

PECULIARITIES OF THE SETTLEMENT OF COLLECTIVE LABOUR DISPUTES IN LITHUANIA

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Received on 28 September, 2012; accepted on 26 November, 2012

Abstract. *Collective labour disputes are inevitably related to the institutes of a dispute, since the employees and employers often fail to reach a consensus on a particular issue. Moreover, the employers do not always follow the agreed terms and conditions of the collective agreement. In order to disclose the problems of the settlement of collective labour disputes in Lithuania, it is necessary to analyse the conception and classification of the institutes of dispute, distinguishing the conception of collective labour disputes, the procedure of settlement of such disputes, and possible methods of settlement with the emphasis on the institutes of a strike. This article also seeks to reveal the peculiarities of the cases that settle individual labour disputes, the subject of which at least partially includes the provisions of the collective agreement, and collective labour disputes regarding the legality of strike.*

Keywords: *collective labour disputes, collective bargaining, collective agreements, strike, conciliation procedure, the methods of the settlement of collective labour disputes.*

Introduction

Subject of the research: peculiarities of the settlement of collective labour disputes (disputes regarding collective bargaining and the collective agreement, including the institutes of a strike).

Aim of the research: to disclose the problem aspects of settlement of collective labour disputes in Lithuania.

In order to achieve the above aim, the following tasks were established:

1. To reveal the conception of collective labour disputes and to distinguish their types according to the Labour Code of the Republic of Lithuania;
2. To reveal the problems of exercising the right to strike;
3. To carry out the analysis of labour disputes, arising from the collective agreement and collective bargaining, and labour disputes regarding the legality of strike, based on case law.

Methods. Logical analytical method is used in the research for the analysis of case law and identification of the errors of application of the law. This method along with the comparative method helps making comparisons, generalisations, and drawing the conclusions of the research. The structure of the Labour Code is analysed using the logical systemic method. The theological method is used to analyse the purpose of the legislator in establishing certain legislative provisions.

References. The main references are the Labour Code of the Republic of Lithuania as the main act of positive law regulating labour relations in Lithuania and the case law. Relevant monographs and textbooks by the following authors were used when writing the article: D. Petrylaitė, R. Krasauskas. The references include international legislation regulating legal labour relations: the European Social Charter and the Annex to the Revised European Social Charter. This legislation was used for comparative analysis of national and international legislation.

1. Conception of Collective Labour Disputes

Until the middle of the 20th century, the procedure of collective labour disputes has not been regulated in any state. In many states, these issues were regulated by collective agreements for a long time.¹ The right to collective labour disputes and their settlement is indirectly established by ILO conventions: No. 98 “Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively”², No. 135 “Convention concerning Protection and Facilities to be Afforded to Workers’

1 Petrylaitė, D. *Kolektyviniai darbo ginčai: monografija* [Collective Labour Disputes. Monograph]. Vilnius: Teisinės informacijos centras, 2005, p. 64.

2 ILO convention No. 98 “Convention Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively”. *Official Gazette*. 1996, No. 28-674.

Representatives in the Undertaking”³, No. 151 “Convention concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service”⁴.

The first legal document adopted by the International Labour Organisation and intended for direct regulation of labour disputes is ILO recommendation No. 92 “Recommendation concerning Voluntary Conciliation and Arbitration”⁵, which establishes the main principles of settlement of collective labour disputes. For instance, paragraph 1 of the Recommendation provides that voluntary conciliation machinery, appropriate to national conditions, should be made available to assist in the prevention and settlement of industrial disputes between employers and employees, etc.

The right to collective labour disputes is also guaranteed by the European Social Charter (revised) adopted in 1996 by the European Council⁶. Paragraph 3 of Article 6 of the Revised European Social Charter established a provision that Member states undertake to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes, and Paragraph 4 of the same Article states that Member States recognize the right of employees and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

It is noteworthy that the definition of the conception of collective labour dispute is not presented in international legislation.

Legal doctrine does not have and has not had any opinions on the issue of the conception of labour disputes either. The arising of labour disputes is generally determined by the violations of labour law, i.e. the cases, where one party of labour relations is not implementing its obligations to the other party of employment contract properly or is not implementing its obligations at all. The researchers give different definitions of the conception of labour disputes, e.g. labour disputes are the disagreements of the parties of labour relations regarding the non-implementation or improper implementation of obligations established by the labour law regulations and collective agreements as well as disagreements regarding the imposing of new working conditions, which are settled with the assistance of authorised bodies.⁷ D. Petrylaitė⁸ distinguishes the following elements describing the conception of collective labour dispute applicable in Lithuania: parties of the dispute, subject of the dispute, and the moment of beginning of the dispute.

3 ILO convention No. 135 “Convention Concerning Protection And Facilities To Be Afforded To Workers’ Representatives In The Undertaking”. *Official Gazette*. 1996, No. 30-737.

4 *Mezhdunarodnaja organizacija truda. Konvenciji i rekomendaciji 1919-1956*. Tom I [International Labour Organisations: Conventions and Recommendations 1919–1956. Vol. I]. Zheneva: Mezhdunarodnoe bjuro truda, 1991, p. 1883–1887.

