

THE IMPORTANCE OF SOCIAL DIALOGUE AND COLLECTIVE BARGAINING IN THE PROCESS OF SHAPING WORKING CONDITIONS

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Abstract: *The article explores the influence and importance of social dialogue and collective bargaining on the formation of working conditions. Social dialogue and collective bargaining are among the basic ways to influence the conditions of work through employees' representatives and how to represent the weaker party from the point of view of labour law (the interests of the employee). The article points out the fundamental importance of social dialogue in creating an environment of decent work, both in the international environment (especially the competence of the International Labour Organization or the implementation of the European Pillar of Social Rights) and wages or addressing the impacts of COVID-19 pandemics in the national environment of the Czech Republic.*

Keywords: *Trade union, International labour law organization, European pillar of social rights, Minimum wage, Right to information and consultations, Labour law.*

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1. INTRODUCTION

Human. Work. Employee. Remuneration. Working hours. Reconciling family and work life. Health and safety protection at work. Accidents at work. Obstacles at work. Holidays and much more. All, but not only, are one of the basic elements of labour law. Labour law regulates relationships in the performance of dependent work. It can be said that labour law regulates a special category of legal relationships. The mentioned relationships can be described as a special category of legal relationships because their object is dependent work, which, however, can be performed only by a human being. In practice, and in fact, labour law aims to define the boundaries and rules of conduct, especially between the employee and the employer and thus serves to protect not only the property interests of the employer, but especially the mental, somatic, but also social aspects of a human being – the employee. And it is a human being, as a basic element of legal relations in the performance of dependent work that is one of the fundamental distinguishing features.

To confirm the importance and impact of social dialogue and collective bargaining on the world of labour law, we use the comparative method, as well as the method of analysis in revealing the basic starting points and subsequently we employ deduction and synthesis to suggest possible approaches. In any case, the demonstration of the importance of social dialogue to guarantee not only working conditions and the achievement of the goal of decent work can be seen as the result of the research.

Dependent work is paid work, i.e. for remuneration (Galvas, 2015). It cannot be performed for free. Natural persons work, from the point of view of labour law, primarily for the purpose of receiving remuneration (hereinafter referred to as „wages”), thanks to which they earn financial means for their lives, and secure their families and social integration into society. Natural persons enter the labour market with their labour supply, where their supply meets the demand from employers (of course, the opposite can be defined, i.e. the centre of the labour supply - vacancies - employers with the demand from employees).

Labour law is aware of the position of both subjects of basic employment relationships. The legislator was and is aware of the unequal position of the employee with the employer in terms of fact. Legally, both entities are equal. Neither can force the other to enter into an employment relationship. They are therefore equal - in terms of their legal status. Inequality appears on a factual level, which is given by various factors, such as psychological (employee or job seeker has a subjective feeling of superiority of the employer), economic (employee is economically dependent on the income), geographical (unemployment rate in the region or area, where the employee lives, and the difficulty of finding a new job), social and sociological (good earnings equals good social status, which means a good position in society) or generally personal (qualifications and employability in the labour market). The norms of labour law aim to eliminate the mentioned inequality and the factual superiority of the employer.

Labour law rules. Rules determining the performance of dependent work and working conditions. What is it and where does it come from? Maybe it is here that it is possible to search for answers to the question why the submitted article deals with the context of social dialogue and collective bargaining. One of the specifics of labour law, which lead to its differentiation from other branches of law, is the disruption of the normal private law relationship, where the rights and obligations of the parties can be entered into and interfered only by public authorities and not by another private entity. Labour law rules include not only general legislation (starting with international sources and ending with national by-laws), but also unilateral statements by a collective employer (e.g. internal regulations governing employees' wages rights or working time arrangements), and especially collective

agreements (results of collective bargaining and representing the interests of employees), which in fact constitute a binding rule determining the working conditions of employees. However, they are not created by the legislator, but by the employer (one contracting party) and by the employees' representative (typically a trade union) - never an individual employee. Thus, specific working conditions are not only created by legal regulations and individual agreements of the employee with the employer (e.g. an agreement on the amount of wages or shorter working hours), but also by a third party.

