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COLLECTIVE LABOUR AGREEMENT AS A RESULT OF SOCIAL DIALOGUE IN FAVOREM PRINCIPLE CONTEXT: CASE OF LITHUANIA

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Abstract

Contractual regulation of labour relations through collective agreements is one of the possibilities of social dialogue. In a collective agreement, the parties agree on conditions that are not regulated by laws or other normative acts, or which do not contradict them, and which do not worsen the situation of employees (*in favorem* (Lat.) – principle in favour of someone). Obligations, provisions, or conditions established in a collective agreement cannot worsen the situation of employees compared to that stipulated by employment contracts and laws. Such conditions that would worsen the employee's position are invalid. The provision of additional guarantees and rights to employees in a collective agreement almost always depends not only on the results of mutual negotiations, the activity of employer or employee representatives, but also on the financial situation of the enterprise or institution. The purpose of a collective agreement as a source of labour law is to promote the legal regulation of collective labour relations that benefits not only the employee but also the employer. Thus, social dialogue is an effective way to reconcile interests, overcome social challenges, and promote economic progress. The purpose of a collective bargaining agreement as a source of labor law is to facilitate the legal regulation of collective labor relations, which benefits not only the employee but also the employer. Thus, social dialogue is an effective way to reconcile interests, overcome social challenges, and promote economic progress. Problematic question. Why are relatively few collective bargaining agreements concluded in Lithuania, even though Lithuanian laws enshrine collective bargaining agreements on the principle of in favorem, which allows both parties to independently decide on the content of the agreement? The purpose of the article. To analyze the theoretical and practical aspects of a collective agreement as a result of social dialogue in the context of the in favorem principle. Research objectives. 1) To define the concept of social dialogue. 2) To analyze the concept and legal nature of collective bargaining agreements. 3) To reveal the peculiarities of the process of collective bargaining in determining the terms and conditions of collective agreements in the context of the in favorem principle. Research methodology. Analysis of legal acts – analysis of the concepts of social dialogue, collective bargaining, collective agreements; Analysis of scientific literature – analysis of scientific literature that reveals the specifics of collective labor relations; Comparative analysis – comparison of coverage of social dialogue in the EU countries; Generalization – formulation of conclusions. The effectiveness of a collective agreement as a source of labor legislation is evidenced by the quantity and quality of regulatory terms and conditions in a collective agreement. In order to encourage collective bargaining for the conclusion of collective agreements, the legislation of the Republic of Lithuania establishes only advisory legal provisions legitimizing the possibility of agreeing on legal provisions other than those provided for by laws. The freedom and opportunity granted by the legislator to determine the content of collective agreements and related issues implies comprehensive advantages of collective agreements. The content of a collective agreement should be evaluated on the basis of the principle of «for the benefit of» and applied to both parties to the collective agreement. A collective bargaining agreement not only facilitates agreements between employees and employers by providing clarity on labor and environmental issues, but also promotes social dialogue.

Key words: social dialogue, collective agreement, in favorem principle, Lithuanian law, benefits for employees, benefits for employers, labour law.

Introduction. ***Relevance of the topic.*** Social dialogue is one of the essential governance mechanisms and components of the European social model, as identified by the European Union (EU) institutions. The International Labour Organization (ILO) and the Organisation for Economic Co-operation and Development (OECD) consider social dialogue to be a valuable tool for reducing societal tensions and developing policies suitable for a wide audience (International Labour Office, 2017). The organization Eurofound, which is the main institution assessing working conditions throughout the EU, emphasizes that social dialogue helps align the interests of employees and employers, ensuring economic competitiveness and social cohesion (Assessment of the Quality and Development of Social Dialogue in Lithuania, 2020). This type of communication

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creates conditions for both employee representatives and employers to seek a compromise that satisfies both parties. In this way, working conditions for employees are improved, business development is promoted, and competitiveness and productivity of enterprises are ensured.

