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Social Dialogue in Europe: Recent Trends and Practices

Crossroads of Social Dialogue in the Czech Republic

JUDr. Vít Samek

Vice President of CMKOS

samek.vit@cmkos.cz

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Náš motiv na zvýše
společného s volba
rozpočtu každoročn
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navrhoval 12 500 k
nad hranicí příjmov
dodává, že snížení
mezd.

Českomoravská konfederace odborových svazů

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Challenges of current social dialogue in the Czech Republic

- ***Employers' organizations without a mandate to bargain collectively and to sign the collective agreement***
- ***Majority rules in the Labour Code prefer minority trade unions despite the ILO approach (Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, 5th (revised) edition, 2006)***
- ***Increase of atypical forms of work - loss of “good-quality jobs”, growth of insecure jobs in private sector, rise of the gig economy etc.***
- ***Decline of trade union density (globalization, new forms of work)***
- ***Pressure of legislative and political reforms (company by-laws with a power of a collective agreement, civil law reform etc.)***

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Risks and challenges of social dialogue in the Czech Republic

- ***Employers' organizations without a mandate to bargain collectively and to sign the collective agreement***
 - ***Specific form of employers' organizations not allowing conclude an collective agreement (interest association of legal entities and other forms on the high/branch, sectoral level)***
 - ***Strict orders limiting mandate of a company management by the owners of the industrial group (often foreign)***
 - ***Section 25 of the Labour Code:***

- (1) The collective agreement shall be binding on the contracting parties to the agreement.
- (2) The collective agreement shall also be binding on:
 - (a) the employers who are members of the employer organization (association) which has concluded the higher-level (collective) agreement and on those employers who left the employer organization while the agreement was in effect;
 - (b) the employees on whose behalf the collective agreement has been concluded by the trade union organization or trade union organizations;
 - (c) such trade union organizations on whose behalf the trade union organization has concluded the higher-level agreement.

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Risks and challenges of social dialogue in the Czech Republic

- ***Majority rules in the Section of 24/2 of the Labour Code (and Finding of Constitutional Court Pl. ÚS 83/06 from the 12. of March 2008, č.116/2008 Coll.) prefer minority trade unions despite the ILO approach:***

Section 24

(2) Where two or more trade union organizations operate within one employer's undertaking (plant, enterprise), the employer must negotiate the conclusion of the collective agreement with all such trade union organizations; unless the trade union organizations agree between (among) themselves and with the employer otherwise, the trade union organizations shall act and negotiate the collective agreement jointly and in mutual consent, with legal consequences for all employees (of the employer concerned).

(1) The trade union organization shall conclude a collective agreement also on behalf of employees who are not trade union members.

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Risks and challenges of social dialogue in the Czech Republic

- **Majority rules - the ILO approach:** *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, 5th (revised) edition, 2006*:

967. In order to determine whether an organization has the capacity to be the sole signatory to collective agreements, two criteria should be applied: representativeness and independence. The determination of which organizations meet these criteria should be carried out by a body offering every guarantee of independence and objectivity.

971. *In order to encourage the harmonious development of collective bargaining and to avoid disputes, it should always be the practice to follow, where they exist, the procedures laid down for **the designation of the most representative unions for collective bargaining purposes** when it is not clear by which unions the workers wish to be represented. In the absence of such procedures, the authorities, where appropriate, should examine the possibility of laying down objective rules in this respect.*



Legal framework of social dialogue in the Czech Republic

- **Constitutional Act No. 1/1993 Coll., Constitution of the Czech Republic**

Art. 3 - *The Charter of Fundamental Rights and Basic Freedoms forms a part of the constitutional order of the Czech Republic)*

Art. 4 - *The fundamental rights and basic freedoms shall enjoy the protection of judicial bodies.*

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- **The Charter of Fundamental Rights and Basic Freedoms (No. 2/1993 Coll.)**

Art. 20/1 - *The right of association is guaranteed. Everybody has the right to associate together with others in **clubs, societies, an other associations.***

Art. 20/3 - *The exercise of these rights may be **limited only** in cases specified by law, if it involves measures that are necessary in a democratic society for the **security of the state, the protection of public security and public order, the prevention of crime, or the protection of the rights and freedoms of others.***

Art. 20/4 - *Political parties and political movements, as well as other **associations, are separate from the state.***



Legal framework of social dialogue in the Czech Republic

- **The Charter of Fundamental Rights and Basic Freedoms (No. 2/1993 Coll.)**

Art. 27/1 - Everyone has the right to associate freely with others for the protection of his/her economic and social interests.

Art. 27/2 - Trade unions shall be established independently of the state. No limits may be placed upon the members of trade union organizations, nor may any of them given preferential treatment in a particular enterprise or branch of industry.

Art. 27/3 - The activities of trade unions and the formation and activities of similar associations for the protection of economic and social interests may be **limited by law in the case of measures necessary in a democratic society for the protection of the security of the state, public order, or the right and freedoms of others.**

Art. 27/4 - The right to strike is guaranteed under the conditions provided for by law, this right does not appertain to judges, prosecutors, or members of armed forces or security corps.