5 *Konvenciji i rekomendaciji 1919-1956*, *supra* note 4, p. 1045–1047.

6 European Social Charter (Revised). *Official Gazette*. 2001, No. 49-1704.

7 Petrylaitė, D. Vientiso darbo ginčų instituto perspektyvos Lietuvos darbo teisėje [The Perspectives of Developing a Unified Institute of Labour Law Disputes in Lithuanian Labour Law]. *Jurisprudencija*. 2008, 8(110): 50–56.

8 Petrylaitė, D., *supra* note 1, p. 73.

Three main groups of labour dispute classification are distinguished in the theory of labour law: by the parties of labour disputes (subjective criterion), the type (contents) of labour dispute (objective criterion), and the type of legal violation.

The theory of labour law of many states recognizes the system of classification of labour disputes based on the criterion of the subject of labour dispute. Based on the type of labour dispute, i.e. the objective criterion, labour disputes are classified into the disputes of interests and law. The disputes of interests arise due to the differences of the parties of labour relations when establishing new or changing existing working conditions. Meanwhile the disputes of law arise due to the differences in application of law, violations of labour law, and failure to fulfil the obligations. The general opinion is that individual labour disputes are the disputes of law, since most often they arise due to different interpretation of the rule of law, whereas collective disputes may be both of law and of interests, as the interests of the parties of labour relations may clash even without a respective rule of law, i.e. when establishing new and changing existing working conditions. This position gave rise to the complex classification of labour disputes recognize by almost all countries and the theory of law: collective labour disputes of law and individual labour disputes of law. In all states, the criteria of labour disputes classification is assessed as a complex and therefore, labour laws are classified taking into account both criteria.⁹

When speaking of international standards of labour disputes regulation, it is noteworthy that ILO has not established specific procedures for the settlement of labour disputes. It has only established the general principles and guidelines for Member States. On the other hand, these guidelines and principles are essential when adopting national legislation and establishing the regulations of labour disputes prevention or settlement as well as implementing them in practice. Thus, the purposes of ILO in establishing the general principles of labour disputes prevention and settlement are as follows: first, to encourage the participation of employees in administering justice, second, to defend the basic rights of employees, in particular the right of associations; third, to enable the parties of labour relations, i.e. the employees and the employer, to settle bilateral labour dispute, in other words, to restrict the participation of the third party – the state – in the process of the settlement of labour relations; four, to promote constructive labour relations. This fundamental provision is based on two essential assumptions: first, labour laws of interests must be exclusively settled by mutual bargaining between the parties of labour dispute, providing a possibility of collective sanctions (strikes) or bringing in a third party as a mediator in the event of failure to bargain; second, labour disputes of law must be settled exclusively in courts or arbitration and the right to collective sanctions may not be granted under any circumstances, as the essence of these disputes is the violation of law established by legislation or agreements, which can only be ascertained by authorised public bodies.¹⁰

9 Petrylaitė, D., *supra* note 7.

10 Nekrošius, I., *et al. Darbo teisė* [Labour Law]. Vilnius: Teisinės informacijos centras, 2008, p. 2.

The system of labour disputes established by the Labour Code of the Republic of Lithuania is essentially based on the subjective element of classification of labour disputes and therefore, two unrelated systems of labour disputes (individual and collective) were created. The Labour Code distinguishes individual and collective labour disputes. Completely different procedural rules are established for the settlement of individual and collective labour disputes. For collective labour disputes, a special system of settlement is established by the Labour Code of the Republic of Lithuania, based on the principles of social partnership. Regardless of their subject, collective labour disputes (both collective labour disputes of law and collective labour disputes of interests) are settled using the methods of third parties and conciliation, and the employees may exercise the right to strike as ultima ratio. It is noteworthy that even collective labour disputes arising due to failure to comply with the law do not fall under the jurisdiction of court.¹¹

The reasons of collective labour disputes are disagreements about establishing working, social and economic conditions or their change during bargaining, conclusion and implementation of the collective agreement. The disputes of interests (when a collective agreement has not been concluded yet and negotiations are conducted for its conclusion) and of law (when a collective agreement is concluded, but it is not observed or implemented) are possible. The definition of the collective labour dispute is presented in Article 68 of the Labour Code: “A collective labour dispute means a disagreement between the employees or their representatives and the employer or its representatives about the conclusion of the collective agreement, non-implementation or improper implementation of collective agreements, which violates the collective interests and rights of the employees”.

Now the essential criteria of the collective dispute are the collective interests and rights of the employees.

The Labour Code of the Republic of Lithuania does not directly consider collective bargaining to be a means of settlement of labour disputes, but the definition of the essence of collective bargaining in Article 48 of this code indicates that the parties of collective labour relations and their representatives must agree on their interests and settle the disputes by bargaining. Therefore, it can be stated that collective bargaining may be applied not only for agreeing on the interests of the parties of collective labour relations, but also in the settlement of arising disputes.¹² This is also the position of some representatives of the collective labour law doctrine in Lithuania, who state that collective bargaining is the activity or process, taking place when preparing the collective agreement and analysing the disputes between social partners – representatives of employees and employers and their organisations.¹³

11 Petrylaitė, D., *supra* note 7.

12 Petrylaitė, D. Kolektyvinių derybų vaidmuo ir reikšmė sprendžiant kolektyvinius darbo ginčus: Lenkijos praktika ir perspektyvos Lietuvoje [The Role and Importance of Collective Bargaining in Solving Collective Labour Disputes: Polish Practice and Future Prospects in Lithuania]. *Jurisprudencija*. 2005, 74(66): 23–29.

