

громадського сектору¹. Тому, необхідно і надалі рухатися в напрямку подолання паралельності у діалозі між інститутами громадянського суспільства і держави, як єдино можливий вихід подолання суспільно-політичної кризи в Україні.

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**THE INSTITUTE OF SOCIAL PARTNERSHIP
IN «POST-SOVIET» SOCIETY: CHALLENGE
FOR TRADE UNIONS IDENTIFYING
THE NEW TASKS IN NOWADAYS LABOUR
MARKET CONDITIONS / ІНСТУТУТ
СОЦІАЛЬНОГО ПАРТНЕРСТВА
В «ПОСТРАДЯНСЬКИХ» КРАЇНАХ: ВИКЛИК ДЛЯ
ПРОФЕСІЙНИХ СПІЛОК У ВИЗНАЧЕННІ НОВИХ
ЗАВДАНЬ В СУЧАСНИХ РИНКОВИХ УМОВАХ**

Introduction

The freedom of association more than fifty years is the unquestionable fundamental employees' right. Trade unions, as the most important and professional representatives of employees, have performed an especially important role in the establishment of democratic labour relations as well as in the

¹ Про Комітет з питань реформування правоохоронних органів: Указ Президента України від 6 квітня 2012 р. № 252/2012 [Електронний ресурс]. – Режим доступу: <http://www.president.gov.ua/documents/14672.html>

area of strengthening and monitoring legal regulation. However, the transformation of models in labour market, globalisation and other factors of modern life has the significant importance in trade unions' activities. In contemporary labour relations, there is a huge increase of individualism and the drastic reduce not only in trade union membership but also in the confidence in these organisations. Consequently, such situation turns into changes trade unions themselves, as well as induces the review of aspects of their legal regulation. It should be noted, that the example of Lithuania shows that immediately after the restoration of independence, there was created the legal model of the freedom of association, trade unions' freedom to operate and the right to freely join them, which had not existed before. On the other hand, before the mentioned model had started to operate properly and when the gaps of legal regulation had started to be seen, the Lithuanian labour market faced new challenges – euro integration, globalisation impact, one after another happened several economic crises. Therefore, the question of the legal status of trade unions has become especially relevant, which needs the modern legal approach. Notwithstanding, within the latter decades this problem has not been solved, the legal gaps were adjusted minimally, the case law started to interpret valid provisions in extended way and to create new rules, which sometimes contradict between each other in different decisions. It is obvious, that such situation does not help trade unions to exercise their activities, increase mistrust not only in the system of collective labour relations but also in trade unions, wherefore, it is noticed the drastic reduction of trade union density.

1. Trade unions in retrospect

In pre-independence Lithuania, like in other countries of the socialist bloc, the legal system contained a Soviet regulatory model for labour relations which entailed non-autonomous regulation. The state ownership of capital goods prevented the emergence of private employers. Therefore, it was the state which indirectly performed the function of the employer in a variety of forms, i.e. the state was the sole employer. During this period, there was no question of cooperation between employers and employees, and

their representatives (trade unions). The movement of trade unions was completely monopolised by the Soviet authorities – there were only state trade unions which had very little room to manoeuvre and actually did not represent workers' interests. In principle, the field of labour relations was at the exclusive disposition of the state and implementation of the social partnership idea was absolutely impossible.

While market economy trade unions are mostly concerned with workers' *representation*, Soviet unions emphasized «*defense of workers' rights*.» As Soviet reality has shown, this was quite far from being the same thing. Soviet trade unions enjoyed a rather wide spectrum of legal rights. Besides this, they were quite powerful organizations. Although they had been formally independent from government authorities, they were in fact performing a large number of functions traditionally attributed to the state. Trade unions were actually inseparable both from the state and the employers, because all enterprises (i.e., employers) belonged to the «Soviet people». Therefore, it is no wonder that Soviet Union was criticized by the ILO for breaches of freedom of association principles. As Bob Hepple considers, the dispute as to how tripartism could operate in a country where there is no distinction between the state, the government, and employers has never been satisfactorily resolved¹. Nevertheless, this manifesting non-conformity of Soviet trade unions to the principles of freedom of association formulated by the capitalist countries in accordance with their vision of human rights standards did not necessarily mean that Soviet trade unions were a worse tool for the workers' protection than their Western analogs, or that Soviet workers were defenseless against the employer compared with the employees of capitalist countries. It would be more appropriate to say that they were principally different bodies, based on an absolutely different philosophy. Soviet trade unions were not independent from the state and performed functions incompatible with freedom of association principles, their «defensive» function in respect of workers, as opposed to «representation» function of market economy countries, was a

