

CENTRIFUGAL TRENDS IN COLLECTIVE BARGAINING

*Raluca DIMITRIU*¹

The Bucharest University of Economic Studies, Romania

ABSTRACT

Labour Law is dealing with a period of tremendous changes, which may even jeopardise its legitimacy. Solidarity between employees has lost its vigour since the organisational culture of the company shows a trend towards internal competition. Indeed, decreased union membership and increased number of collective labour agreements seems to definitely mark a new era of labour relations. Today, solidarity, a basic principle of the collective labour law, seems to have diminished; employees perceive themselves as competitors, and industrial relations are being atomized. Besides, at the European level, far from speaking of a centralization of the European collective bargaining, we are witnessing decentralization, down to the level of the national enterprises. In fact, what can be the sense of European solidarity, if the competition among workers, among workers of the old Member States and the new Member States, or among those with standard labour agreements and those with precarious work labour agreements - are higher than ever? There is indeed a centrifugal trend in collective negotiation, moving the weight centre towards the basic level of the unit within the pyramid of collective labour agreements. Under such new circumstances, the paper aims to analyse the possible future of the collective labour law and its possible future structure under the new labour paradigm.

✂ *Labour law, Collective contracts, European collective bargaining, Social Dialogue*

JEL code: K31

¹ *Correspondence address:* Faculty of Accounting and Management Information Systems, Law Department, Bucharest University of Economic Studies, Piata Romana no 6, Bucharest, Romania, Tel. +40 21 319.19.00, Email: raluca.dimitriu@cig.ase.ro

PRELIMINARY ASSUMPTIONS

Questions regarding the future of the labour law are of concern for researchers all over Europe. Do we share the same problems for which we are trying to find new solutions, or the problems themselves have changed? We tend to believe the latter has happened.

Collective negotiation has been the foundation of the labour law since the beginning of the 20th century. This law area is special because, instead of having its sources exclusively in the law, it has sources also in the collective labour agreements. The dual nature of the labour law source has always provided the special identity to this law field. However, things look different currently.

Paradoxically, no sooner had labour law established itself as an autonomous branch of law than its boundaries and rationale began to be seriously questioned. One challenge was the inability of traditional labour laws to protect the rapidly increasing number of workers in new relationships that could not be defined as 'subordinate' or 'dependent' labour (Hepple & Veneziani, 2009: 13)

Indeed, the number of standard employees who work full time on the premises of the company with non-fixed duration labour agreements is decreasing. A new category of apparently independent employees is appearing; they have a relation of economic dependence on the client, namely the beneficiary of the work. Even more vulnerability can be found with those who perform informal work, precarious work and house care activities. Some employees conclude atypical labour agreements – with non-fixed duration, temporary agreements or various types of „niche” agreements. In addition, the flexible labour schedule, work at home, externalized activities, transnational work or tele-work cause employees perform their activity on their own, in an individual relation with the beneficiary of their work. Proximity traditionally fostered solidarity; it enabled workers to develop personal ties, identify potential leaders, reflect on their common fate, and respond collectively to a shared sense of grievance (Arthurs, 2013: 21).

Today, solidarity, a basic principle of the collective labour law, seems to have diminished; employees perceive themselves as competitors, and industrial relations are being atomized. The factory as a location where employees cooperate with each other is eroding to an increasing extent. Outsourcing, networking, sub-contracting, teleworking, and similar dislocating strategies are on the agenda (Weiss, 2013: 45). The category of informal employment, a category now current in both labour statistics and in labour law, points to forms of work and relationships that often go beyond 'classic' employment relationships (Sankaran, 2013: 224). And since paid work can be performed today on very different grounds, other than employment contract (Stefanescu, 2013: 50), the very idea of 'solidarity' may become obsolete.

Besides, internal competition undermines solidarity and the appetite for union membership. Indeed, decreased union membership and increased number of collective labour agreements (a phenomenon across Europe, but even more in Romania as a result of the provisions in the Law on social dialogue) seems to definitely mark a new era of labour relations.