13 Dambrauskienė, G. Kolektyvinių derybų principai tarptautinėje ir Lietuvos darbo teisėje [Principles of Collective Bargaining in the International and Lithuanian Labour Law]. *Jurisprudencija*. 2003, 40(32): 10.

Speaking of collective bargaining and its impact on both the peace of labour relations and the settlement of conflicts, first it is important to establish the main principles of the methods of collective dispute settlement, which determine their significance and effectiveness in each particular case. The following main principles providing the basis for collective bargaining are distinguished: first, the obligation of the parties representing the employees to refrain from raising the demands that exceed economic and financial possibilities of the employers; second, readiness to the employers to take into account economically and/or financially justified demands or providing related information; third, respect for the public interests of third parties, including the interests of employees that are not covered by the particular collective labour dispute.¹⁴

The role of collective bargaining may be revealed through the function of the bargaining, which is not unambiguous. Collective bargaining is essentially perceived as: first, the process of communication of different interest groups, leading to a common solution; second, one of the methods to achieve social peace in the event of various labour relations conflicts. If a collective labour dispute arises, collective bargaining has a single and specific purpose, i.e. it is traditionally believed that in such case, collective bargaining is a factor determining social peace. Actually, speaking of collective bargaining as a means of settlement of collective labour disputes, one must admit that the legal nature of collective bargaining itself, where essentially all freedom of action and decision-making is granted to the parties of collective labour relations, implies that it should be the most civilised and efficient means of settlement of collective labour disputes and restoring peace and quiet. As mentioned above, the specifics of the settlement of collective labour relations by direct bargaining is that the parties of the dispute themselves and without external help attempt to settle the dispute and achieve a respective agreement. Usually even in the states where collective bargaining is the mandatory primary stage of the settlement of collective labour disputes, the process of bargaining and other related issues are not regulated by legislation at all or the regulation is very laconic and leaving a lot of leeway for the parties of the collective labour dispute. In settlement of collective labour disputes by collective bargaining, the procedure is often covered by collective agreements. The settlement of collective labour disputes by direct bargaining is considered to be a flexible means of peaceful settlement of disputes that most often yields good results. Therefore, as mentioned above, in some states this stage of settlement is mandatory and must be applied before other methods of settlement of collective labour disputes. On the other hand, it is noteworthy that collective bargaining in their direct sense is applied in few states as a method of settlement of collective labour disputes. However, obviously, in all states without exception each disagreement, though not defined as a collective labour dispute, passes the stage of collective settlement, where both parties of the disagreement have comprehensive possibilities to reach a compromise. It may be the reason why many foreign states cannot name such an autonomous method of settlement of collective labour disputes as collective bargaining. On the other hand, it must be stated

14 Cudowski, B. Model rozwiązywania sporów zbiorowych. *Zbiorowe prawo pracy w społecznej gospodarce rynkowej*. Pod redakcją goździewicza G. Torun. Wydawnictwo "Dom organizatora", 2000, p. 245–246.

that all other positive means and methods of settlement of collective labour disputes are essentially based on the principles of collective bargaining and is but a modification of these institutes. Therefore, one cannot state that collective bargaining as a principle and as a process is not applied in the settlement of collective labour disputes.¹⁵ Bargaining is the method of defending the rights of the parties seeking to find a solution acceptable to both parties by mutual compromise. On the other hand, prior to starting the bargaining, the parties must understand that a common solution may be not found, regardless of fair attempts to agree, i.e. the fact that the parties have failed to find a solution acceptable to both parties by bargaining does not imply that the bargaining was unfair. Section 2 of Article 40 of the Labour Code states that social partnership shall be based on the principles of free collective bargaining, voluntary and independent assumption of obligations binding the parties, and equality of parties, goodwill and respect for lawful mutual interests, among other principles. The principle of fair collective bargaining is also established by Article 48 of the Labour Code that regulates collective bargaining. The principle of fair collective bargaining means the attempts to reach and agreement, honest and constructive behaviour during bargaining, avoiding unjustified delay of bargaining, and mutual respect to assumed obligations in fair regard to the results of the bargaining. Section 3 of Article 48 of the Labour Code provides for the principle of good faith established in accordance with the provisions of ILO convention No. 154 “Convention concerning the Promotion of Collective Bargaining”. ILO Committee on Freedom of Association emphasizing the importance of the obligation to bargain in good faith has established the following principles: 1) it is important that in bargaining the employees and trade unions put in all effort to reach and agreement; moreover, actual and constructive bargaining is a necessary component to establish and maintain the relation of mutual trust; 2) any unjustified delays must be avoided in bargaining; 3) the agreements must be binding to the parties. Having not found a violation of collective agreement and following Section 3 of Article 78 of the Labour Code, which prohibits to declare a strike during the term of validity of the collective agreement, the judicial panel approved of the court conclusion of the appellate instance that the strike declared by the appellants has breached the restrictions established by the law and therefore, was illegitimate. It is noteworthy that the appellants unreasonably stated that the strike is the only legal leverage of trade unions in the cases, where the bargaining has not given results. The Labour Code also provides for other means of defending the collective rights of employees: hearing of collective labour disputes by labour arbitration, third party court or via a mediator on the request of one of the parties of the collective labour dispute (Article 71 of the Labour Code).¹⁶

15 Petrylaitė, D., *supra* note 12.

16 Ruling of the Department of Civil Cases of the Supreme Court of Lithuania of 6 March 2012 in the Civil Case No. 3k-3-81/2012.

