Verslo ir teisės aktualijos / Current Issues of Business and Law
ISSN 1822-9530 print / ISSN 2029-574X online
2015, 10, 13–16
doi:10.5200/1822-9530.2015.02

International Legal Standards of Collective Agreements and Related Aspects in the Selected European Union Member States

Andrzej Marian Świątkowski[1], Daiva Petrylaitė[2], Inga Blažienė[3], Aušra Bagdonaitė[4]

[1]*Jean Monnet Professor of European Labour Law*
Jagiellonian University, Faculty of Law and Administration
Department of Labour Law and Social Policy
Chief Researcher of the Lithuanian Social Research Centre

Doctor of Social Sciences
A. Goštauto Str. 11, LT-01108 Vilnius
Tel. (+370 5) 2113774
E-mail: andrzej.swiatkowski@uj.edu

[2]*Senior Researcher of the Lithuanian Social Research Centre*
Doctor of Social Sciences
A. Goštauto Str. 11, LT-01108 Vilnius
Tel. (+370 5) 2113774
E-mail: daiva.petrylaite@gmail.lt

[3]*Senior Researcher of the Lithuanian Social Research Centre*
Doctor of Social Sciences
A. Goštauto Str. 11, LT-01108 Vilnius
Tel. (+370 5) 2113774
E-mail: inga.blaziene@dsti.lt

[4]*Researcher of the Lithuanian Social Research Centre*
Doctor of Social Sciences
A. Goštauto Str. 11, LT-01108 Vilnius
Tel. (+370 5) 2113774
E-mail: bagdonaiteau@gmail.com

Abstract

This article analyses the international standards of labour law adopted by the International Labour Organization (ILO). The focus is on ILO conventions and recommendations regulating collective bargaining, conclusion of collective agreements and their content, as well as other related issues. The article not only reveals the content of the aforementioned legal standards, but also relies upon abundant case-law, i.e. the essence of international standards and their impact on national law-making and collective bargaining practices are explained using conclusions of the Committee on Freedom of Association and the Committee of Experts.

Keywords: industrial relations, collective bargaining, collective agreements, international labour standards

Tarpautinės teisės standartai dėl Kolektyvinių sutarčių ir su jomis susijusių aspektų taikymo pasirinktose Europos Sąjungos valstybėse narėse

Anotacija

Šiame straipsnyje analizuojami tarptautiniai darbo teisės standartai, kuriuos yra priėmusi Tarptautinė darbo organizacija. Analizuojami kolektyvinių derybų ir kolektyvinių sutarčių sudarymo, turinio ir kitus susijusius klausimus reglamentuojančios Tarptautinės darbo organizacijos konvencijos bei rekomendacijos. Atskleidžiamas ne tik šių teisės standartų turinys, bet gausiai remiantis precedento teise, t. y. Asociacijų laisvės komiteto bei Ekspertų komiteto išvadomis, konkretizuojama tarptautinių standartų reikšmė ir jų įtaka nacionalinei teisėkūrai bei kolektyvinių derybų praktikai.

Reikšminiai žodžiai: kolektyviniai darbo santykiai; kolektyvinės derybos, kolektyvinės sutartys, tarptautiniai darbo teisės standartai.

Introduction

Fundamental human freedoms, including workers' freedom to belong to trade unions and employers' freedom to belong to employers' organisations, the right to negotiate minimum conditions of work and pay and organise collective actions to exert pressure on social partner organisations representing economic, professional and social interests of the workers' and employers' collectives, are regulated globally by conventions of the International Labour Organization: no. 87 of 9 July 1948 – the Convention concerning Freedom of Association and Protection of the Right to Organise (Convention No. 87…, 1948) and no. 98 of 1 July 1949 – the Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (Convention No. 98…, 1949). It is important to emphasize that in the above-mentioned international sources of labour law, the freedom of association and the freedom to negotiate collective agreements was guaranteed also to employers. The principle of balance between the parties to collective labour relationships, who are at the same time social partners, obligates international organisations in their capacity of legislators to ensure uniform regulation of the rights connected with the establishment and joining of trade unions and workers' organisations and the rights to negotiate and conclude, on equal footing, collective agreements and

other normative agreements. The principle of balance in collective labour relationships and the principle of equality of social partners in the light of international public laws are interpreted as a source of competence of employers and their organisations to exert pressure on trade unions representing interests of a collective of the workers and protecting rights of members of such a collective.