Solidarity between standard employees has lost its vigour since the organisational culture of the company shows - currently – a trend towards internal competition. For instance, in sales companies, there are selective procedures to promote commercial agents who exceed their sales targets. They turn to fierce competition among themselves. Moreover, competition is a reality because, during the economic crisis, the number of jobs may decrease so that the employer is forced to make a selection of the employees.

If relationships between standard employees become based on competition rather than on solidarity, how can we expect solidarity to manifest beyond the boundaries of this category of standard employees? It is an illusion to hope that employees who have the „chance” of an individual labour agreement with non-fixed duration could feel solidarity with those who perform precarious work, with those who work without legal agreements concluded, or temporary employees or employees who have fixed-term labour agreements and who are, eventually, potential replacements of the „privileged” employees, who enjoy full protection of the labour law.

If the basic principle of the labour law since the beginning of the 20th century has been solidarity among employees, how can we expect, under the circumstances, that the limits of the labour law extend so that to cover also the disadvantaged employees and the vulnerable employees who do not enjoy typical labour agreements?

It looks more plausible to believe that labour law may become more limited in the future in order to protect less and less employees.

Consequently, a question is raised: what is the future of the labour law in a world where collective negotiation gradually goes pale to complete dissolution? Can the traditional labour law (focused on the relations between standard employees, able to form unions) efficiently protect the „atypical” employees who are really vulnerable? Has the labour law some juridical mechanisms to compensate the diminishing cohesion strength among employees?

These are questions worrying the labour law researchers since juridical options and EU social and economic options depend on these answers.

1. COLLECTIVE BARGAINING – TODAY

As above mentioned, the specific feature of the labour law as against other law area is the fact that it possesses negotiated sources together with the legal sources. The latter are not the result of the will of the law-maker but of the mutual agreement between the social partners. To the extent to which this agreement derogates from the law or from the collective labour agreement only to the advantage of the employees, it has the power of a law. Hence, among the sources of the labour law in general, and of the collective labour law especially, there are not only normative acts but also collective labour agreements.

In other law systems, the agreements concluded among social partners are not usable in courts, in the sense that they generate what we call in civil law „imperfect obligations”, deprived of juridical sanction. They are part of the „soft law” – of juridical instruments that produce natural obligations. Non-compliance with a collective agreement could not entail the possibility to bring an action in court but it could deteriorate the image and the credibility of the party that has not kept one’s promise.

In the Romanian law system, collective labour agreements cannot be included in the „soft law”, susceptible to generate imperfect obligations (natural) since, irrespective of the level they are concluded at, they cause juridical rights and obligations.

In case of non-compliance with an obligation written in a collective labour agreement, the other party (most often, employees) can turn to the coercion power of the state to claim respect for their right. Such a conflict, even if it involves all the employees in a company, is called “individual conflict” by the new Law on social dialogue no 62/2011.

Indeed, by abandoning the traditional classification in conflicts of interests and conflicts of rights, the Romanian law-maker chose a distinction that can easily generate confusions: only the conflicts arisen during the negotiation of the collective labour agreement shall be collective; all other conflicts (arisen from non-compliance with the law, with the individual or collective labour agreement) shall be individual conflicts.

The culture of collective negotiation develops in time and has, like in any law system, its roots in the tradition of the type of communication practiced, of the history of social relations and of the way in which partnership and conflict alternated in the dialogue employers – trade unions. In the Romanian society, where social partners had not existed before 1990 (neither had employers or trade unions, in their sense and from the point of view of their basic objectives) – social

dialogue started by applying juridical norms rather than as a pre-existent reality that the law was trying to reflect in writing.

In regulating collective negotiation, the law seemed closer to *poiesis* than *praxis*, as it urged to action and it was not an expression of an action already taken. Since there was no social dialogue, the role of the law was to create, not to regulate, like in most Western countries, a dialogue that was already taking place.

How can we „invent” a social dialogue if it hadn't existed naturally?

One solution for the Romanian law-maker was to force the employer, under sanction of paying a fine, to initiate collective bargaining. Indeed, the right of the employees to collective bargaining has as corresponding obligation - in our system - the obligation of the employer to initiate such negotiations, in all units with more than 21 employees. Many voices however criticise this legislative option.