2. Conciliation Procedure in Hearing of Collective Disputes

The methods of the settlement of collective labour disputes receive a lot of attention in the doctrine and practice of collective labour law of all states. These issues take an important place in international legislation regulating labour and related relations. The aim of these rules of law is not to impose the imperative will of the state to the parties of collective labour dispute. On the contrary, the aim of legal regulation of the settlement of collective labour disputes is not only to prevent open and uncontrollable conflicts, but also to provide the parties with a possibility to settle the disputes without confrontation. One must admit that collective labour disputes are a complicated social phenomenon, which is difficult to regulate by the law. Taking this into account, many states seek to establish a practice of regulation of the settlement of collective labour disputes, where more importance is placed on the autonomy and mutual compromise of the parties of the collective labour dispute, and the influence of the regulations adopted by the state is reduced and interpreted as a certain recommendation system, except for the issues related to the fields vital to the state and the society. This is why the doctrine and practice of collective labour law of foreign states give priority to so-called positive methods of settlement of collective labour disputes. These are the methods that allow achieving social peace without the use of force and pressure. Different systems of collective labour law have different means of application of the methods in practice: bargain (Lt. derybos; Pl. rokowanie), conciliation (Lt. taikinimas, Pl. koncyliacja), mediation (Lt. tarpininkavimas, Pl. mediacja, pojednawsto), arbitration (Lt. arbitražas, Pl. arbitrai, rozjemstwo), etc. Moreover, in many states, the parties of collective labour relations are allowed to agree themselves on the application of other positive methods in the event of collective labour dispute. These methods allow the parties of the collective labour dispute achieving a result of peaceful settlement of a conflict.¹⁷

Article 71 of the Labour Code provides that “Collective labour disputes shall be heard by conciliation commission, labour arbitration or third party court, or with the assistance of a mediator on the request of one of the parties of the collective labour dispute.”

It is noteworthy that hearing the dispute by a conciliation commission is a mandatory stage of hearing a collective labour dispute, if one of the parties of the collective labour dispute has not requested that the collective labour dispute was heard with the assistance of a mediator (Section 1 of Article 73 of the Labour Code).

It should be noted that court is not included among the bodies hearing collective disputes; however, the Law on Trade Unions provides that a trade union may apply to court for annulment of the employer’s decisions (see below).¹⁸ In such case, a possibility to settle a collective dispute of law (not of interests) in court is established in Lithuania.

Article 18 of the Law on Trade Unions provides that “Trade unions shall have the right to demand that the employer annul his decisions which violate labour, economic,

17 Petrylaitė, D., *supra* note 12.

18 The Law on Trade Unions of the Republic of Lithuania. *Official Gazette*. 1991, No. 34-933.

and social rights of their members provided by the laws of the Republic of Lithuania. The employer must consider said demands within 10 days in the presence of the representatives of the trade union which submitted the demands. In the event that the employer fails to timely consider the demand of the trade union to annul the decision or refuses to satisfy the demand, the trade union shall have the right to appeal to court.”

The Supreme Court of Lithuania that Article 68 of the Labour Code (version of the Law No. X-1534 of 13 May 2008) states that a collective labour dispute means a disagreement between the employees or their representatives and the employer or its representatives about the conclusion of the collective agreement, non-implementation or improper implementation of collective agreements, which violates the collective interests and rights of the employees. According to Article 22 of the Law on Trade Unions, trade unions shall take part in the settlement of individual or collective labour disputes according to the procedure established by law. Disputes arising between trade unions and the employer concerning failure to perform duties and obligations provided by law or agreements shall be considered by court. Trade unions shall have the right to demand that the employer annul his decisions which violate labour, economic, and social rights of their members provided by the laws of the Republic of Lithuania (Section 1 of Article 18 of the Law on Trade Unions).