The aim of this article is to analyse and evaluate provisions of the mentioned international standards in the area of collective bargaining and collective agreements, as well as to reflect the perspective significance of the standards for the development of the institute of collective bargaining (agreements).

The research problem covers the international-scale peculiarities of the legal regulation of collective bargaining and collective agreements signed in the course of this process. The research employs such methods as document analysis, scientific analysis, comparison, and systematic analysis.

1. International Labour Organization standards concerning the freedom of collective bargaining

The modern European concept of collective labour relationships is based on social dialogue. Social dialogue in collective labour relationships means exchange of substantive opinions between social partners on matters of their interest which are regulated by labour laws (Świątkowski, 2014). One of the basic functions of the International Labour Organization is to promote social dialogue among social partners. The Declaration of Philadelphia of 1944 annexed to the Constitution of the International Labour Organization declares that a "solemn obligation" of the International Labour Organization is to promote the "effective recognition of the right of collective bargaining" and "collaboration of workers and employers" (Declaration of Philadelphia, 1944). Collective bargaining and social dialogue should serve the purpose of "improvement of organisation of production" and "development and implementation of the social and economic policy" (Świątkowski, 2008). The above obligation is worded in Article 4 of International Labour Organization Convention No. 98 concerning the application of the right to organise and to bargain collectively. The mentioned provision imposes on the Member States the obligation to encourage social partners to negotiate collective agreements (Application of International Labour Standards, 2006). It obligates the authorities of the Member States to encourage and promote the full development and utilisation by

the social partners of machinery for voluntary negotiation to conclude collective agreements.

The Member States were under the obligation to support the idea of collective bargaining "where necessary". The scope of the obligation to promote collective agreements was extended to include the states that had not ratified International Labour Organization Convention No. 98 within the framework of the International Labour Organization Declaration of Fundamental Principles and Rights at work (Declaration of Fundamental Principles…, 1998). The Declaration imposes on authorities of the states that have not ratified this fundamental convention the obligation to comply with, promote and apply in good faith, in accordance with the Constitution of the International Labour Organization, the principles relating to the fundamental rights regulated by International Labour Organization Convention No. 98. It can be emphasised that the intention of the International Labour Organization is to promote workers' fundamental rights: the freedom to associate and to bargain collectively. The right of social partners to conclude collective agreements and other normative agreements is considered by the lawyers specialising in international labour law as a necessary and significant element of the freedom to associate (Bartolomei de la Cruz, Potobsky, 1996). Workers associate in trade unions to have an impact on the conditions of work and pay.

Apart from International Labour Organization Convention No. 98, the scope of the freedom to bargain collectively is regulated by the following International Labour Organization conventions and recommendations: Convention No. 151 concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service (Convention No. 151…, 1978), Convention No. 154 concerning the Promotion of Collective Bargaining (Convention No. 154…, 1981), Recommendation No. 91 concerning collective agreements (Recommendation No. 91…, 1951), Recommendation No. 159 concerning Procedures for Determining Conditions of Employment in the Public Service (Recommendation No. 159…, 1978), and Recommendation No. 163 concerning the Promotion of Collective Bargaining (Recommendation No. 163…, 1981). These legal standards also are going be discussed in subsequent sections.

2. Purpose of collective bargaining

2.1. General remarks

Social partners negotiate to conclude collective agreements. Negotiations are defined in the literature of international labour law as a process leading to signing of a normative agreement by social partners, that is, a collective agreement (Gernigon, Odero, Guido, 2000). In international labour law, the "collective agreement" is defined as "all agreements in writing regarding terms of employment and remuneration concluded between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more representative workers' organisations, on the other hand".

International Labour Organization Recommendation No. 91 has introduced the following principles to international labour law: (1) mandatory nature of stipulations of collective agreements; (2) primacy of a collective agreement over contracts of employment concluded by employers with particular workers; (3) cessation of validity of the contracts of employment less favourable to workers than the provisions of collective agreements; (4) automatic replacement of the stipulations of the contracts of employment considered null and void with stipulations of the collective agreements more favourable to workers.