The world of labour law recognizes the importance of employees' representatives in creating working conditions and employment rules. Participatory rights are an important part of every employee's entitlement standard. When considering if participatory rights in labour law can be discussed at all, or to which extent or when, both international and national legal systems and approaches must necessarily be respected. When asked the question - whether social dialogue and collective bargaining, as elements of employee participation not only in the management of the company, but also in the protection of their social and cultural and economic rights, are important and whether they can be even recognized, answers can be found in specific legal systems and working conditions.

We use the international survey to clearly demonstrate the influence of social dialogue and collective bargaining on the formation of working conditions. However, the national environment must always be respected.

The presented paper points out various aspects of social dialogue in the environment of the Czech Republic. It takes into account international approaches and outlines their manifestations in the Czech legal environment, underlining the benefits and importance of transnational social dialogue and sources of law that are important at the national level for the promotion of employees' rights. In a timely manner, it demonstrates the importance of social dialogue and collective bargaining, for example, on the growth of the minimum wage for employees, as well as on the tendency to provide more space for reconciling family and working life as a consequence of reduced working hours.

2. FACTUAL MANIFESTATIONS OF SOCIAL DIALOGUE AND COLLECTIVE BARGAINING

Labour law (sources) is a set of labour law rules that relate to the performance of dependent work. As presented in the introduction, these are not only the legal regulations themselves (Labour Code), but also manifestations of the employer's power of disposition (Horecký, 2018), and at the same time the results of social dialogue and collective bargaining (collective agreements).

Systematically, labour law can be divided into three basic areas, the so-called pillars of labour law (figure 1).

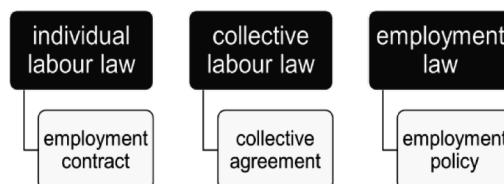


Figure 1. Areas of Czech Labour Law
Source: Authors

When thinking more deeply about the representation of the pillars of labour law, it is possible to make a conclusion about a coherence of its parts. It can be accepted that individual labour law (represented by an employment contract) can exist without collective labour law. At the same time, however, it is true that collective labour law can give higher quality to both individual labour law and the field of employment (e.g. in the labour market addressing the issue of employment in the region or sector in regional tripartite bodies). Collective rights are important and necessary for the protection of individual rights.

Social dialogue and collective bargaining are among the basic ways of adjusting working conditions. Representing and defending employees' rights, promoting social dialogue and freedom of association are fundamental rights of every employee. The guarantee of the right to associate and organize freely in order to protect one's employment interests, as well as the promotion of social dialogue, stems from a series of international documents, both European and global.

The contribution of social dialogue to the formation of modern society can be demonstrably recorded, for example, as a result of the founding of the International Labour Organization (hereinafter also "ILO") in 1919. Practically the highest tripartite body imaginable - the Conference of the International Labour Organization, as well as the entire International Labour Organization, aims to achieve decent working conditions and fundamental rights of employees (such as safe and healthy working conditions, standardization of working hours or a decent wage).

The International Labour Organization embodies a unique global project that participates in (and aims to) shape the world of work. It is an institution operating across all continents. The scope and results of the ILO's activities affect the widest range of employees, employers but also individuals in general. The basic principles of the ILO's existence include the principle of functional representation (Gregorová, 1988, p. 20). The principle of functional representation is reflected in the way the bodies are composed and it consists in the form of tripartite representation as the bodies are made up not only of government representatives, but also of representatives of employers and employees. The application of the principle of autonomy then allows and establishes the possibility to act in separate groups, as the national delegations (i.e. the government, the employees' and employers' representatives) do not have to act in agreement, but each within its functional coherence.