It was mentioned that according to the disposition of Article 68 of the Labour Code, a collective dispute may also arise due to non-implementation or improper implementation of labour law regulations, which violates the collective interests and rights of the employees. Thus, when the employer decided not to implement the applicable ruling of the Conciliation Commission of 10 June 2008, the trade union was entitled to and obliged to defend the interests of the employees in the procedure set by the law (Articles 18 and 22 of the Law on Trade Unions, Constitutional Court ruling of 14 January 1999). It is noteworthy that according to Article 76 of the Labour Code, that failure to implement or improper implementation of the ruling of Conciliation Commission is one of the grounds for declaring a strike. Therefore, the judicial panel stated that even though the appellate instance court made an ungrounded decision that there were individual labour disputes between the employer and the employee and not a collective dispute between the employer and the trade union, it indicated that the defendant had exercised its rights to declare a strike failing to observe the procedure and grounds established by the law.¹⁹

3. Strike

Section 1 of Article 51 of the Constitution of the Republic of Lithuania states that while defending their economic and social interests, employees shall have the right to strike. This right is the fundamental right of the employees and their organisations, providing them with the possibility to defend their economic and social interests. The main international documents declaring the right to strike are the International Covenant

19 Ruling of the Department of Civil Cases of the Supreme Court of Lithuania of 31 January 2011 in the Civil Case No. 3k-3-15/2011.

on Economic, Social and Cultural Rights (Paragraph d of Article 8) and European Social Charter (including the Revised European Social Charter) (Paragraph 4 of Article 6). These documents directly establish the right of the employees to strike. The European Social Charter adheres to the principle that collective actions are only possible in case of the conflict of interests, but even in that case, the right to strike is not absolute, since the states may impose the restrictions of exercising this right. In the European Union, the right to strike is established by the European Union Charter of Fundamental Rights (Article 28), which became binding to the Member States after the Lisbon Treaty came into effect. This Charter only establishes the right of the employee, but it does not elaborate on it, just like other international agreements. Taking into account the division of competence between the European Union and Member States, legal regulation of strikes is autonomously defined in the national legal systems of the Member States, but their legal regulation may not deny or improperly modify the right.

One of specific attributes of collective labour disputes in contemporary labour law is the possibility to settle those using collective sanctions, i.e. using conflict (negative) methods of settlement of collective labour disputes. One of the characteristics of negative methods is that their foothold is economic, organisational or even psychological pressure when seeking advantageous purposes as a result of the collective labour dispute. A strike is one of the conflict (negative) methods of settlement of collective labour disputes based on the refusal of the employees to work.²⁰

The right to strike is not absolute, since a strike is not only the means to exert pressure on the employer and defend social and economic interests, but it also constitutes certain damage to the employer or even third persons. Therefore, a strike is considered to be *ultima ratio*. Article 51 of the Constitution of the Republic of Lithuania states that the limitations of the right to strike and the conditions and procedure for its implementation shall be established by law. This law is the Labour Code; its Articles 76-85 of Chapter X “Regulation of Collective Labour Disputes” directly regulate the strike, its legal grounds and declaration, limitations applicable to strikes, managing a strike and its process, legitimacy of a strike, and other legal relations related to the right to strike.

Article 76 of the Labour Code states that “Strike means a temporary cessation of work by the employees or a professional field of employees or a group of employees of one or several enterprises if a collective dispute is not settled or a decision adopted by the Conciliation Commission, Labour Arbitration or third party court, which is acceptable to the employees, is not being executed or is being executed improperly, or when the agreement reached through mediation is not being executed.”

Thus, the strike as a method of the settlement of collective labour disputes may only be used for the grounds established by the law, after other possibilities of settlement of dispute established by the law are used. The strike itself or its threat may be the only actual legal sanction of the employees for the employer, which would encourage compromise; on the other hand, a strike may have negative effects on both the employer and employees as well as other public groups.

20 Petrylaitė, D., *supra* note 1, p. 176–177.

The Supreme Court of Lithuania has explained that the limitations of the right to strike recognized by international documents are established by national legal systems, provided such limitations are justified and do not deny the essence of the right to strike. ILO Committee on Freedom of Association maintains that the conditions, which have to be established by the law so that a strike would be recognized as legitimate, must be reasonable and not restrict the means of action available to trade unions. It may be stated that the right to strike, just like any other personal right, has certain limitations and may not be exercised arbitrarily, i.e. the implementation conditions set by the law must be observed. When solving the issue of the legitimacy of a strike, the regulations regulating collective labour relations that establishing the conditions of legitimacy of a strike and its limitations should be applied first.²¹

When declaring a strike, only the demands that were not satisfied during the conciliation procedure or mediation may be raised.

Article 77 of the Labour Code provides that the right to adopt a decision to declare a strike in an enterprise or its structural subdivision shall be vested in the trade union according to the procedure laid down in its regulations. If there is no trade union in operation in an enterprise and if the meeting of personnel has not transferred the function of representation and defence of employees to an organisation of trade unions of respective economic activity, the decision to declare a strike in an enterprise or its structural subdivision may be made by the labour council. A strike shall be declared if a corresponding decision is approved by secret ballot by: 1) more than half of the enterprise employees voting in favour of a strike in the enterprise; 2) more than half of the employees of a structural subdivision of the enterprise voting in favour of a strike in the structural subdivision of the enterprise.

The Supreme Court of Lithuania has stated that a trade union is entitled to make the decision to declare a strike (including a warning strike) in the procedure of decision-making established in its regulations. The fact that the regulations of a trade union do not specifically discuss the procedure of declaring a strike cannot prevent the trade union from exercising the right to make a decision to declare a strike.

Making the decision to declare a strike at a professional field level is the right of the organisations of trade unions in the procedure set by the regulations after discussing the issue with the trilateral council of the Republic of Lithuania.