2.2. Definition of a collective agreement

International Labour Organization Convention No. 98 does not provide a legal definition of a collective agreement. Article 4 of this Convention includes guidelines useful in the process of construction of the legal definition of collective agreements. On the basis of the guidelines contained in that provision, the collective agreements may be defined as acts voluntarily negotiated by social partners (Application of International Labour Standards, 2006) and used to shape the content of individual labour relations. Definitions of collective agreements vary from country to country. Some Member States, such as Estonia, stipulate a precise definition in their legislation. Article 2(1) of the Collective Agreements Act (Collective Agreements Act …,1993) refers to a collective agreement as a voluntary agreement between employees or a union or federation of employees and the employer or an association or federation of employers, and also state agencies or local governments, which regulates labour relations between employers and employees. Unlike in Estonia, other countries regulate only separate elements of the aforementioned definition. The Labour

Code of Hungary (Act I of 2012 on the Labour Code…, 2012) regulates the parties to, the form and other aspects of a collective agreement separately in different articles. According to Article 13 of this Code, collective agreements constitute a part of employment regulations, i.e. normative sources of law.

A significant element of that definition of collective agreements is a method used by social partners. The regulation included in International Labour Organization Recommendation No. 91 stipulates supremacy in labour relations of autonomy of a collective will expressed by social partners negotiating the collective agreements which specify the terms and conditions of individual contracts of employment over an individual will expressed by parties to a contract of employment. The Member States are not obliged to adopt provisions enabling implementation in the national legal system of the above-mentioned four principles describing the relationship between the collective agreements and the individual contracts of employment if the social partners – parties to the collective agreements – ensure effective application of stipulations of such collective agreements. However, in most cases countries define the relationship between the individual contracts of employment and the collective agreements by legislation. For example, Article 241^{13} of the Labour Code of Poland (Labour Code…, 1974) regulates relations between a contract of employment or another act which was the basis for the employment relationship created under previously applicable labour laws (generally applicable laws and provisions of collective agreements) and the provisions of a new collective agreement. If the currently applicable collective agreement includes the provisions which are more favourable than the provisions of the contract of employment or the act which was the basis for the employment relationship established by the generally applicable laws enacted earlier than the collective agreement, the more favourable provisions of the subsequent collective agreement replace by virtue of law, as of the effective date of such subsequent collective agreement, the terms and conditions of the contract of employment or another act based on the labour laws in force in the period preceding conclusion of the currently applicable collective agreement.

2.3. Parties to a collective agreement

Collective agreements may be concluded by social partners: an employer or employers and workers. The employer is entitled to independently carry out the collective bargaining process. The employer's interests may also be represented by a group of employers or one or several employers' organisations. Workers' interests may be represented only by one or several representative

workers' organisations. International Labour Organization Recommendation No. 91 does not regulate a conflict of interest between representative workers' organisations operating in one establishment, all of which claim to have the right to bargain collectively on behalf of the workers employed by a particular employer. International Labour Organization Convention No. 135 concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking (Convention No. 135…, 1971) also does not set out principles for the settlement of positive competence disputes between different representative workers' organisations all of which propose to the employer to bargain collectively in order to regulate the terms of employment and remuneration of workers employed by a particular employer and regulate mutual relations between such an organisation and the employer. Article 5 of this Convention includes a guideline on how the conflicts of competence should be dealt with in matters relating to collective bargaining between trade unions and other workers' representative organisations. It notes that the activity of representative workers' organisations should not undermine the position of the trade unions concerned or their representatives as well as cooperation between them should be encouraged. In the case of collective agreements, the Member States either establish the principle of monopoly of trade unions to negotiate normative agreements with the employer or they order all the workers' organisations functioning in an enterprise to conclude an agreement to select common representation during collective bargaining with the employer. A refusal to cooperate results in temporary loss of ability to represent workers during the negotiations by a less representative trade union organisation or workers' representative organisation. Only in the cases when there is no trade union in the enterprise which could be considered as representative, any trade union organisation becomes entitled to bargain collectively. Laws adopted by a Member State should grant to such a trade union at least the right to negotiate the collective agreements on behalf of the represented workers (Application of International Labour Standards, 2006).