The current situation in the Republic of Lithuania (hereinafter – LR) reveals that social dialogue between employee representatives and employers is progressing rather slowly. According to the LR Ministry of Social Security and Labour's study on the monitoring of collective agreements (2021), from October 16, 2017, to October 15, 2021, there were 338 valid collective agreements registered in Lithuania, applying to 309,000 employees, or roughly a quarter of the country's workforce. Notably, the data from the monitoring presentation of collective agreements (2021) shows that the coverage of collective agreements is rapidly changing: from 14.8% in 2019, to 21.03% in 2020, and 25% in 2021. It is evident that the legal regulation of collective labour relations is increasing, suggesting that more and more employees and employers understand and appreciate the benefits of collective agreements.

A Problematic Question. Why are relatively few collective agreements being concluded in Lithuania, even though Lithuanian laws enshrine collective agreements based on the in favorem principle allowing both parties to decide on the content of the agreement themselves?

The purpose of the article. To analyse the theoretical and practical aspects of the collective agreement as a result of social dialogue in the context of the in favorem principle.

Research objectives. 1) To reveal the concept of social dialogue. 2) To analyze the concept and legal nature of collective agreements. 3) To uncover the characteristics of the collective bargaining process in determining the conditions of collective agreements in the context of the in favorem principle.

Methodology of investigation. Analysis of legal acts – analyzing the concepts of social dialogue, collective bargaining, and collective agreements; analysis of scientific literature – analyzing scholarly literature revealing the specifics of collective labour relations; comparative analysis – comparing the coverage of social dialogue in EU countries; summarization – formulating conclusions.

1. Definition of Social Dialogue

Social dialogue is understood as a mutual understanding between parties and a search for compromises aimed at social justice, seeking to resolve emerging conflicts and challenges through peaceful collective bargaining. Progress in any area of public or private life occurs only when both parties engage in dialogue, discuss, share proposals, ideas, and demand changes. For a non-unidirectional discussion to take place, but rather a dialogue, both parties of the social dialogue must have a common goal and interest in changing the existing situation into one that is more favourable and beneficial for both.

In ILO reports (2013), social dialogue is defined as a process of consultations, all types of negotiations, and information sharing on aspects and issues of social and economic policy. The foundation of social dialogue is the common goal of the parties, which requires mutual trust and a joint problem-solving approach, as well as the cultivation of a culture of dialogue. It is also worth noting that social dialogue is a continuous and ongoing negotiation process necessary for making new decisions, hearing opinions, forming contracts, and determining individuals' responsibilities and duties. Continuity and uninterruptedness are necessary due to the foundation of social dialogue – the common goal of the parties; otherwise, it cannot be achieved.

According to the ILO's Sixth Conference Report (2013), social dialogue can be bipartite, occurring between employees and employers, whom the ILO refers to as social partners, or tripartite, involving representatives of governmental institutions. Tripartite social dialogue (in Lithuania – the Tripartite Council) brings together not only representatives of employers and employees but also the government to discuss laws, public policy, and other decision-making processes that affect the interests of employees and employers. Additionally, social dialogue can occur at the national, territorial, sectoral, or workplace levels. Thus, social dialogue at a certain level can take place as a bipartite process between employees and employers or unions and employers or their organizations, or as a tripartite process involving government institutions (see Figure 1).

It can be stated that there are positive changes in the field of social dialogue in Lithuania. However, as the assessment indicates, to see a more pronounced impact of social dialogue in the country, greater attention must be paid to empowering social partners and employee representatives. It is noteworthy that the representation of both employers and employees in Lithuania is among the lowest in the EU. According to the 2021 report on the development of social dialogue in municipalities and data