The provision regarding negotiation as an obligation is not unique in Europe; we must mention the UK and partially France. In France, negotiation is compulsory regarding certain aspects such as salaries or working time (Rebhahn, 2003: 276).

However, we must stress that the ILO - the International Labour Organization - has reserves whether the law should impose the obligation to negotiate the collective labour agreements or not. The Committee for Unions' Freedom repeatedly showed that, "in order to be efficient, collective negotiation shall have a voluntary nature and shall not involve constraints that may alter this voluntary nature". "No provision of art. 4 of the Convention no 98/1949 imposes the obligation to impose constraints upon governments in order to force the parties to negotiate with a certain organisation; these measures would definitely result into modifications of the nature of the negotiations" (ILO, 1996: 187).

But is law an expression of reality or is its engine? The Romanian experience seems to view regulations as ways to orient the forces, to start (even compulsorily) social dialogue, which gives a forced, un-natural character to social dialogue.

Obviously, the obligation of collective negotiation does not include and does not imply the obligation to reach an agreement, which would contradict the principle of contractual freedom.

Negotiation can be successful or not; there are 2 possibilities:

- the happy end of the negotiation leads to the conclusion of the collective agreement;
- the failed negotiation leads to a conflict of interests.

2. THE PYRAMID OF COLLECTIVE AGREEMENTS

The basic goal of collective bargaining is, in a law system like the Romanian one, to conclude the collective labour agreement, a regulator of the rights and obligations of the parties, at the respective level.

In the preceding Romanian legislation, collective negotiation had been conceived like a pyramid. The collective labour agreement was on the top, it was concluded at the national level and it was *erga omnes* applicable, just like a law. On each level of the pyramid, social partners were negotiating starting from a minimum of rights that were consecrated at the immediately next higher level: at the national level, branch level, group of units and unit levels, down to individual negotiation, where the parties had to accept the at least rights established in the collective labour agreement applicable.

The clauses of the collective labour agreement were considered to be taken over from the immediately next higher level, and so on, down to the individual negotiation level; the contractual freedom of the parties was thus limited.

Generally, the European legal systems contain three possible ways for the application of the collective labour agreements within individual relations: mutually compulsory, unilaterally compulsory and supplemental. Of these, the Romanian legislator has chosen the first system (unilaterally compulsory), in the sense that the individual labour contract may deviate from the collective agreement only in favour of the employee and his position, and must not deviate to his detriment. Therefore, the individual labour contracts will have to comply with the minimal dispositions provided in the collective labour agreements, from which they will not be allowed to depart unless in favour of the employees. The same strict perspective is present with regards to the relation between the law and the collective labour agreement relation, the latter being allowed to derogate from the law, exclusively to the employees' advantage.

Thus, Law no 13/1991 and, latter, Law no 130/1996 imposed that the levels of collective bargaining should be: the unit, the group of units, the branch and the national level. The weight of this bargaining was closer to the top of the pyramid and the number of collective agreements was low at the base. This was mainly due to the impossibility of the *in pejus* bargaining, which, under the circumstances of very protective legislation and more protective collective agreements at national level and at branch level, made impossible the bargaining of additional rights for employees at the level of the unit. The possibilities of the employer were already exceeded (saturated) through collective agreements concluded at higher levels.

At the national level however, the collective agreement „doubled” the provisions of the Labour Code which were taken over at higher protection level for employees.

The provisions of the collective labour agreement concluded at national level were *erga omnes* applicable, in the sense that all employers across the country, irrespective of the number of employees, irrespective of represented or not upon bargaining and irrespective of size, had to comply with this second Labour Code.

Somehow ironically, juridical difficulties appeared about the state – as employer – which considered that this collective agreement (result of two-party bargaining – the employers' association / the unions – and not three-party bargaining) was not opposable to it. This led for instance in 2008 to the existence of 2 minimal wages per economy: one in the public sector, approved by Governmental Decision, the other in the private sector, established through the collective agreement concluded at national level.