The strike is managed by a strike committee established by the party that has presented the demands to the employer. The strike committee and the employer must ensure the safety of property and people. The body managing the strike coordinates the process of the strike, i.e. establishes the rules for behaviour of employees during the strike, may organise the meetings of employees, is entitled to receive the information related to the strike from the employer, to apply for consulting to specialists, etc.

According to their duration, the strikes in Lithuania are divided into warning strikes and actual strikes (Article 77 of the Labour Code). Warning strikes may not last longer

21 Ruling of the Department of Civil Cases of The Supreme Court of Lithuania of 6 March 2012 in the Civil Case No. 3k-3-81/2012.

than two hours. The duration of actual strikes is not restricted. The employer must be notified about the start of the strike no later than seven days beforehand by sending a decision made in the procedure set by the Labour Code. A warning strike may be declared without a special approval of the employees, but the employer must also be notified in writing no later than seven days beforehand.

After making a decision to declare a strike (including a warning strike) in railway, public transport, civil aviation, medical, water supply, power supply, heat and gas supply, sewerage and waste collection enterprises, the employer must be notified about it in writing no later than fourteen days beforehand. During strikes in such enterprises and organisations, minimum conditions (services) must be ensured for satisfying urgent (vital) public needs. The conditions and services must be established by the agreement of the parties of the collective labour dispute no later than within three days after the notification about the strike and respectively the Government or municipal executive authority must be notified about it in writing. The fulfilment of these conditions shall be ensured by the strike committee, the employer, and appointed employees. If the parties of the collective labour dispute fail to agree, the decision regarding minimum conditions is made by the Government or municipal executive authority after consulting with the parties of the collective labour dispute. If the conditions are not fulfilled, the Government or municipal executive authority may bring in other services to ensure the fulfilment of the conditions.

The prolonged term for notification about the strike and the restriction of the employees' right to strike is related to potential severe and dangerous consequences to the public or human life or health, which may occur, if the activities of one of the above enterprises are suspended.

The Supreme Court of Lithuania²², when making a statement about the terms of notification of strike, stated that notification terms allow the employer to defend its interests and rights in court by preventive action for recognizing the strike as illegitimate, and to notify the public about potential harmful consequences of the strike, to take measures to reduce the damage, to notify business partners and other persons about the strike as force majeure, etc.

It is noteworthy that when applying the above notification term to other enterprises not indicated in the Labour Code, one should take into account the finite list of enterprises presented by the ILO Committee on Freedom of Association²³: 1) radio and television; 2) the petroleum sector; 3) ports (loading and unloading); 4) banking; 5) computer services for the collection of excise duties and taxes; 6) department stores and pleasure parks; 7) the metal sector and the mining sector; 8) transport generally; 9) refrigeration

22 Ruling of the Judicial Panel of the Department of Civil Cases of the Supreme Court of Lithuania of 6 March 2001 in the Civil Case *SP Vilniaus autobusų parkas, UAB v. SP Workers' union of Vilniaus autobusų parkas, UAB* No. 3k-3-32/2001.

23 Committee on Freedom of Association is an ILO Institution Operating since 1952 under the ILO Governing Body. Committee on Freedom of Association Deals with the Statements and Complaints of Member States of ILO Regarding the Violations of Association Rights and Prepares the Conclusions and Recommendations.

enterprises; 10) hotel services; 11) construction; 12) automobile manufacturing; 13) aircraft repairs; 14) agricultural activities and the supply and distribution of foodstuffs; 15) the Mint; 16) the government printing service; 17) the state alcohol, salt and tobacco monopolies; 18) the education sector; 19) postal services; 20) metropolitan transport²⁴.

Thus, as stated by the Supreme Court of Lithuania, the conditions of exercising the right to strike established by Article 77 of the Labour Code are as follows: 1) the trade union must make a decision to declare a strike; 2) the established majority of employees must approve of the decision to declare a strike; 3) the will of the employees regarding the declaration of a strike must be expressed by secret ballot. By setting these mandatory conditions of exercising the right to strike, the law does not regulate directly, whether a trade union is entitled to make the decision after the approval of the majority of employees to declare a strike by secret ballot, or a trade union is entitled to make a decision to declare a strike before the will of employees is expressed by secret ballot and the strike is declared later on, if the established majority of employees approve of the decision of the trade union by secret ballot. With such legal regulation established by Section 1 of Article 77 of the Labour Code, it may be concluded that a trade union is entitled to make a decision to declare a strike before the will of the employees regarding the declaration of strike is expressed by secret ballot, but the decision of the trade union may only be implemented and a strike may be declared only if the established majority of employees vote for declaring a strike by secret ballot.

After a strike is declared, the employer or the party that has received the demands may apply to court for recognizing the strike as illegitimate. The court must consider the case in ten days. The court recognizes the strike as illegitimate, if its purposes contravene with the Constitution of the Republic of Lithuania and other laws or if it is declared without observing the procedure and requirements set forth in this Code. After the judgement regarding the recognition of a strike as illegitimate comes into effect, the strike may not be started, and if the strike is already being held, it must be immediately cancelled. Such legal regulation provides the grounds for a conclusion that a strike that has not started (been held) yet may also be recognized as illegitimate.²⁵ If there is an immediate threat that minimum conditions (services) necessary for urgent (vital) public needs may not be ensured and it may cause hazard to human life, health, and safety, the court is entitled to postpone the strike that has not started yet for 30 days, and if the strike has already started, to suspend it for the same period of time.