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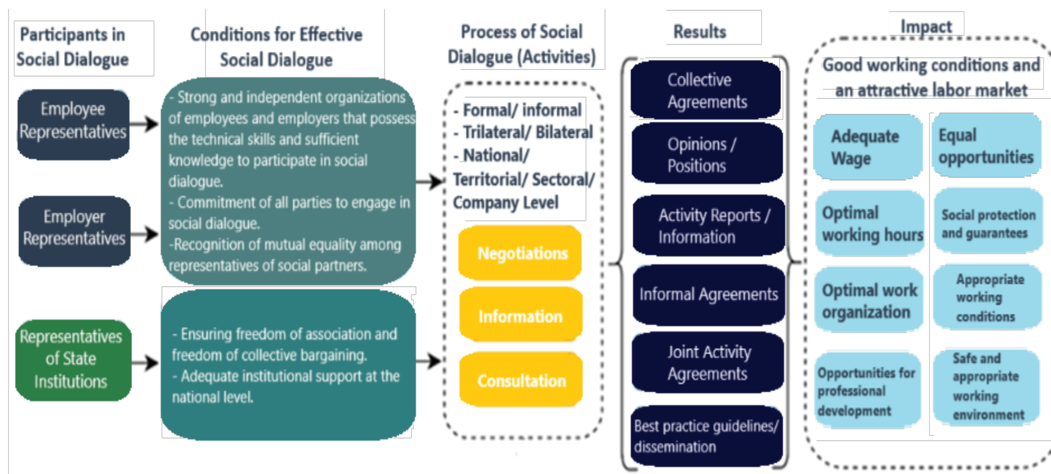

Fig. 1. Theoretical Model of Social Dialogue.

Source – 'Visionary Analytics.'

provided by the ILO in 2019, trade unions had only 89,600 members, accounting for just 7.1% of all employees in Lithuania. It is important to highlight that union membership is becoming more popular: according to Statistics Department data, in 2021, trade unions had 121,200 members. However, even such a level of representation results in limited employee representation, affecting their ability to participate in collective bargaining and form collective agreements.

Thus, social dialogue is understood as the collaboration between employers and employee representatives, which creates conditions for addressing work-related issues, disagreements, and seeking mutually satisfactory compromises. Although the growth of social dialogue each year suggests an increasing representation of employees, the knowledge, skills, and understanding of the benefits of social dialogue among the parties involved are crucial for ensuring mutual collaboration in addressing work-related issues. Nonetheless, the situation of social dialogue remains problematic concerning the number and coverage of collective agreements, as well as the representation of employees and employers.

2. The Concept and Legal Nature of Collective Agreements

As mentioned earlier, social dialogue is implemented in various forms. One of these forms is the initiation of collective bargaining, conducting negotiations, and the conclusion of collective agreements. Article 190 of the Labour Code of the Republic of Lithuania states that a collective agreement is a written agreement that establishes the rights, obligations, and responsibilities of the parties, created by trade unions, employers, and their organizations. According to the ILO's «Guidelines on Collective Bargaining,» a collective agreement is described as an effective instrument for regulating the work relations between employers and employees, as well as their associated relations. The ILO Recommendation No. 91 on «Collective Agreements» defines a collective agreement as «written agreements between an employer, a group of employers, an employers' organization, and employee organizations; if such organizations do not exist, it is an agreement between employees who are duly elected and authorized under the law.» Thus, a collective agreement is a written agreement between the employer and employee representatives or their organizations regarding wage conditions, organization of work, employee safety, rest, working hours, and all other social and economic conditions. In simple terms, it is a written agreement between the employer and employee representatives concerning work, social, and economic conditions, guarantees, the rights, duties, and responsibilities of the parties, which are not regulated by laws or other normative acts, or which do not contradict them and do not worsen the employees' position.

The primary sources of labour law are normative legal acts. Article 3, part 1 of the Labour Code of the Republic of Lithuania specifies the sources of labour law: «[...] the Constitution of the Republic of Lithuania, the Labour Code of the Republic of Lithuania, other laws regulating labour relations, European Union legislation, international treaties of the Republic of Lithuania, resolutions of the Government of the Republic of Lithuania, normative legal acts of other state institutions, collective

agreements, agreements between employers and work councils, and other local normative legal acts.» The legal norms established in the sources of labour law are universally binding general rules of conduct that regulate public labour relations. It can be argued that the sources of labour law are those legal acts that establish mutual rights and obligations, regulating the behaviour of both parties in the context of labour relations arising from employment contracts.