¹ Hepple, Bob. Labour Laws and Global Trade. Hart Publishin, 2005.

matter of reality¹. The Soviet Union ratified both fundamental ILO Conventions on freedom of association – No. 87 and 98 – but, as has already been noted, it was repeatedly criticized by the Committee on Freedom of Association (CFA) and the Committee of Experts on Application of Conventions and Recommendations of the ILO (CEACR) for its non-conformity to the principles set up in the Conventions. The non-conformity was found in the trade unions' monopoly imposed by law; excessive functions of unions, such as, the function, stipulated by law, where «the trade unions shall educate workers and employees in order to strengthen their ideological convictions» and other features of socialist legislation on trade unions.

Overall, it has to be noted that even prior to the Soviet occupation Lithuania was insufficiently developed in terms of trade union democracy. Although the first trade unions started emerging in Lithuania at the end of the 19th century, they were legitimated only in 1906 by virtue of adopting a special law (it should be noted that at that time it was the territory of the Russian Empire). While being unpopular and scarce of members, trade unions were mainly engaged in the organisation of strikes. After the World War I, workers of independent Lithuania were more active in joining trade unions. However, after the authoritarian government coup in 1932, trade unions were completely banned². This is an obvious evidence of Lithuanian trade unions being under a significant influence of political systems in all times. In contrast to Western countries, trade unions in Lithuania even did not have a real opportunity to develop and function as «true representatives of workers».

Such a situation evidently predetermined relevant views of society towards trade unions. This is particularly the case with Soviet trade union activities that lasted for as long as 50 years. As it has been mentioned, the functions of the then trade unions included representation of workers' interests in the areas of production, labour, household and cultural areas. Trade unions were considered

¹ Lyutov, Nikita; Petrylaitė, Daiva. Trade unions' law evolution in Post-Soviet countries: the experiences of Lithuania and Russia. Comparative Labor Law & Policy Journal. 2009, vol. 30, iss. 4. p. 779-799.

² Kasiliauskas, Nerijus. Problems of legal status of trade unions in Lithuania: summary of doctoral dissertation, Vilnius University, 2006.

a part of the state political system whose activities were led by the communist party. Acting in cooperation with state institutions, the then trade unions controlled production, organised socialist competition, were responsible for the improvement of working, living and resting conditions of workers, and dealt with social insurance issues. In addition, trade unions distributed incentives, residential spaces, organised cultural events, distributed bonuses to employees, provided vouchers to sanatoria, rest-houses and/or resorts. In other words, Soviet-time trade unions performed not only the functions of protecting social, labour and economic rights of employees, but also those falling within the ambit of the authorities. Therefore, Lithuanian employees had long associated trade unions with the state, and even after reinstatement of independence many employees continued (and probably still continue) to expect the performance of the aforementioned functions from trade unions without even trying to understand the essence of the classical democratic representation functions that are normally performed by trade unions.

2. Formation of the independent trade unions

In 1989, the Workers' Union of Lithuania was established as an alternative to Soviet trade unions. It means formally relations with the Soviet trade union were terminated. The congress of Lithuanian trade unions took place on April 19–21, 1990. The congress on the former soviet trade union basics established the Confederation of Free Trade Unions of Lithuania, which became the successor to the rights of former trade unions. Later, it changed its name to the Lithuanian Trade Union Centre. Dissatisfied with slow reform and its «Soviet» past, some trade union branches and organizations abstained from joining this organization and in February 1992 established one more organization – the Alliance of Trade Unions of Lithuania. In 2002, the Lithuanian Trade Union Centre and the Alliance of Trade Unions of Lithuania merged into the biggest Lithuanian organization – the Lithuanian Trade Union Confederation. The Workers' Union of Lithuania changed its name and became the Lithuanian Trade Union «Solidarumas.»