It is noteworthy that the employees working in ambulance services are prohibited from declaring a strike. The demands of these employees are settled by the Government after consulting with the parties of the collective labour dispute. Strikes are also prohibited in the areas of natural disasters and in the regions, where mobilisation or

24 *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the International Labour Organisation*. Geneva: International Labour Office, 1996, p. 112–113.

25 Ruling of the Department of Civil Cases of the Supreme Court of Lithuania of 3 March 2008 in the Civil Case No. 3k-3-141/2008.

state of war or emergency is declared according to set procedure, until the consequences of the natural disaster are eliminated, demobilisation is declared or the state of war or emergency is revoked.

It is prohibited to declare a strike during collective agreement validity period, if the agreement is being fulfilled. This regulation is imperative. It means that if it is established in a case that a strike was declared during collective agreement validity period, the issue of legitimacy of the strike must be considered taking into account whether the collective agreement was being fulfilled.²⁶

A strike ends, if:

- 1) the employer or their organisation makes a decision to meet the demands;
- 2) the parties agree to cancel the strike;
- 3) the party which organised the strike recognises that it is inexpedient to continue the strike.

After the end of a strike, work must be resumed no later than on the next business day (shift).

It should be noted that the only cases related to collective labour disputes considered in courts in Lithuania are the cases regarding the legitimacy of a strike. However, the cases regarding the strikes also analyse the provisions of collective agreements, the courts make statements regarding the procedure and principles of collective bargaining, which should be observed by the parties of collective bargaining. When considering the above cases, the courts encounter the proper application of regulations of the Labour Code regulating the procedures of postponement/cancellation of a strike and the institutes of a strike itself

Conclusions

1. Depending on the type of the dispute, the machinery of the settlement of labour disputes is different, which in turn determines certain peculiarities of the settlement of such disputes. To settle collective labour disputes, conciliation methods are first applied. If the parties fail to reach a consensus, various collective sanctions may be applied, including a strike as ultima ratio. In Lithuania, the employees are entitled to strike for violation of both the rights and the interests.

2. Collective bargaining is a method of defending the interests of the parties by attempting to find a solution acceptable to both parties by mutual compromise. On the other hand, prior to starting the bargaining, the parties must understand that a common solution may be not found, regardless of fair attempts to agree, i.e. the fact that the parties have failed to find a solution acceptable to both parties by bargaining does not imply that the bargaining was unfair. When a result of bargaining is not achieved, a strike is not the only legal leverage of trade unions. The Labour Code also provides for

26 Ruling of the Department of Civil Cases of the Supreme Court of Lithuania of 6 March 2012 in the Civil Case No. 3k-3-81/2012.

other means of defending the collective rights of employees: hearing of collective labour disputes by labour arbitration, third party court or via a mediator on the request of one of the parties of the collective labour dispute (Article 71 of the Labour Code).

3. The laws of the Republic of Lithuania establish that a collective labour dispute of law may be considered in court (as an action brought by trade unions) and a collective labour dispute of interests – in the special procedure of the settlement of collective labour disputes, including a strike. Such regulation causes practical problems when distinguishing whether the dispute of the parties is that of law or that of interest, as in different cases, different methods of settlement of disputes are employed.

4. In some cases the competence of the courts in the settlement of collective disputes (regarding the legitimacy of a strike) may be reasonably doubted, since the regulations regulating the process of collective bargaining and the obligations of the parties during bargaining, the institutes of postponing a strike are applied improperly, the provisions of the collective agreement between the parties relevant to the case are not taken into account well enough.

5. One of the reasons of the preconditions for the problems of the settlement of collective labour disputes in Lithuania is inconsistent and complicated statutory regulation of the consideration of the disputes arising from collective labour relations. The Labour Code of the Republic of Lithuania needs corrections that would eliminate complicated provisions and would provide the preconditions for the courts to apply the regulations in practice more professionally.

References

- Cudowski, B. Model rozwiązywania sporów zbiorowych. *Zbiorowe prawo pracy w społecznej gospodarce rynkowej*. Pod redakcją gozdzievicza G. Torun. Wydawictwo “Dom organizatora”, 2000.
- Dambrauskienė, G. Kolektyvinių derybų principai tarptautinėje ir Lietuvos darbo teisėje [Principles of Collective Bargaining in the International and Lithuanian Labour Law]. *Jurisprudencija*. 2003, 40(32).
- European Social Charter (Revised). *Official Gazette*. 2001, No. 49-1704.
- Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the International Labour Organisation*. Geneva: International Labour Office, 1996.
- ILO convention No. 135 “Convention Concerning Protection And Facilities To Be Afforded To Workers’ Representatives In The Undertaking”. *Official Gazette*. 1996, No. 30-737.
- ILO convention No. 98 “Convention Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively”. *Official Gazette*. 1996, No. 28-674.
- Mezhdunarodnaja organizacija truda. Konvenciji i rekomendaciji 1919-1956*. Tom I [International Labour Organisations: Conventions and Recommendations 1919–1956. Vol. I]. Zheneva: Mezhdunarodnoe bjuro truda, 1991.
- Nekrošius, I., et al. *Darbo teisė* [Labour Law]. Vilnius: Teisinės informacijos centras, 2008.
- Petrylaitė, D. *Kolektyviniai darbo ginčai: monografija* [Collective Labour Disputes. Monograph]. Vilnius: Teisinės informacijos centras, 2005.