Communication between employers', governments' and employees' representatives illustrates that form of social dialogue. The tangible results of the social dialogue - ILO activities - are the Conventions and Recommendations. ILO rulemaking focuses on basic areas of the labour market and working conditions. As follows from the aims and justifications for the establishment of the ILO declared in the Peace Treaty between the Powers in 1919 (achieving a general peace based on social justice or eliminating unfair working conditions), a state of harmonious working (and at the same time social) environment is to be achieved with the support of tripartite negotiations. Binding documents are mainly the Conventions of the International Labour Organization. In addition to the contractually binding Conventions of the International Labour Organization, the Recommendation can be found. The Recommendation is not binding, but is to be seen rather as non-binding guidelines for the interpretation of certain terms used in the Conventions. Although the content of Conventions and Recommendations is written in very general terms (with regard to the different conditions in individual states), the basic objectives are common and clearly defined. The social dialogue carried out at the International Labour Organization has resulted, for example, in the creation of a Declaration of Fundamental Rights and Principles on Employment that are to be respected by the Member States, regardless of its ratification (Bakvis & McCoy, 2008).

The main principles are:

- The right to freedom of association and the effective recognition of the right to collective bargaining (Convention No 87 and Convention No 98),
- Elimination and prevention of all forms of forced labour (Convention No 29 and Convention No 105),
- Effective elimination of all forms of child labour (Convention 138 and Convention 182),
- Elimination of discrimination in employment and occupation (Convention No. 100 and Convention No. 111).

Specific manifestations of social dialogue at the supranational level can be demonstrated in the Czech environment, for example, in maintaining the concept of the position of the employees' representatives - trade unions in connection with the recodification of private law (2014).

The application of the first principle of the Declaration has contributed to maintaining the special status of the trade union as a *sui generis* legal entity (Horecký Jan, 2015, p. 23). Without an appeal to the existence of the Declaration, trade unions in the Czech Republic would be established on the principle of registration (i.e. after approval by the register court - legal authority). The reference to the Declaration and the Convention led to the preservation of the principle of record (creation following a simple notification, not subject to the approval process). The importance of the Declarations and Conventions is also evident in the support of trade union activity itself, the conduct of social dialogue and collective bargaining.

Convention No. 98 on the Right to Organize and Bargain Collectively provides protection against unequal treatment through the exercise of collective rights. At the same time, it provides increased protection for trade union officials against termination of employment (employees cannot be punished for the activities of an employee representative). The principles of the ILO introduce the prohibition of discrimination and unequal treatment or, in other words, increased protection for trade union officials and participants in collective bargaining (Horecký, 2010).

The social dialogue carried out by the International Labour Organization generally aims to ensure fair and decent working conditions. The concept of *decent work* determines current trends and the direction of ILO activities. Decent work and decent working conditions are expressed in the Decent Agenda and also fall under the global activities of the League of Nations. Social dialogue and tripartism are ways in which, in the context of decent work, political directions and decisions that reflect societal sentiment and demands can be reached. Overall, it is evident that the policies set out through social dialogue in society help people and larger communities to cope with the effects of climate change and at the same time set up the economy in a way that is compatible with sustainable development (economy). Decent work also has a positive effect on maintaining social peace. The positive perception of one's own working conditions and the overall satisfaction of employees, as well as the feeling of maintaining dignity, hope and intensification of the feeling of social justice resulting from the implementation of decent work, undoubtedly also work appropriately to create and maintain an environment in which we can talk about social peace (Ryder, 2019). The Decent Work Agenda leads to permanent and sustainable progress, peace and prosperity for both employers and employees and for society as a whole (ILO, 2019). The impact of social dialogue at ILO level can therefore be seen, demonstrably, as global.

Social dialogue at transnational level is not just an ILO activity. The European Union is moving in the same direction. The fundamental freedoms of the European market are together completed by the EU's driving force, which is the economic and social model. Social dialogue is also a central

point of the EU's economic-social model, as expressed not only in the Charter of Fundamental Rights of the European Union (Article 12 on freedom of association and Articles 27 and 28 on the right to information and negotiation and the right to collective bargaining), but also as it appears in the fundamental documents of the EU (Article 151 et seq. of the Treaty on the Functioning of the European Union).