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Legal framework of social dialogue in the Czech Republic

- **Convention No. 87 on freedom of association and protection of the right to organize, ILO, 1948**

Art. 2 - *Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.*

Art. 3/1 - *Workers' and employers' organizations shall have **the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs.***

Art. 3/2 - *The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.*

Art. 4 - *Workers' and employers' organizations shall **not be liable to be dissolved or suspended by administrative authority.***

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Legal framework of social dialogue in the Czech Republic

- Convention No. 87 on freedom of association and protection of the right to organize, ILO, 1948

Art. 5 - Workers' and employers' organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers.

Art. 6 - The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organizations.

*Art. 7 - **The acquisition of legal personality** by workers' and employers' organizations, federations and confederations **shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.***

*Art. 11 - **Each Member** of the International Labour Organisation for which this Convention is in force **undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.***

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Legal framework of social dialogue in the Czech Republic

- **Convention No. 98 on Right to Organize and Collective Bargaining, ILO, 1949**

Art. 1/1 - *Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.*

Art. 2/1 - *Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.*

Art. 3 - *Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize as defined in the preceding Articles.*

Art. 4 - *Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.*

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Legal framework of social dialogue in the Czech Republic

- **Act No. 83/1990 Coll., on association of citizens** – *replaced by the Act No. 89/2012 Coll., the Civil Code*

Section 2/1 - *The citizens may establish **associations, societies, unions, movements, clubs and other civic associations** as well as trade unions (hereinafter referred to as "associations") and unite in them.*

Section 9 (a)/1 - *A trade union or an association of employers shall become a body corporate on the day following the day of lodging their application to the respective Ministry for putting same on records.*

Section 9 (a)/2 - *Putting trade unions or associations of employers on record shall be governed, mutatis mutandis by the provisions of Section 6 paragraph (2), Section 7 paragraph (1) and Section 9 paragraph (2) hereof. PROVIDED THAT, the provisions of Section 6 paragraph (1) Section 7 paragraphs (2) and (3), Section 8 and Section 9 paragraph (1) shall not apply to trade unions and associations of employers.*

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Legal framework of social dialogue in the Czech Republic

- **Act No. 89/2012 Coll., the Civil Code**

Section 3025/1 - *The provisions of this Act on legal persons and associations apply to trade unions and employer's organizations in the necessary modifications **only insofar as they are not contrary to their nature as representatives of employees and employers under international treaties by which the Czech Republic is bound and** which govern the freedom of association and the protection of the right to associate freely.*

Section 3025/2 - *Trade unions and employer's organizations are incorporated on the day following the date on which the notice of their formation was delivered to the competent public body; **the same applies mutatis mutandis, where a change or winding up of a trade union occurs.***

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Legal framework of social dialogue in the Czech Republic

- **Act No. 89/2012 Coll., the Civil Code** (as amended by the Act No. 460/2016 Coll.)

Section 3041/2 - *The provisions of a memorandum of association or the by-laws of the legal persons under Subsection (1) which are contrary to the compelling provisions of this Act cease to have binding effect on the effective date of this Act; a legal person shall, within three years from the effective date of this Act, amend its memorandum of association or by-laws so that they are in accordance with this Act, and deliver them to the public body which maintains the public register in which the legal person is registered. If it fails to do so, specifying in the request a reasonable additional time limit to fulfil this duty, if additional time limit expires without the duty being fulfilled, a court shall, on the application of the public body or a person who proves a legal interest therein, dissolve the legal person and order its liquidation.*

Section 3041/3 - *The provisions of the paragraph 2, part of the sentence behind the semicolon does not apply to trade unions and employers' organizations.*

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Legal framework of social dialogue in the Czech Republic

- **Act No. 89/2012 Coll., the Civil Code**

Section 3046 – A trade union and employer's organization registered under Act No. 83/1990 Coll., on the association of citizens, as amended, are considered to be trade unions and employer's organizations under this Act.

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Legal framework of social dialogue in the Czech Republic

- **Act No. 304/2013 Coll., on public registers of legal and natural persons**

Section 121/1 - Trade unions, international trade unions, employer's organizations and international employer's organizations are incorporated on the day following the date on which the notice of their formation was delivered to the court which maintains the public register; **the same applies mutatis mutandis, where a change or winding up of a trade union occurs.**

Section 121/2 - The court which maintains the public register makes an entry into the register within 5 working days.

Section 121/3 – Provisions of the Part one. Chapter II, of the Parts two and three does not apply to entry of the notice of the formation of trade union, international trade union, employer's organization and international employer's organization **into the register of associations.**

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Legal framework of social dialogue in the Czech Republic

- **Act No. 262/2006 Coll., the Labour Code**
 - *Substantive (labour) law, including collective rights, information, consultation*
- **Act No. 2/1991 Coll., on collective bargaining**
 - *Procedures of collective bargaining, intermediary, arbitrary, right to strike,*

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Thank you for your attention

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