The pyramid system of collective negotiation proved to have both advantages and disadvantages.

The consequence of such structure of the negotiation and the impossibility to negotiate *in pejus*, was the fact that the employees, even if not members of unions or members of non-representative unions, were covered by collective labour agreements. No one's rights and obligations were directly regulated by the law because, irrespective of the size of the unit and on the union membership, a certain collective agreement was applicable (at least the national one), thus providing a more favourable juridical regime than the legal regime.

The collective labour agreement concluded at the national level included, for instance, the coefficient of hierarchical salary structure, so that the minimal salary depended on the studies required for that position. Such a provision was applicable to all Romanian employees.

On the other hand, the disadvantages of such a system became visible especially during the economic crisis. Although deprived of finance, companies were forced to comply with the results of negotiations they did not take part in and sometimes they were not even represented in. The consequence was that the obligations of the employers, irrespective of their size or negotiation power, were exaggerated.

For instance, the imposing of a certain level of compensations in case of collective dismissal that was applicable under the collective labour agreements concluded at higher levels produced major economic difficulties in practice for small employers, forced to comply with a level of compensations that exceeded their financial possibilities.

Indeed, the entrepreneurs' confederations that were representative at the national level represented in fact only a part of the employers, most of them (especially

small employers, which account for 80% of the total number of units in Romania) were not represented in this national collective bargaining, whose results acquired, however, a general-compulsory nature.

The Law on social dialogue modified these rules as it established new levels of negotiation, by removing negotiation at the national level and at the branch level and by stipulating negotiation at the level of sector, group of units and unit.

The last collective labour agreement at national level was concluded for the years 2007-2010. Bargaining for a new collective agreement followed, never finalized, then the adoption of the Law of social dialog in May 2011 which removed this level from the pyramid of collective bargaining.

Which actually stopped being a pyramid.

The disappearance of the unique collective agreement at national level allowed centrifugal forces; collective bargaining took place in units and groups of units. Bargaining at the level of sector – the highest level allowed by the current legislation – was made difficult by very strict rules regarding representativeness and by the fact that sectors themselves were not determined until December 2011, by Governmental Decision no 1260 of 21 December 2011 regarding the sectors of activity established according to the Law no 62/2011, published in the Official Gazette, Part I, no 933 of 29 December 2011.

Only 2 labour agreements have been concluded at the level of sector so far, both in the public sector; it is unlikely that their number may increase significantly in the near future. In addition, these agreements are no longer general-compulsory but they apply only to the units stipulated in the annex of the collective agreement, which therefore agreed expressly upon applying the collective agreement.

At the level of the group of units, the collective agreement shall apply only to the extent to which there is an express agreement in this respect. The only level where the *erga omnes* applicability of the collective agreement has been preserved is the unit level.

Market rules of free competition have always contained a threat against trade unions and collective bargaining when those social institutions are viewed as being in restraint of trade and so undetermining the workings of free market (Bruun and Hepple, 2009: 54). Additionally however, the Law on Social Dialogue adds to this threat its own obstacles and conditions, which diminishes significantly the possibility of social stakeholders to effectively get involved in implementing flexicurity through social dialog.

3. PARTICIPANTS IN THE COLLECTIVE NEGOTIATION

If the pyramid of collective negotiation has been removed and collective negotiation has been exposed to decentralization by removing the *erga omnes* effects of the collective labour agreements, the participants in these collective negotiations have been modified as well following the entering into force of the new Law on social dialogue no 62/2011.

According to the current Law on social dialogue, in order to negotiate the collective labour agreement at the unit level, the union shall cumulate at least half plus one of the number of union members (as against a third in the former regulations), which is a difficult requirement to meet, if not impossible sometimes.

In the absence of the representative union, the law stipulates other ways to represent employees; however, difficult to implement in practice. More specifically, under these situations, the employees are represented by:

- representatives of the employees if there is no union, or if the existing union is non-representative and not affiliated to a federation representative in the sector of activity the unit is part of;
- representatives of the union federation together with representatives of the employees, if there is a non-representative union at the unit level affiliated to the representative union federation.