The International Labour Organization Committee on Freedom of Association considers that a trade union is an entity entitled to represent workers' interests during collective bargaining (Bartolomei de la Cruz, Potobsky, 1996). It insists that trade union organisations intending to exercise their rights to bargain collectively should be autonomous and independent, free from influence of public authorities and/or employers. The right to negotiate collective agreements may be granted to representative trade unions. According to a directive included in Recommendation No. 163, the Member States should recognize

representative employers' and workers' organisations for the purpose of collective bargaining. As a rule, the status of a representative organisation is granted to the most numerous trade union organisations. If the status of a 'representative' trade union is associated with exclusivity or preferential treatment in the collective bargaining process, the status of a representative trade union should be based on objective and pre-established criteria (Recommendation No. 159). Trade unions that apply for the status of a representative workers' organisation authorised to negotiate collective agreements should represent at least half of the workers of an establishment, industry branch or workers of a given profession that are to be subject to a collective agreement (Bartolomei de la Cruz, Potobsky, 1996).

For example, Article 276(1) of the Labour Code of Hungary states that collective agreements may be concluded: by employers or their interest groups by authorization of their members and trade unions. Taking into account the aspect of the trade unions, the Code stipulates the requirement of their representativeness based on quantitative criteria. In addition, the Code requires that a trade union be entitled to conclude a collective agreement if its membership reaches ten per cent of all workers employed by the employer or of the number of workers covered by the collective agreement concluded by the employers' interest group. Such regulation specifies that the same representativeness criteria of trade unions are necessary at both company and sectorial level.

To analyse the position of the International Labour Organization in relation to employee representation, it must be pointed out that this organisation considers the right to form trade unions for the protection of employee interests and the right to join trade unions to be an integral part of the freedom of association. An analysis of documents of the International Labour Organization shows that this organisation classifies employee representation entities into two groups: union employee representatives and elected (designated) employee representatives. There are two aspects in this classification worth paying attention to: first, elected employee representatives are seen as an alternative to trade unions, concurrently providing a possibility of simultaneous co-acting of these two organisations. In such a way, the International Labour Organization expresses its striving to promote co-operation between elected employee representatives and trade unions and also obligates states to take measures, where such are necessary, to prevent using the elected employee representatives to weaken the positions of trade unions. This brings about the second aspect of the above-mentioned classification, that is, entrenchment of the priority of trade unions in collective labour relations vis-à-vis elected (designated)

employee representatives. The latter striving of the International Labour Organization in respect of the balance between employee representation bodies is quite differently implemented in practice by different states (Blažienė, Petrylaitė, 2010). For instance, in Estonia there is a possibility of alternative employees' representation. Article 3 of the Collective Agreements Act states that if employees are not represented by a trade union in an enterprise, agency or other organisation, an authorised representative of the employees shall enter into the collective agreement. It is highly questionable that one person can represent all employees in a company. However, it is difficult to evaluate the effect of such clause, because it does not work in practice.

3. Scope of negotiations

3.1. General remarks

International Labour Organization Conventions No. 98, 151, 154 and ILO Recommendation No. 91 regulate the scope *ratione personae* and *scope ratione materiae* of collective agreements. According to the sources of international labour law mentioned above, the scope of negotiations and the scope of application of the collective agreements are unlimited. The *ratione personae* and *ratione materiae* limits of the collective agreements may be set by social partners in accordance with two principles: the freedom to negotiate and the freedom to select the scope of application of a collective agreement. International Labour Organization Convention No. 98 supports the "most extensive" collective bargaining of the social partners. However, it establishes one condition: a collective agreement may be concluded only in "voluntary negotiations". The social partners, parties to collective agreements concluded in the private and public sector, if they participate in negotiations voluntarily, enjoy an unlimited freedom to define the scope *ratione personae* and scope *ratione materiae* of application of the collective agreements. International Labour Organization Recommendation No. 163 imposes on the Member States the obligation to encourage the social partners to bargain collectively at any level: the level of the establishment, local, the branch of activity or the regional or national levels. In countries where collective bargaining takes place at several levels, the social partners should seek to ensure that there is co-ordination among these levels. Collective bargaining should be conducted in good faith. If a collective agreement is negotiated at the national level, public authorities should make available to the workers' representatives such information as is necessary regarding

the overall economic and social situation of the country and the branch of activity concerned, to the extent to which the disclosure of this information is not prejudicial to the national interest.