- Petrylaitė, D. Kolektyvinių derybų vaidmuo ir reikšmė sprendžiant kolektyvinius darbo ginčus: Lenkijos praktika ir perspektyvos Lietuvoje [The Role and Importance of Collective Bargaining in Solving Collective Labour Disputes: Polish Practice and Future Prospects in Lithuania]. *Jurisprudencija*. 2005, 74(66): 23–29.
- Petrylaitė, D. Vientiso darbo ginčų instituto perspektyvos Lietuvos darbo teisėje [The Perspectives of Developing a Unified Institute of Labour Law Disputes in Lithuanian Labour Law]. *Jurisprudencija*. 2008, 8(110): 50–56.
- Ruling of the Department of Civil Cases of the Supreme Court of Lithuania of 3 March 2008 in the Civil Case No. 3k-3-141/2008.
- Ruling of the Department of Civil Cases of the Supreme Court of Lithuania of 31 January 2011 in the Civil Case No. 3k-3-15/2011.
- Ruling of the Department of Civil Cases of the Supreme Court of Lithuania of 6 March 2012 in the Civil Case No. 3k-3-81/2012.
- Ruling of the Judicial Panel of the Department of Civil Cases of the Supreme Court of Lithuania of 6 March 2001 in the Civil Case *SP Vilniaus autobusų parkas, UAB v. SP Workers' union of Vilniaus autobusų parkas, UAB*, No. 3k-3-32/2001.
- The Law on Trade Unions of the Republic of Lithuania. *Official Gazette*. 1991, No. 34-933.

KOLEKTYVINIŲ DARBO GINČŲ SPRENDIMO LIETUVOJE YPATUMAI

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Santrauka. Kolektyviniai darbo santykiai neišvengiamai susiję su ginčų institutu, nes darbuotojams ir darbdaviams dažnu atveju nepavyksta pasiekti konsensuso tam tikru klausimu. Be to, darbdavys ne visada laikosi sulygtų kolektyvinės sutarties nuostatų. Norint atskleisti kolektyvinių darbo ginčų sprendimo problematiką Lietuvoje, būtina analizuoti darbo ginčų instituto sampratą ir klasifikaciją, išskiriant kolektyvinių darbo ginčų sampratą, šių ginčų sprendimo procedūrą bei galimus sprendimo metodus, akcentuojant streiko institutą. Šio straipsnio tyrimo objektas – kolektyvinių darbo ginčų sprendimo (ginčų dėl kolektyvinių derybų ir kolektyvinės sutarties, apimant ir streiko institutą) ypatumai. Tyrimo tikslas – atskleisti kolektyvinių darbo ginčų sprendimo Lietuvoje probleminius aspektus. Siekiant nurodyto tikslo keliami tokie uždaviniai: atskleisti kolektyvinių darbo ginčų sampratą ir išskirti rūšis pagal Lietuvos Darbo kodeksą; atskleisti teisės streikuoti įgyvendinimo problematiką; atlikti darbo ginčų, kylančių dėl kolektyvinės sutarties bei kolektyvinių derybų, bei darbo ginčų dėl streiko teisėtumo analizę, remiantis teismų praktika. Šiame straipsnyje analizuojamos bylos, kuriose sprendžiami individualūs darbo ginčai, kurių objektas bent iš dalies apima ir kolektyvinės sutarties nuostatas, bei bylos dėl kolektyvinių darbo ginčų: dėl kolektyvinių derybų vedimo ir streiko teisėtumo. Priklausomai nuo darbo ginčo rūšies, skiriasi darbo ginčų sprendimo mechanizmai, o tai savo ruožtu lemia tam tikrus tokių ginčų sprendimo ypatumus. Kolektyvinių darbo ginčų išsprendimui visų pirma taikomi taikinimo mechanizmai, o

nepasiekus konsensuso taikomos įvairios kolektyvinio poveiko priemonės, prie kurių priskirtinas ir streikas kaip ultima ratio priemonė. Lietuvoje darbuotojai turi teisę streikuoti tiek dėl teisių, tiek dėl interesų pažeidimo. Pagrindinis tyrimo šaltinis yra Lietuvos Respublikos darbo kodeksas kaip pozityviosios teisės aktas, reguliuojantis darbo santykius Lietuvoje, bei teismų praktika. Rašant straipsnį remtasi teisės doktrina, tarp šaltinių taip pat tarptautinės teisės aktai, kurie buvo naudojami atliekant lyginamąją nacionalinių teisės aktų ir tarptautinių teisės aktų analizę.

Reikšminiai žodžiai: kolektyviniai darbo ginčai, kolektyvinių darbo ginčų sprendimo būdai, kolektyvinės derybos, kolektyvinė sutartis, streikas.

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