The relationship between the employees and their representatives has the juridical nature of a civil mandate (Stefanescu, 2012: 127).

We can state that the widening of the attributions of the representatives of the employees, to the detriment of the unions, is a legislative trend with negative social effect. The Romanian experience proves the weak participation of the employees that are not union members in the collective negotiation. In fact, the first step to involve employees in supporting and imposing claims on entrepreneurs is to organize a union. The diminishing of the rights and powers of the unions to increase the rights and powers of the employees that are not union members can only lead to diminished voice of employees in general.

In addition, the Law no 62/2011 brought reduced rights for union leaders, which once again discourages the strength of the union movement and collective negotiation.

An example in this respect: according to the previous Trade Union Law no 54/2003, the union leaders had the right to 3-5 days per month, which could be used for union activities, without reducing the wage. Today they no more have

such right; in case the applicable collective contract provides so, they may have a number of days off, used for union activities, but without any payment.

The current Law no 62/2011 on Social Dialogue prohibits “the modification and/or the termination of the employment contracts of trade union members, for reasons pertaining to their trade union membership or to their trade union activity”. However, in the Memorandum of ILO Technical Comments on the Draft Labour Code and the Draft Law on Social Dialogue of Romania it has been said that “to be fully in compliance with Convention No. 87, the ground should include *union membership* and the law should foresee sufficiently dissuasive sanctions”.

Afterwards, the issue was brought before the Committee of Experts on the Application of Conventions and Recommendations; it was noted that, despite the fact that the law prohibits the dismissal on the grounds of union membership, it does not provide for other sanctions, with the exception of the nullity of the dismissal, provided the employee contested the dismissal in court (ILO, 2012: 219).

On the other hand, the employer, or the representative entrepreneurs’ association – if the negotiation takes place at a higher level - is a participant in the collective negotiation.

At the unit level, the employer shall have the obligation to initiate collective negotiation with at least 45 calendar days before the collective labour agreements expire. The problem raised in practice is, of course, if this obligation remains in cases where there is no collective labour agreement concluded in that unit. We consider the answer to be negative, since art. 129 para. (3) in the Law no 62/2011 on Social Dialogue covers exclusively the case where there is already a collective agreement, terminated.

This regulation restricts further more the range of collective negotiation. It must be correlated with the abrogation of the provisions regarding the annual negotiation for salaries and work conditions, a provision that existed in the Law no 168/1999 regarding the solving of labour conflicts.

4. COLLECTIVE BARGAINING IN THE PUBLIC SECTOR

According to article 138 of the Law no 62/2011 on Social Dialogue, through the collective labour contracts/agreements concluded with state employees cannot be negotiated or included clauses referring to financial rights or in kind rights, other than those stated by the current legislation for the respective category of personnel.

The wages of the budget employees are established by law within precise thresholds which cannot constitute the object of bargaining and cannot be modified

through collective labour contracts. In case the wages are established by special laws within minimum and maximum thresholds, the concrete wage levels are determined through collective bargaining, but only within these legal thresholds.

The issue is very sensitive because any limitation of the possibility for collective bargaining becomes a limitation of the possibility to initiate a collective conflict and therefore the strike. Hence, in the public sector, strikes would be legal rather in exceptional cases, especially when strikes were initiated for claims that are not related to salaries or when claims related to salaries range between the minimal and maximal limits pre-established in a normative act.

The clauses included in the collective labour contracts concluded with the infringement of these provisions shall be declared void.

Consequently, in the budget sector the collective negotiation cannot refer to the most important of the negotiation topic: the wage. This restriction may raise some question marks regarding the correct application of art. 4 of the ILO Convention 98. Indeed, although art. 6 of the Convention excludes from application civil servants, it does not exclude state employees altogether.

The collective bargaining becomes void of content if the exact topic of worker wages avoids the possibility of negotiation. On occasion of the 101st Session of the International Labour Conference, with reference to this matter, the Committee had recalled that “if, as part of its stabilization policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers’ living standards”. “The Committee observes with concern that Act No. 284/2010 which replaces Act No. 330/2009, continues to globally preclude collective bargaining on salary rights and pecuniary entitlements in the public budget sector” (ILO, 2012: 220-221).