3.2. Scope *ratione personae* of collective agreements

Collective agreements are of general scope. They may and – according to the International Labour Organization – should be negotiated and concluded both in the private and public sector. International Labour Organization Convention No. 98 excludes public servants from the scope of its application. Article 6 of that Convention provides that the Convention does not deal with the position of public servants. The situation of the public servants has changed significantly following the adoption of International Labour Organization Convention No. 151 concerning labour relations (public service). The public employees whose representatives are entitled to bargain collectively with public authorities are all persons employed by public authorities irrespective of the basis of establishment of the work relationship (Article 2). The purpose of the negotiations should be to regulate the terms and conditions of employment of public employees or to agree upon such other methods as will allow representatives of public employees to participate in the determination of these matters (Article 7). This provision of International Labour Organization Convention No. 151 does not impose on social partners in the public sector the obligation to bargain collectively. Public authorities and public employees' organisations have the right to develop other, alternative to collective agreements, techniques of setting out the terms of employment and remuneration of public servants. The social partners should decide themselves which techniques should be considered to the most appropriate ones. A public authority, which play a double role: that of the addressee of the obligation specified in International Labour Organization Convention No. 151 and that of a direct employer of public servants, is not entitled to decide on its own whether the procedures to set out the terms and conditions of employment as agreed upon by the social partners are sufficient.

In Poland, collective agreements cannot be concluded for the categories of workers listed in Article 239(3) of the Labour Code. According to this provision, the collective agreements cannot be concluded for civil servants as well as for employees of public institutions employed by way of nomination and appointment, local government employees employed by way of election, nomination and appointment in marshalls' offices, poviat starosts' offices, municipal offices, offices (and their equivalents) of local government associations, judges

and prosecutors. The persons listed in the aforementioned article are employees within the meaning of Article 2 of the Labour Code. Article 239(3) of the Labour Code allows to exclude the right to conclude collective agreements by all employees of the public administration (government administration, local government administration, judiciary), irrespective of the nature of the performed work and the position held. Therefore, the scope of exclusions established in the Labour Code is far broader than allowed by International Labour Organization Convention No. 15.

3.3. Scope *ratione materiae* of collective agreements

International Labour Organization Conventions No. 98, 151 and Recommendation No. 91 define very broadly the scope *ratione materiae* of collective agreements (Application of International Labour Standards, 2006). Collective agreements mean all normative agreements "regarding terms of employment and remuneration" concluded by social partners. Documents of the International Labour Organization formulate the principle of the freedom to negotiate and conclude collective agreements in all matters regarding terms of employment and remuneration. National labour laws which restrict the above rights are considered by the International Labour Organization Committee of Experts on the Application of Conventions and Recommendations contrary to the conventions of the International Labour Organization. However, the International Labour Organization allows authorities of the Member States to interfere in matters regarding the freedom to negotiate collective agreements if this is justified by economic and social reasons, when such interference is justified by the protection of wider interests (Committee of Experts on the Application of Conventions and Recommendations, 1983). However, a collective agreement which is "manifestly in conflict" with the purposes of social and economic policy of a Member State cannot be considered invalid or ineffective by the authorities of that state. Moreover, the Member States are not entitled to refuse registration of a collective agreement which is contrary to social and economic policy (Application of International Labour Standards, 2006).