The legal nature of a collective agreement is dual. A collective agreement can be described as a normative agreement made between employees and the employer(s). A normative agreement is a specific type of legal act adopted through a contractual process, the content of which consists of legal norms; therefore, a collective agreement possesses characteristics of both a contract and a normative act. The normative part of the collective agreement (normative conditions) allows it to be classified as a normative act. The normative part of the collective agreement, like other legal norms, is created through a legislative process, establishing a general rule of conduct as a model of desired behaviour, fulfilling the purpose of legal norms – to serve as a means of legal regulation and, undoubtedly, to be formally defined.

A collective agreement, as a contractual legal normative act, is adopted in exercising the right to collective bargaining and encompasses mutual obligations of the parties. The principles of adopting a collective agreement include voluntariness and independence in binding obligations, equality of the parties, goodwill, respect for legitimate mutual interests, actual fulfilment of obligations, among others, as enshrined in the Labour Code of the Republic of Lithuania, which confirms the contractual nature of the collective agreement. Employees and employers, through their representatives, independently establish the structure and content of the collective agreement, considering the in favorem principle.

The Labour Code of the Republic of Lithuania not only establishes the concept of a collective agreement but also specifies the types of collective agreements and the parties involved. Article 191 of the Labour Code specifies the types of collective agreements: national (intersectoral), territorial, branch (service, production, professional), employer-level, and workplace-level (see Table 1). As noted by T. Davulis (2018), the parties to collective agreements (as established in Article 163 of the Labour Code of the Republic of Lithuania) correspond to the levels of social partnership. It is noteworthy that neither the employees themselves nor their collective can be parties to a collective agreement. Only trade unions can represent employees in concluding a collective agreement. Thus, a collective agreement is bilateral, meaning there are unequivocally only two parties to the collective agreement.

In scholarly literature (Krasauskas, 2009), the conditions of collective agreements are classified into: a) normative conditions; b) obligatory conditions; c) organizational conditions; d) informational conditions. Normative conditions are those that establish mandatory behavioral rules for employers and employees, falling within the legal regulation of a specific collective agreement. Obligatory conditions are those that specify the obligations of employers and employees that fall under the legal regulation of a particular collective agreement, which, upon the conclusion of the collective agreement, acquire the nature of a legal obligation and must be executed according to the terms set forth in the agreement. Organizational conditions establish the procedures for amending, reviewing, controlling the implementation of the collective agreement, addressing disputes regarding the application of the agreement, and liability for non-fulfillment of the agreement. Informational conditions typically repeat the provisions of relevant laws and serve the function of informing employees. Thus, it can be concluded that the collective agreement, due to its normative nature, is considered a source of labour law.

In the Green Paper «Modernizing Labour Law to Meet the Challenges of the 21st Century,» published by the European Commission in 2006, it is stated that collective agreements are no longer merely auxiliary tools meant to supplement working conditions defined by labour law norms. They are very important for specific circumstances in certain sectors and for adapting labour law principles to specific economic conditions. Given that collective agreements are unique sources of labour law–normative agreements–their significance is very high and indisputable. For this reason, collective agreements cannot be viewed as mere auxiliary tools in labour law. Therefore, collective agreements benefit not only employers and employees but can also be very advantageous for society as a whole, as they can create stable, socially robust relationships that ensure social peace, thereby fulfilling fundamental legal principles and societal needs.

It should be noted that, on one hand, a collective agreement is a normative agreement characterized by the establishment of normative provisions, that is, general rules. On the other hand, a collective

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Table 1

Parties and Types of Collective Agreements

<table>
<tr><th>No.</th><th>Types of Collective Agreements</th><th>Parties to Collective Agreements</th></tr>
<tr><td>1.</td><td>National (intersectoral) collective agreement</td><td>One or more national trade union organizations on one side, and one or more national employers' organizations on the other side.</td></tr>
<tr><td>2.</td><td>Territorial collective agreement</td><td>One or more trade union organizations operating in that territory on one side, and one or more employers' organizations on the other side.</td></tr>
<tr><td>3.</td><td>Branch (production, service, professional) collective agreement</td><td>One or more branch trade union organizations on one side, and one or more corresponding branch employers' organizations on the other side. The branch collective agreement may be limited to a specific territory.</td></tr>
<tr><td>4.</td><td>Employer-level collective agreement</td><td rowspan="2">A trade union operating at the employer level and the employer. If multiple trade unions operate at the employer or workplace level, the employer-level or workplace-level collective agreement may be concluded by a trade union and the employer or by a joint representative of the trade unions and the employer.</td></tr>
<tr><td>5.</td><td>Workplace-level collective agreement</td></tr>
</table>