Social dialogue is seen as a central tool in the area of regulating social conditions and harmonizing EU law. Consultation of the social partners on the adoption of harmonization measures is encouraged. The adoption of the European Pillar of Social Rights can be seen as a shining result of the social partners' activities (social dialogue). The European Pillar of Social Rights has been the most important document and agenda in recent years, linking to the Decent Work Agenda. The statement of the President of the European Commission Jean-Claude Juncker showed that the proclamation of the Pillar represents a turning point for Europe and that it comes to firmly anchor a strong social dimension in the future of the European Union (Juncker, 2017). Point 8 of the document defines social dialogue as one of the central pillars. It directly enshrines the obligation of governments to cooperate with the social partners.

The social partners must be consulted in the formulation and implementation of economic, employment and social policies in accordance with national practice. They must be encouraged to negotiate and conclude collective agreements in matters which concern them, while recognizing their autonomy and the right to take collective action. Where appropriate, contracts concluded between the social partners must be implemented at the level of the Union and its Member States. Lower-level social dialogue (i.e. sectoral and corporate) is also enshrined. Workers or their representatives shall have the right to be informed and consulted in good time on matters which concern them, in particular in the event of transfers, restructuring and mergers and collective redundancies. Increasing the capacity of the social partners to strengthen social dialogue must be encouraged.

In the conditions of the Czech Republic, at least from the formal point of view, the objectives of the Pillar are fulfilled. Specifically, the operation of transnational social dialogue (both the Agenda and the European Pillar of Social Rights) is reflected in the basic norm regulating the performance of dependent work. Section 320 of the Labour Code stipulates the obligation to discuss bills and draft other legal regulations concerning important interests of workers, especially economic, production, labour, wage, cultural and social conditions, with the relevant trade unions and employers' organizations. Central administrative authorities, which issue implementing labour law regulations, do so after discussing them with the relevant trade union and the relevant employers' organization. The relevant state authorities discuss with trade unions issues related to the working and living conditions of employees and provide trade unions with the necessary information. In practice, the aforesaid is done, to a greater or lesser extent, through the Tripartite platform - the Council of the Economic and Social Agreement. It is an institutionalized platform for conducting social dialogue between government, trade unions and employers. It is to be seen as a joint voluntary, negotiating and initiative body of the government, trade unions and employers for tripartite negotiations, based at the Office of the Government of the Czech Republic, with the aim of reaching agreement on fundamental issues of economic and social development. In the field of tripartism, the social partners routinely participate in the needs of changes in labour legislation (e.g. amendment of the Labour Code by Act No. 285/2020 Coll.), or also in addressing current social and economic issues (e.g. addressing the impact of the coronavirus pandemic COVID-19 and adoption of important regulations, Act No. 569/2020 Coll., on the distribution of medicinal products containing a vaccine for vaccination against COVID-19).

In effect all efforts, regardless of the general subjects, the level of social dialogue and the specific agenda, are directed towards the same goal - achieving *decent work conditions*.

The importance of social dialogue is growing and is evident in every crisis in the national economy and subsequently in the labour market. It is currently growing due to the effects of the COVID-19 pandemic. There is room for extensive cooperation between the social partners to address the negative effects of the crisis and with a view to the future. The European Commission directly highlights the communication of the social partners and points to the important role of social dialogue in addressing the complex challenges of the COVID-19 crisis (EC, 2020).

In the Czech Republic, employees' representatives and employers participate in resolving the effects of the pandemic on the national labour market. Through social dialogue and tripartite negotiations, a financial instrument has been created to cover the effects of the pandemic. The ANTIVIRUS programme aims to support the labour market (OECD, 2020). It offers employers the opportunity to cover the loss of income caused by government measures. It also aims to preserve jobs. Social dialogue has led, and continues to lead, debates on adapting support programmes to better meet current needs and, where appropriate, to cover a wider range of people with disabilities.

A common policy that combines the content of social dialogue at all levels is the goal of achieving decent work and decent working conditions. In the context of social dialogue and collective bargaining, it is a procedure of mutual consultation or informing about all possible conditions of work performance. In general, social dialogue can be defined as any negotiation between employees' representatives and the employer about the working (social) conditions of employees.