Most frequent interferences of authorities of the Member States in the freedom of collective bargaining refer to terms of remuneration. The authorities of the Member States want to control the freedom of negotiation by social partners regarding the level and rate of increase of wages. If the social partners agree upon a rate of increase in wages different from the previously applied in a specific private economy sector, this causes reaction of other social partners acting both in other private economy sectors and in the public

sector. The International Labour Organization Committee of Experts on the Application of Conventions and Recommendations agrees for interference by a Member State and restriction of the freedom of the social partners to negotiate an increase in wages within the limits of, for example, 0 to 1 percent annually (Betten, 1993) only in case of serious economic problems. Restrictions of the freedom to negotiate the increase in wages are subject to the same principles as those applied to evaluation of interference of the authorities of the Member States in the freedom of collective bargaining. A Member State must convince the International Labour Organization Committee of Experts on the Application of Conventions and Recommendations that restriction of the freedom to negotiate the increase in the wages of workers covered by a collective agreement was necessary due to a serious threat to economic interests of the state, the interference of the Member State is adequate to the threat and restrictions on the freedom to negotiate collective agreements are temporary. Furthermore, a Member State that interferes in the freedom of the social partners to negotiate the increase in wages is obliged to prove that this will enable compliance with previous living standards. This means that it needs to prove the relationship between the rate of wages guaranteed by previously concluded collective agreements and the level of remuneration established by laws adopted by the Member State and the inflation rate and price index for selected products. Preservation of restrictions on the freedom to negotiate increase in wages in collective agreements which does not conform to the factors mentioned above (exceptionally justifying the actually unacceptable interference of state authorities in the freedom to negotiate the collective agreements) is generally considered a violation of international standards.

4. Problematic aspects of collective agreements in Lithuania

Collective agreements are regulated by the Labour Code (Labour Code of the Republic of Lithuania…, 2002). Article 3 of the Labour Code establishes regulatory provisions of collective agreements as sources of labour law. The Code separates upper-level (national, sectorial, territorial) collective agreements as well as collective agreements of an enterprise. Article 50(1) of the Code defines an upper-level collective agreement as an agreement concluded in writing between trade union organisations (association, federation, centre, etc.) and employers' organisations (association, federation, confederation, etc.). Moreover, this article regulates the different content of such agreements. A collective

agreement concluded on a territorial level specifies the conditions for dealing with certain work, socio-economic problems which reflect territorial peculiarities (Article 50(3)). Over the past three years, the first territorial collective agreements have been concluded. According to the aforementioned provision of the Labour Code, territorial collective agreements reflect territorial peculiarities. In reality, there are no such territorial aspects included in the content of these effective agreements. It shows that territorial collective agreements do not reach their main goal. Therefore, these collective agreements may be considered more as obligatory contracts between social partners which are active in the same territory, i.e. municipality or district, rather than as normative agreements, because they do not include normative regulations in relation to employees of the territory concerned. As the practice of territorial collective agreements demonstrates, the regulation of such agreements is inappropriate. Such agreements could be allowed only as an instrument to develop social partnership on the territorial level and referred as social agreements dealing with labour, social and economic conditions of a particular territory.

Compared with other European countries, Lithuania has a unique concept of parties to a collective agreement of an enterprise. Article 60(1) of the Labour Code defines parties to a collective agreement of an enterprise as the staff of the enterprise and the employer. As it can be seen, a party to a collective agreement is not a trade union itself (only representative), but the staff of the enterprise. This problem does not have any ideological character, but it does raise practical problems (Petrylaitė, Bagdonaitė, 2015). It is especially obvious in the cases when there are disagreements between employees and trade unions as their representatives. For instance, it happens that a conflict arises not between a trade union and an employer, but between a trade union and employees, which decide not to agree with a draft collective agreement prepared by the trade union and negotiated with the employer (in compliance with the procedure for the conclusion of a collective agreement on the enterprise level as stipulated in the Labour Code, a trade union and an employer can sign a collective agreement upon its approval by the majority of employees of an enterprise). In this case, trade unions' negotiation actions are often blocked and tension arises among employees, etc. Therefore, trade unions increasingly emphasize this obvious drawback of legal conception and indicate as a good example the regulation of parties to collective agreements on a higher level. One more argument is that employees (the staff) being independent subjects have the rights which they cannot realize in the absence of trade unions, or they have the rights which they can realize only with the help of trade unions (e.g., the right to strike).