Fights among trade unions for the former Soviet trade unions' property were extremely detrimental to the movement of Lithuanian

trade unions. These fights were provoked by inconsistent decisions by the Parliament and Government concerning the use and redistribution of this property. Various financial business groups also contributed to these processes. Representatives of trade unions took an active role in the restitution processes of the state. It happened because Soviet trade union used to be an owner of a huge property. After the reinstatement of Lithuania's independence, the issue of taking over the property managed by trade unions, which had functioned during the Soviet times, caused several problems. To this effect, on May 25, 1993, the Seimas of the Republic of Lithuania adopted the Law on the Property of Former State Trade Unions of the Lithuanian SSR, which stipulated the bases and procedures for handing over the property of the former trade unions of the Lithuanian SSR¹. Article 2 of this law stipulated that the property of former state trade unions of the Lithuanian SSR should be transferred as ownership (1) to the state, in order to satisfy the needs of the Lithuanian people; (2) to the Special Fund for Support of the Functioning Trade Unions and Those in the Process of Establishment and that, within five years, transfers the property to the trade unions; and, (3) to the former owners (restitution process). On July 20, 2000, the Seimas adopted the Law on the Distribution of Property of Trade Unions². Article 3 of this law established which objects are transferred by right of ownership, to directly indicated entities: the Lithuanian Trade Unions' Centre, the Alliance of Trade Unions of Lithuania, the Labour Federation of Lithuania, and the Workers' Union of Lithuania. However, such provisions of the law were appealed before courts. Having reviewed the cases, the Constitutional Court of the Republic of Lithuania stated that no right could appear on the unlawful grounds. The property nationalized or otherwise unlawfully disseized by the occupation government did not become state-owned property, it «may be considered as property which is only in fact possessed by the state»³ (and by the state trade unions).

¹ Official journal, 1993, No. 20-486.

² Official journal, 2000, No. 67-2018.

³ Ruling of 20 September 2003, of the Constitutional Court of the Republic of Lithuania «On the compliance of the legal acts by which questions of the property formerly possessed by trade unions which used to function in Lithuania prior to the restoration of the independent state of Lithuania with the Constitution of the Republic of Lithuania.» Official journal, 2003, No. 93-4223.

Therefore, it may be stated that such pluralist means of rights succession and new trade union formation has resulted both in a strength and a weakness of the modern trade union movement in Lithuania. The obvious strength is that trade unions since the 1990 have faced an atmosphere of competition with each other and this motivated them to be actually independent from the employers and the state. At the same time, however, this competition, combined with a lack of financial resources, resulted in a weakness: the low level of membership and bargaining coverage. Besides the fact that trade unions representing only a small number of employees are weak in workplace-level collective bargaining, they could not put significant pressure on the legislature in order to promote labor laws favorable to them and to the employees.

3. Trade union activities today

In compliance with Article 35 of the Constitution of the Republic of Lithuania, citizens shall be guaranteed the right to freely form societies, political parties, and associations, provided that the aims and activities thereof do not contradict the Constitution and laws. Article 50 of the Constitution specifies the provision of Article 35 in more detail, defining the legal status of one of associations, i.e., trade union. The Article stipulates that trade unions shall be freely established and shall function independently with the main purpose and duty to defend the rights of employees. In Lithuania, the establishment, membership, and activities of trade unions are regulated by the Law on Trade Unions adopted as early as in 1991. The preamble of this law reads that trade unions shall be voluntary, independent and autonomous organisations representing and advocating employees' labour, economic, social rights and interests relating to their professions. Persons who are legally employed under an employment contract or on other statutory grounds in the territory of the Republic of Lithuania shall have the right to form trade unions and join them. After the reinstatement of independence, trade unions evidenced a sharp decline in union membership which, notwithstanding minor fluctuations, remains among the lowest in the European Union standing below 8.5 per cent.

In compliance with the data of Statistics Lithuania:

	2006	2007	2008	2009	2010	2011	2012	2013	2014
TU members number (thousand)	115,7	115,0	111,7	115,4	112,6	108,9	102,3	95,3	94,2
Percent of all employees	9,15%	8,68%	8,3%	8,73%	9,0%	8,69%	8%	7,35%	7,75%

It should be noted that non-confidence in trade unions dramatically increased during the economic crisis. This can be also illustrated by the results of public opinion polls¹. For example, as few as 37% of respondents were positive about the activities of trade unions and 41% of respondents had no opinion on this issue. The question «Are you a trade union member?» was answered in the affirmative only by 5% of respondents; 10% of respondents reported having withdrawn from trade unions. It means that even 85% of Lithuanian employees are not covered by trade unions and, even, are not interested in their activities. It also means that they deprive themselves of the right to collective representation and of the opportunity to act collectively in defending their social and economic rights and interests.