From the point of view of the importance and binding nature of the results of social dialogue, it is necessary to perceive different levels and forms of social dialogue. First of all, as can be seen from the previous text, social dialogue can be led at the supranational level (ILO), at the national level (Tripartite) and subsequently at the sectoral / regional or company level. The result can be both binding transnational conventions (e.g. ILO conventions or EU directives) and collective agreements themselves. Collective agreements are a specific result of the formalized process of conducting social dialogue - collective bargaining. Collective bargaining and social dialogue usually do not have their own definition. However, it is important to distinguish between them (e.g. in the Czech Republic). Social dialogue is a broader concept, it includes both ordinary participatory rights of employees and the right to collective bargaining. Collective bargaining is then perceived by Act No. 2/1991 Coll., only as a special formalized procedure for concluding a collective agreement (see the following figure).



Figure 2. The relationship between social dialogue and collective bargaining

Source: Authors

From the point of view of answering the question of the importance of social dialogue and collective bargaining in the formation of working conditions, it is not of importance which of these forms it is. Working conditions are affected by the activities of employees' representatives regardless of the result (collective agreement or current agreement or resolution of an individual employee's complaint or discussion of working time arrangements, etc.). However, if the binding nature of the result should be distinguished, then the division makes sense. Only a collective agreement can establish more favourable working conditions and rights for employees in a binding and enforceable manner.

A special, but regular and essential, agenda of social dialogue and collective bargaining is the negotiation of employees' wages. Decent work also entails the demand for decent wages. „*Decent work lets employees be humans*” (Horecký, 2019). The mentioned importance of social dialogue and collective bargaining can currently be traced in the European Commission's efforts to set the conditions for guaranteeing a decent wage.

European Commission President Ursula von der Leyen expressed her belief that workers should have access to an adequate minimum wages and a decent standard of living. (Commission, Advancing the EU social market economy: adequate minimum wages for workers across Member States, 2020). Decent working conditions are to be achieved through social dialogue. Social partners have a crucial role to play in negotiating wages nationally and locally. We support their freedom to negotiate wages autonomously, and where this is not possible, we give a framework to guide Member states in setting minimum wages. Collective bargaining should be the gold standard across all Member States. (Commission, Advancing the EU social market economy: adequate minimum wages for workers across Member States, 2020).

At the same time, the European Commission calls on all Member States to ensure the effective involvement of the social partners in setting minimum wage levels to ensure fair wages. Member States are to promote social dialogue and collective bargaining and, in accordance with ILO Conventions, ensure the conditions for conducting social dialogue and collective bargaining (Council, 2020). The Commission sees social dialogue and collective bargaining as a key tool for achieving a decent and decent level of minimum wages in the proposal for a directive on adequate minimum wages in the European Union (Commission, 2020/0310 (COD), 2020).

The impact of the European social dialogue will then be manifested in the individual Member States. In the Czech Republic, with the participation of the social partners, there has been a regular increase in the minimum wage in recent years. Conducting social dialogue in general also brings an advantage not only at the national level, but also for individual employers. In companies with a trade union and a collective agreement, employees have, on average, higher incomes and shorter working hours.

3. CONCLUSION

The presented article points to various aspects of social dialogue in the Czech Republic and it takes into account international approaches and outlines their manifestations in the Czech legal environment, underlining the benefits and importance of transnational social dialogue and sources of law that are important at the national level for the promotion of employees' rights. In many cases, it demonstrates the importance of social dialogue and collective bargaining, for example, on the increase in the minimum wage for employees, as well as on the tendency to provide more room for reconciling family and working life as a result of reduced working hours.

The subject of the research is the current form of participation of employees' representatives in solving issues of the world of work (e.g. the negative effects of the COVID-19 pandemic or the negotiation of decent minimum wages).

Social dialogue leads to more favourable working conditions, decent work and fair wages. It has been proven to have positive effects on the world of work.

Social dialogue is an important means of adjusting working conditions. It has a significant role to play in shaping the environment of the world of work and, after all, in shaping society as a whole. The statement on the global importance of social dialogue is also supported by the fact that compliance with ILO Convention No. 87 on Freedom of Association was one of the basic points (21 postulates) of the Solidarity movement. The requirement for recognition of the independence of trade unions from the Communist Party and employers (Meller, 2017, p. 319) was right in the first point and in the first place. It is known to what extent the efforts of the movement and the consequences of the application of social dialogue have led. Social dialogue can thus also be seen as an important element of democracy.

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