In order to encourage collective bargaining, Lithuania has chosen a liberal (compromise) model of employees' representation on the enterprise level. According to Article 60(4), where an enterprise has no functioning trade union and where a staff meeting has not transferred the function of employee representation and protection to a trade union of the respective sector of economic activity, a collective agreement may be concluded between the employer and a works council. However, the aforementioned representation model, since its validation by the adoption of the Law on Works Councils (Law on Works Councils…, 2004) in 2004, does not work in practice and employees either are represented by trade unions, or remain unrepresented at all. Collective bargaining covers about 10 percent of Lithuanian employees, and such a rate remains the lowest in the European Union (Industrial Relations in Europe 2012, 2012).

In recent years, there has also been a discussion concerning the regulation of representativeness criteria for trade unions on the upper level of collective bargaining. Article 50 of the Constitution of the Republic of Lithuania (Constitution of the Republic of Lithuania…, 1992) states that all trade unions have equal rights. This constitutional provision should be considered as referring to equality in established guarantees and procedures for trade unions, but still their rights may be differentiated on objective grounds, for example, the rights related to collective bargaining. Therefore, the perspective of regulation of such criteria cannot be considered as an infringement of the Lithuanian Constitution. The absence of the representativeness criteria leads to the problems related to the identification of social partnership and influences the delay of collective bargaining.

Conclusions

The right to negotiate collective agreements (the right to bargain collectively) is guaranteed by international labour law. The Member States are obliged to comply with the international standards which guarantee the above right. They are obliged to promote the concept of negotiation by social partners of terms of employment and remuneration of workers. They are obliged to enable the social partners to negotiate the terms of employment and remuneration, and the social partners should exercise the above right in good faith.

The right to negotiate collective agreements is granted to social partners: employers and their organisations; trade unions are entitled to negotiate the

collective agreements on behalf of workers. Only in the cases when the workers are not associated with or represented by union organisations, the right to negotiate the collective agreements is granted to other organisations representing the workers. The Member States may guarantee the right to negotiate the collective agreements to representative trade unions only. The criteria applied to determine whether a trade union is representative should be objective. As a rule, the decisive factor is the number of members of a trade union.

The right to negotiate collective agreements has a universal coverage. The collective agreements should regulate the terms of employment and remuneration of workers employed both in the private and public sector.

Collective agreements regulate: terms of employment and remuneration of workers (normative stipulations of a collective agreement) and rights and obligations of social partners (obligating stipulations of the collective agreement). The normative stipulations of collective agreements that are more favourable to workers are applicable and have priority over provisions adopted by the state and provisions of contracts of employment.

References

Act I of 2012 on the Labour Code of the Republic of Hungary. *Magyar Közlöny – Official Gazette, Közlöny*, pp. 257–316.

Application of International Labour Standards, vol. I. (2006). Geneva: International Labour Organization, 2006 (I), p. 845.

Bartolomei de la Cruz, H. G., Potobsky von, G. (1996). *The International Labor Organization: The international standards system and basic human rights.* Boulder, Colo: Westview Press, p. 218.

Betten, L. (1993). *International Labour Law: Selected Issues*. Deventer – Boston: Kluwer, p. 221.

Blažienė, I., Petrylaitė, D. (2010). The institute of works councils: specific theoretical and practical features. The case of Lithuania. *Issues of Business and Law*, vol. 2, p. 85–94.

Collective Agreements Act of the Republic of Estonia. *RT1* I 1993, 20, 353.

Committee of Experts on the Application of Conventions and Recommendations. (1983). General Survey. Geneva: International Labour Organization, p. 102.

Constitution of the Republic of Lithuania. *Official Gazette*, 1992, No 33-1014.

Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise (1948). Retrieved May 5, 2014, from http://www.ilo.org/dyn/normlex/en

Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (1949). Retrieved May 5, 2014, from http://www.ilo.org/dyn/normlex/en

Convention No. 135 concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking (1971). Retrieved May 5, 2014, from http://www.ilo.org/dyn/normlex/en

Convention No. 151 concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service (1978). Retrieved May 5, 2014, from http://www.ilo.org/dyn/normlex/en

Convention No. 154 concerning the Promotion of Collective Bargaining (1981). Retrieved May 5, 2014, from http://www.ilo.org/dyn/normlex/en

Declaration of Fundamental Principles and Rights at work (1998). Retrieved May 5, 2014, from http://www.ilo.org/dyn/normlex/en

Declaration of Philadelphia: Declaration concerning the aims and purposes of the International Labour Organization (1944). Retrieved May 5, 2014, from http://www.ilo.org/dyn/normlex/en

Gernigon, B., Odero, A., Guido, H. (2000). *Collective Bargaining*. Geneva: International Labour Organization, p. 150.