Source: *Compiled by the author according to Articles 191 and 163 of the Labour Code of the Republic of Lithuania.*

agreement is a contract made by labour law subjects or their representatives, which is fully negotiated and establishes conditions for action or inaction that are acceptable to both parties. These principles not only demonstrate the contractual nature of the collective agreement but also represent the principles for its acceptance. Thus, each collective agreement is a normative agreement between the parties, equivalent to a particular type of legal source, which is adopted contractually, and whose content consists of legal norms. For this reason, it can be stated that a collective agreement has features of both a normative act and a contract and is regarded as an agreement between the parties.

In conclusion, the legal nature of the collective agreement is dual. On the one hand, a collective agreement is a normative legal act that establishes local legal norms that enhance social guarantees. On the other hand, it is a contract, an agreement between the relevant social partners. Thus, a collective agreement possesses features of both a normative legal act and a contract.

3. Collective Agreement as the Result of Implementing the In Favorem Principle in the Collective Bargaining Process

The I section of the ILO Convention No. 154 «Promoting Collective Bargaining» defines the concept of collective bargaining, stating that collective bargaining encompasses all types of negotiations between an employer, a group of employers, and one or more employers' organizations on one side, and one or more employees' organizations on the other side. Collective bargaining typically occurs at the initiative of employees or their representatives to negotiate the terms of a collective agreement and to form the agreement itself. It is noteworthy that collective bargaining can involve not only the establishment of terms for collective agreements but also a broader range of processes, including interest reconciliation and dispute resolution. Thus, the parties in collective labour relations negotiate their interests and resolve disputes through collective bargaining. It can be asserted that collective bargaining is a communication process aimed at a common goal–social peace.

The collective bargaining process aims to find a mutually acceptable solution through compromises from both sides, resulting in the formation of a collective agreement. Collective bargaining occurs in accordance with laws and the framework established by social partners. Due to the search for mutual compromises, collective bargaining is a peaceful and democratic process that benefits both parties involved. Only the entities specified by law may initiate, organize, and conduct collective bargaining, as well as determine the content of the collective agreement. In this process, the parties are equal and equivalent, making the subjects of collective labour relations legislative subjects. They participate in the process where a legal idea is formulated (a model of desired behaviour). This idea later becomes a legal norm, which is adopted and published. The final result of the legislation is a new legal norm.

In Lithuania, the laws minimally regulate collective bargaining between trade unions and employers or their organizations, as well as the formation of collective agreements. Regulation is established only in Articles 186-202 of the Labour Code of the Republic of Lithuania. As a result, more freedom is left to social partners, who can regulate the collective bargaining process themselves, guided by the principles set out in Article 161(2) of the Labour Code: equal-

ity of the parties, goodwill and respect for legitimate mutual interests, voluntariness and independence in making binding commitments, and actual performance of commitments. These principles not only help develop social dialogue, collective bargaining, and the process of forming collective agreements, but also facilitate the implementation of the bargaining mechanism, which is mandated for states in the Revised European Social Charter.

The process of preparing collective agreements is a distinctive legislative mechanism–it represents contractual legislation by employers and employees, which plays a crucial role in regulating labour legal relations. This contractual legislation involves only specific subjects of labour relations who are legally entitled to conduct collective bargaining and form collective agreements. Depending on the level at which collective bargaining occurs, according to the legal regulations established by the Labour Code, this right is held by trade unions or their organizations and the employer or their organizations. It is noteworthy that this legislative mechanism has a specific legislative procedure–collective bargaining, which is not only very important but also essential for forming the very collective agreements that regulate labour relations and working conditions agreed upon by both parties' free will. Therefore, the process of forming collective agreements between trade unions or their organizations and employers or their organizations is classified as contractual legislation.

