is well-regulated at international, regional, and national levels. Employees have the right to join or refrain from joining trade unions, withdraw from them, join one or several unions, form an organization by making a voluntary decision,

⁷⁰ Collective agreements No. PV3-670 (2023) and PV3-217(2019)). Available: <https://socmin.lrv.lt/lt/paslaugos/administracines-paslaugos/kolektyviniu-sutarciu-registras-ir-kolektyviniu-sutarciu-registravimo-tvarka/?lang=lt> [last viewed 04.05.2024].

⁷¹ Collective agreement of Užvenčio Šatrijos Raganos gymnasium of Kelmė district, Reg. No. PV3-670 (2023). Available: <https://socmin.lrv.lt/uploads/socmin/documents/files/veikla/paslaugos/sutartys/kolektyvines/Kelmes%20Uzvencio%20gimanz%20ks2023%2001%2010.pdf> [last viewed 04.05.2024].

⁷² *Davulis, T.* Savarankiškai dirbančių, p. 41.

⁷³ Decision of 26 August 2021 of the Supreme Court of Lithuania of in civil case The trade union of employees of the public institution “Ambulance Station” v. Public institution “Ambulance Station”.

⁷⁴ Decision of 16 December 2020 Supreme Court of Lithuania of in civil case joint stock company “Lietuvos Geležinkeliai” v. T. Ž.

receive additional benefits or rights, and choose to be protected by the trade union or not. Associations cannot be restricted by legal regulations imposed by the state or employers. Lithuanian laws strictly prohibit intelligence officers, officers of the Special Investigation Service, and soldiers performing professional military service from establishing, joining, or participating in trade unions, although this is contrary to international conventions.

On the other hand, Lithuanian courts have interpreted the law to mean that civil servants cannot elect other representative bodies, such as work councils, which necessitates clearer legal regulations.

The study revealed that the benefits provided by trade union membership depend on membership status, the type of collective agreement, and the level of negotiation. The nature of the benefits also depends on membership status, with governing bodies having more privileges than ordinary members. Additionally, the timing of joining a trade union affects the benefits; under the national contract for the public sector, employees who join after a collective agreement is made do not receive its benefits. Certain Lithuanian laws also restrict collective rights for some members, such as internal service officers, prosecutors, and civil servants in managerial positions, who do not have the right to strike.

A lack of clear legal frameworks restricts self-employed workers from forming associations in Lithuania.

The main benefit of trade union membership is representation, which ranges from representation to the employer and third parties, advocacy in labour dispute commissions or courts, to negotiating and supervising collective agreements. The essence of collective bargaining and representation lies in the greater bargaining power of a group compared to an individual, thereby increasing the likelihood of resolving issues with the employer. Therefore, there remains a problem for employees regarding collective bargaining who work in small companies, and there are mostly such companies in the Lithuanian market.

The content of collective agreements in Lithuania shows some advancement in benefits acquired through mutual negotiations between employees and employers, though it remains insufficient to make membership broadly appealing.

While the State's efforts to promote trade union activity through legal regulation are commendable, they should not exclude other opportunities for workers to represent and defend their rights within the broader concept of freedom of association. In particular, in order to implement the new directive on an adequate minimum wage, it is necessary to promote collective bargaining up to 70%. Therefore, the provisions of the Lithuanian Labour Code will have to be revised in order to oblige the employer to approve the remuneration system by collective bargaining with all employee representatives, unless the employees have ceded this right to a higher-level trade union.

The analysis of Lithuanian cases shows that workers are often discriminated against based on trade union membership, with employers avoiding giving union members more annual leave, including them in higher-paid activities, and refusing to extend collective bargaining guarantees to all workers, even though the law allows this.

Applying collective agreements at national or sectoral levels in the public sector to non-unionized workers is legally possible, but restrictions on applying such agreements to workers who unionize after the agreement is concluded are questionable. This, in the authors' view, violates workers' rights to the benefits provided by membership.

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