Industrial Relations in Europe 2012 (2012). Office for Official Publications of the European Communities: Luxembourg, p. 255.

Labour Code of the Republic of Lithuania. *Official Gazette*, 2002, No 64-2569.

Labour Code of the Republic of Poland. *Dz.U.* 1974 Nr 24 poz. 141.

Law on Works Councils of the Republic of Lithuania. *Official Gazette*, 2004, No 164-5972.

Petrylaitė, D., Bagdonaitė, A. (2015). The Trade Unions as Participants of the Collective Labour Relations: the Problems of Legal Status. Studia z zakresu prawa pracy i polityki społecznej. Kraków: Uniwersytet Jagielloński.

Recommendation No. 91 concerning collective agreements (1951). Retrieved May 5, 2014, from http://www.ilo.org/dyn/normlex/en

Recommendation No. 159 concerning Procedures for Determining Conditions of Employment in the Public Service (1978). Retrieved May 5, 2014, from http://www.ilo.org/dyn/normlex/en

Recommendation No. 163 concerning the Promotion of Collective Bargaining (1981). Retrieved May 5, 2014, from http://www.ilo.org/dyn/normlex/en

Świątkowski, A. M. (2008). Międzynarodowe prawo pracy, T.I.: Miedzynarodowe publiczne prawo pracy [International Labour Law, Volume I: International public labour law]. Warsaw: C.H. Beck, p. 635. (In Polish)

Świątkowski, A. M. (2014). Good governance of collective labour relations in EU via social dialogue. *Teisė*, 92, 7–18.

Short biographical notes

Andrzej Marian ŚWIĄTKOWSKI
He is Jean Monnet Professor of European Labour and Social Security Law, Vice-President of the European Committee of Social Rights at the Council of Europe, member of the International Organization of Labor Law and Social Security (IOSS), the International Industrial Relations Association (IIRA) and the Polish Association of European Law, an expert for the European Union Commission in the field of labor law. He graduated from the Jagiellonian University in Law (1966) and Sociology (1969). He also received a Master's degree at the Faculty of Law at Pennsylvania University in Philadelphia (1977). Since 1988, he has been Head of the Chair of Labour Law and Social Policy at the Faculty of Law and Administration of the Jagiellonian University, Krakow, Poland. Professor Świątkowski is the author of more than 400 publications, including 30 academic texts (monographs, textbooks, commentaries) dealing with Polish, comparative and international labour and social security law and social policies.

Daiva PETRYLAITĖ
Associate Professor of the International Business School at Vilnius University since 2005 and full-time Associate Professor at the Law Faculty of Vilnius University since 2006. She defended her Ph.D. thesis concerning theoretic and practical problems of collective labour disputes in 2005. Her scientific research fields include: labour law, industrial relations, collective labour disputes, social dialogue, and civil service. Dr Daiva Petrylaitė is the author of the monograph "Collective Labour Disputes" and a co-author of several monographs on labour law and civil service, the responsible editor and the co-author of the manual "Labour Law". She has also published a number of articles on relevant labour law issues in national and international publications.

Inga BLAŽIENĖ
Doctor of Social Sciences (Economics). Since 1993, she has been working at the Institute of Labour and Social Research (since 2010 – the Lithuanian Social Research Centre) in the area of living standards, employment and labour market policy, industrial relations and working conditions. She defended her Ph.D. thesis in 2002. Since 2002, Inga Blažienė has worked at Vilnius Gediminas Technical University, the Faculty of Business Management, teaching economics and macroeconomics. Since 2004, she has been a national correspondent for the European Industrial Relations Observatory (EIRO), the European Working Conditions Observatory (EWCO) and the European Restructuring Monitor (ERM).

Aušra BAGDONAITĖ
PhD student at Vilnius University, Faculty of Law. Thesis title: "The role of social partners in application of the principles of flexible and safe labour market: perspectives of the European social model". Her scientific research areas include labour law, industrial relations and social partnership.