Employee representation is understood as the relationship between the parties when acting in the interests of the represented, creating rights and obligations for the representatives. It should be noted that employee representatives include not only trade unions or federations of trade unions. According to Article 165(2) of the Labour Code, employee representation may also be conducted by a works council or an employee representative. However, Article 188(1) of the Labour Code establishes that only trade unions can represent employees in collective bargaining. As noted by the Constitutional Court (1999), the purpose of trade unions is to collectively defend not only their members but also all employees, as reflected in the conventions of the International Labour Organization ratified by Lithuania on June 23, 1994. For instance, Article 5 of the June 23, 1981 convention «Promoting Collective Bargaining» states that measures should be taken, tailored to the conditions of the respective country, to ensure that: a) the opportunities for collective bargaining are made available to all employers and all groups of employees in those sectors of activity to which this Convention applies; b) collective bargaining is gradually applied to all matters referred to in Article 2(a), (b), and (c) of this Convention (that is, determining terms of employment and conditions of work, regulating relations between employers and employees, and regulating relations between employers or their organizations and employees' organizations).

Thus, collective bargaining is a process aimed at finding a mutual compromise, resulting in the formation of a collective agreement. Neither the works council nor the employee representative has the right to represent employees in collective bargaining and the formation of collective agreements. Only trade unions or their organizations have this exclusive right. In order to form a collective agreement, collective bargaining is mandatory, and it is regarded as a primary stage in establishing the terms of the collective agreement. The parties to collective bargaining are equal and have equal opportunities to present their proposals and negotiate acceptable terms for the collective agreement. For this reason, the process of forming collective agreements is classified as contractual legislation between trade unions or their organizations and employers or their organizations. The preamble of the Labour Union Act of the Republic of Lithuania states that trade unions are voluntary, independent, and self-governing organizations that represent and defend the professional, labour, economic, and social rights and interests of employees. There is also a prohibition against employers or their authorized representatives obstructing entry into trade unions or hindering their activities, terminating them, or controlling them. When there is no trade union operating at the employer level, according to Article 188(3) of the Labour Code, a branch trade union may be authorized by a general meeting of the employer's employees to conduct collective bargaining at the employer level. Therefore, trade unions are independent organizations free from employer control, and only trade unions have the exclusive right to represent employees in collective bargaining for the formation of collective agreements.

Conclusions. Social dialogue is understood as the collaboration between employers and employee representatives, which creates conditions for addressing work-related issues, disagreements, and finding mutually satisfactory compromises. In Lithuania, the development of social dialogue is encouraged by providing as many opportunities as possible for the parties involved to regulate work-related relationships themselves. National and international legal

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acts specify the forms of social dialogue: information and consultation, collective bargaining, collective agreements, and joint agreements. Social dialogue can be bilateral or trilateral, occurring at the national, territorial, sectoral, employer, or workplace level.

An analysis of the scientific literature and legal acts governing collective labour relations leads to the conclusion that the legal nature of collective agreements is dual. A collective agreement can be described as a normative agreement, which is a special type of legal source, established through a contractual method and consisting of legal norms. Therefore, a collective agreement possesses features of both a contract and a normative legal act. The parties to collective agreements have the freedom to determine the content of these agreements; however, this must be evaluated in favor of the principle that prohibits establishing worse conditions in collective agreements than those stipulated by laws and other normative legal acts. The in favor of principle in collective agreements applies to both employees and employers and cannot be directed solely at satisfying the interests of one party.

Collective bargaining is a method of protecting the interests of the parties, aiming to find a mutually acceptable solution through mutual agreements (concessions), taking into account the results of collective bargaining as a form of social dialogue. In collective bargaining, employee representatives seek more favorable terms for the establishment, modification, and termination of employment contracts, as well as the establishment of wages, working and rest times, and other conditions; employer representatives focus on issues such as reimbursement of training expenses, the ability to assign overtime work, and other matters related to additional benefits for employers.