In lieu of conclusions

At first glance, it may seem that trade unions were one of the organisations which cardinal transformation in the context of new living conditions of society over the past 25 years was both the feasibility and the necessity. However, the examples above demonstrate that the deep-rooted mentality of trade unions themselves and their heritage of the post-Soviet thinking pose a serious challenge for high-quality performance of new functions.

The example above evidences the still extant former social heritage and reaffirms the statement that some Central and Eastern European countries not only have to fully adopt the rules of the market-economy game but, at the same time, to improve the system

¹ A qualitative representative survey of the Lithuanian population and of individual target groups, carried out within the framework of the Research Council of Lithuania, global grant project VPI-3.1-PMM-07-K-03-085 «The Challenges of the Economic Crisis (Recession) on the Rule of Law and Human Rights».

of industrial relations to such an extent that it would not only function effectively but would also become a social and cultural factor in these countries¹. Unfortunately, restrictive interpretation of social partnership ideas and objectives, attempts to achieve short-term and (alas) often personal goals of individual social partner organisations can be also seen in Lithuanian practices. The public interest is often forgotten and the opportunities provided by suitable implementation of social partnership relations, as well as its effects for the strengthening of social and industrial democracy are underexploited².

In fact, the negative image attached to trade unions by society seems to have prevailed during all these years. Multiple peripeties with the distribution of former Soviet property and conflicts between trade union leaders arising from the aforementioned property interests have left a poor impression. Naturally, this in particular refers to the image of national trade unions as the successors of the former Soviet trade unions. However, taking into account that these three national peak trade unions are highly concentrated and are the main players in social dialogue relations with the government, it is obvious that the image they create is dominant in society. It should be also noted that (although there have been no special studies conducted to this effect) there is a clearly observed challenge posed by generational change. In other words, most of the leaders of national and sectoral trade unions are former Soviet unionists. Their «irreplaceability», reiterated statements that are often cut off from reality, raises a pity rather than trust. That is to say, trade unions are quite discredited from Soviet times³. Representatives of the «old idea» of

¹ WEISS, Manfred. Enlargement and Industrial Relations: Building a New Social Partnership. The International Journal of Comparative Labour Law and Industrial Relations, 2004, vol. 20, no. 1, p. 5-26.

² Petrylaitė, Daiva. The institute of social partnership: European Union legal standards and their implementation in national practices. In: Lithuanian legal system under the influence of European Union law: collection of scientific articles on the influence of European Union law on Lithuanian constitutional, administrative and environment protection, criminal, civil and civil procedure, labour and social protection, finance law: [the 10th anniversary of the Lithuanian membership in the European Union]. Ed. by Gintaras Švedas. Faculty of Law, Vilnius University: 2014.

³ Vladas Gaidys. In: Experts: Lithuania is determined by the trade union unpopularity of the Soviet legacy [in Lithuanian]. From: <http://www.delfi.lt/archive/print.php?id=61032559>

trade unions, that is the majority of trade unions, neither take any steps to improve their image nor invest in the development of union membership. Finally, there is no such practice observed as reporting, publishing of activity results or taking any other measures by the trade unions to motivate their existing and potential members.

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ПОЄДНАННЯ ПУБЛІЧНИХ ТА ПРИВАТНИХ ЗАСАД В ЦИВІЛЬНОМУ ПРОЦЕСІ

Поєднання публічних та приватних засад в цивільному процесі – це відображення сучасного етапу розвитку цієї галузі права, яке має своїм корінням історичні підходи до з'ясування сутності цивільної юрисдикції. Пошук оптимальних варіантів їх співвідношення надає можливість збалансувати інтереси держави та громадянина в системі здійснення правосуддя у цивільних (приватних) спорах та дозволяє забезпечити ефективний захист прав та інтересів громадянина.

Нове розуміння ролі приватноправового регулювання в цивільному процесі, пов'язане з більшою реалізацією принципів диспозитивності, змагальності, відмови від активної участі суду в процесі доказування, збільшення ролі нотаріату, альтернативних способів вирішення спорів, удосконалення системи приватноправової юрисдикції, що, в комплексі, сприяє підвищенню ефективності вітчизняної системи цивільної юрисдикції.

Сучасний цивільний (в широкому розумінні цивілістичний) процес уявляє собою складну інтегративну систему пов'язаних