Thus, the effectiveness of a collective agreement as a source of labour law is indicated by the number and quality of normative conditions in the collective agreement. To encourage collective bargaining for the formation of collective agreements, the laws of the Republic of Lithuania establish only advisory legal norms that legitimize the possibility of agreeing on different legal regulations than those provided for in the laws. The freedom granted by the legislator and the opportunity to determine the content of collective agreements and related issues imply the comprehensive benefits of collective agreements. The content of a collective agreement should be evaluated based on the in favor of principle and should be applicable to both parties of the collective agreement. A collective agreement not only facilitates agreements between employees and employers, providing clarity on employment activities and environmental issues but also promotes social dialogue.

References

Constitution of the Republic of Lithuania: Approved by the citizens of the Republic of Lithuania in the referendum on October 25, 1992: official text with amendments and additions effective until April 1, 2012. (2012). Vilnius: State Register Center.

Republic of Lithuania. (2016). Labour Code (Official Gazette, 2016-09-19, No. XII-2603). Consolidated version.

Republic of Lithuania. (2001). Profit Tax Law (Official Gazette, 2001, No. IX-675). Consolidated version.

Republic of Lithuania. (1991). Trade Union Law (Official Gazette, 1991, No. I-2018). Consolidated version.

Republic of Lithuania. (2017). Law on the Remuneration of Employees in State and Municipal Institutions and the Compensation for Members of Commissions (Official Gazette, 2017, No. XIII-198). Consolidated version.

Republic of Lithuania. (1992). Law on Public Service (Official Gazette, 1992, No. 66-2130). Consolidated version.

Republic of Lithuania. (2003). Law on the Approval of the Internal Service Statute (Official Gazette, 2003, No. IX-1538). Consolidated version.

European Parliament and Council. (2004). Directive 2002/14/EC on the establishment of a general framework for informing and consulting employees in the European Community (Special edition, 2004, No. 1).

International Labour Organization. (196). Convention No. 144 concerning Tripartite Consultations to Promote the Implementation of International Labour Standards (Official Gazette, 196, No. 30-739).

International Labour Organization. (1996). Convention No. 154 concerning the Promotion of Collective Bargaining (Official Gazette, 1996, No. 30-740).

International Labour Organization. (1996). Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize (Official Gazette, 1996, No. 27-646).

International Labour Organization. (1996). Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively (Official Gazette, 1996, No. 28-674).

International Labour Organization. (1951). Recommendation No. 91 [Interactive]. Available online: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R091 [last visited 2024-10-10].

Bakas, A., Papirtienė, D., Tomilinas, A., & Vasiliauskas, M. (2019). Explanatory Note on Legislative Drafts (Reg. No. XIIIP-3182- XIIIP-3184). Official Gazette, No. XIIIP-3182.

Dambrauskienė, G. (2005). Legal Foundations of Social Dialogue. Vilnius: Jurisprudencija.

Davulis, T. (2018). Commentary on the Labour Code of the Republic of Lithuania. Vilnius: State Register Center.

European Commission. (2023). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions: Strengthening social dialogue in the European Union: harnessing its full potential for managing fair transitions. Brussels: COM.

International Labour Organization. (2013). International Labour Conference, 102nd Session [Interactive]. Available online: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_205955.pdf [last visited 2024-10-10].

International Labour Organization. (2017). [Interactive]. Available online: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/--publ/documents/publication/wcms_541211.pdf [last visited 2024-10-11].

International Labour Organization. Collective bargaining [Interactive]. Available online: https://labordoc.ilo.org/discovery/delivery/41ILO_INST:41ILO_V2/1248819570002676 [last visited 2024-10-12].

International Labour Organization. (n.d.). Social dialogue: Finding a common voice [Interactive]. Available online: https://www.ilo.org/public/english/dialogue/download/brochure.pdf [last visited 2024-10-10].

Krasauskas, R. (2009). Regulation of Labor Relations through Collective Agreements: Monograph. Vilnius: State Register Center.

Krasauskas, R. (2013). Collective Labour Law. Vilnius: Mykolas Romeris University.

Ministry of Social Security and Labour of the Republic of Lithuania. (2021). Presentation on Monitoring Collective Agreements.

Vaughan-Whitehead, D. C. (2003). The European Social Model and EU Enlargement. In D. C. Vaughan-Whitehead (Ed.), EU enlargement versus social Europe? The uncertain future of the European social model (pp. xx-xx). Cheltenham Northampton: Edward Elgar.

Assessment of the Quality and Development of Social Dialogue in Lithuania. (2020). [Interactive]. Available online: https://2014.esinvesticijos.lt/lt/dokumentai/socialinio-dialogo-kokybes-ir-pletros-lietuvoje-vertinimas [last visited 2024-10-12].

Development of Social Dialogue in Municipalities. (2021). Vilnius. [Interactive]. Available online: https://www.lsa.lt/wp-content/uploads/2022/05/Socialinio-dialogo-pletojimo-savivaldybese-metodika-2021.pdf [last visited 2024-10-10].

European Commission. (2006). Green Paper: Modernizing Labour Law to Meet the Challenges of the 21st Century. Brussels: COM.

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КОЛЕКТИВНИЙ ТРУДОВИЙ ДОГОВІР ЯК РЕЗУЛЬТАТ СОЦІАЛЬНОГО ДІАЛОГУ В КОНТЕКСТІ ПРИНЦИПІВ ФАВОРЕМ: ПРИКЛАД ЛИТВИ

Abstract

Contractual regulation of labour relations through collective agreements is one of the possibilities of social dialogue. У колективному договорі сторони домовляються про умови, які не врегульовані законами чи іншими норматив-

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ними актами, або які їм не суперечать і які не погіршують становище працівників (*in favorem* (лат.) – принцип на користь когось). Обов'язки, положення або умови, встановлені в колективному договорі, не можуть погіршувати становище працівників у порівнянні з тим, що передбачено трудовими договорами та законами. Такі умови, які б погіршували становище працівника, є неприпустимими. Надання додаткових гарантій і прав працівникам в колективному договорі практично завжди залежить не тільки від результатів взаємних переговорів, активності роботодавця або представників працівників, а й від фінансового становища підприємства або установи. Метою колективного договору як джерела трудового права є сприяння правовому регулюванню колективних трудових відносин, що приносить користь не тільки працівнику, а й роботодавцю. Таким чином, соціальний діалог є ефективним способом примирення інтересів, подолання соціальних викликів, сприяння економічному прогресу. Проблемне питання. Чому в Литві укладається відносно небагато колективних договорів, хоча литовські закони закріплюють колективні договори за принципом in favorem, що дозволяє обом сторонам самостійно вирішувати питання про зміст угоди? Мета статті. Проаналізувати теоретичні та практичні аспекти колективного договору як результату соціального діалогу в контексті принципу in favorem. Задачі дослідження. 1) Розкрити поняття соціального діалогу. 2) Проаналізувати поняття та правову природу колективних договорів. 3) Розкрити особливості процесу колективних переговорів при визначенні умов колективних договорів у контексті принципу «на користь». Методологія дослідження. Аналіз нормативно-правових актів – аналіз понять соціального діалогу, колективних переговорів, колективних договорів; аналіз наукової літератури – аналіз наукової літератури, що розкриває специфіку колективних трудових відносин; порівняльний аналіз – порівняння висвітлення соціального діалогу в країнах ЄС; Узагальнення – формулювання висновків. Про ефективність колективного договору як джерела трудового законодавства свідчить кількість і якість нормативних умов у колективному договорі. Для заохочення ведення колективних переговорів для укладення колективних договорів законодавством Литовської Республіки встановлюються лише консультативні правові норми, які легітимізують можливість узгодження інших правових норм, ніж ті, що передбачені законами. Надана законодавцем свобода і можливість визначати зміст колективних договорів і пов'язані з ними питання мають на увазі всебічні переваги колективних договорів. Зміст колективного договору повинен оцінюватися на основі принципу «на користь» і застосовуватися до обох сторін колективного договору. Колективний договір не лише сприяє встановленню угод між працівниками та роботодавцями, забезпечуючи ясність щодо трудової діяльності та екологічних питань, але й сприяє соціальному діалогу.

Ключові слова: соціальний діалог, колективний договір, принцип in favorem, литовське законодавство, пільги для працівників, пільги для роботодавців, трудове законодавство.

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