However, the absolute contractual freedom in the public sector is a solution neither. Indeed, before 2011, collective labour agreements were concluded sometimes and they included obligations for the public institutions that exceeded by far their financial possibilities. When the issue of granting these rights in practice to the public employees was raised, some institutions invoked the budget limitations and the fact that the applicable normative act prevented them from making those expenses.

Courts had, from this point of view, non-unified practices, since they faced a contradiction between the normative act in force and a collective labour agreement legally concluded.

In the case of public servants, the collective labour conflicts have not been expressly regulated so far. As a result, in the few cases where the issue of these

conflicts arose, the solution was to enforce, by analogy, the rules regarding the collective conflict resolution (called conflict of “interests” at that time) in which the employees were involved (Dimitriu, 2011:89).

5. COLLECTIVE BARGAINING ACROSS EUROPE

Beyond the social dialogue between the representative partners in each Member State, the social partners identify the germs of an EU transnational collective negotiation. Conceptually, the transnational collective negotiation can take place:

- At the level of an enterprise with branches across Europe, to lead to collective agreements in that enterprise,
- At the level of branch/sector, applicable in units in the same branch in several Member States, through unions belonging to the same European confederation, and entrepreneurs’ organizations that belong to the same confederation;
- At the EU level, to conclude collective labour agreements between social partners that are representative at the European level.

To note that there are preoccupations regarding future regulations in this area; proposals have been formulated for a directive regarding the transnational collective negotiation, appropriate for the operations performed by transnational enterprises.

Social dialogue is often seen as a key to the European Social Model. Social partners managed to create autonomous agreements, like the ones covering the tele-work (16 July 2002), the stress at workplace (8 October 2004) and harassment and violence at workplace (27 April 2007). There are 35 operational sectorial committees for the sectors of activity. The role of social dialogue was re-affirmed by the «Green Book regarding the modernization of the labour legislation so that it should meet the challenges of the 21st century», then by the Strategy 2020.

Indeed, there are many voices that support the idea of enhancing transnational social dialogue which is already achieved by:

- Letters of support of the union movement in a country by unions from other countries (Warneck, 2007: 76),
- European coordination of the domestic collective negotiation processes;
- Solidarity strikes or, with a general denomination, secondary collective actions. The expert committee of the ILO – International Labour Organization has repeatedly criticized the law systems that do not accept such actions to be taken and consider them as necessary within the context of globalization and delocation of industrial centres (Jaspers, 2007: 45.). Indeed, the transnational collective action is deemed to be the corollary of the European social dialogue and defined as: a collective action implying

or having effects upon employees of two or more Member States, or a collective action in a Member State, regarding the labour relations of the employees of another Member State (in the spirit of transnational solidarity) (Bercusson, 2007: 8);

- Agreements of social partners adopted, such as the Framework Agreement regarding the development of long life competences and qualifications (2002) or the Agreement on the tele-work. Unlike the preceding agreements, that had been implemented through Directives, these agreements had for the first time a direct and independent applicability.
- The European social dialogue, recognized as a component of the European Social Model, which gives the dialogue a unique character against the global background, is rather shy and results into documents without direct juridical force adopted. The way to the adoption of European collective labour agreements, directly applicable in many Member States, is long. Economic differences and differences in traditional labour relations from one Member State to another limit the possibilities to concretize the transnational social dialogue (Dimitriu *et al.*, 2009: 35).

Art. 28 in the EU Charter stipulates that „workers and employers, in their respective organisations have, in accordance with the Community law and national laws and practice, the right to negotiate and conclude collective agreements at the appropriate levels and, in case of conflicts of interests, to take collective action to defend their interests, including strike action”. However, if Charter rights are limited to national laws and practices, the national standard becomes not the minimum, but the maximum standard (Bercusson, 2007: 12). This eliminates any added value of the Charter, which makes the centrifugal trend of social dialogue manifest itself across Europe. Besides, the very concept of “employment” seems to be unclear and it is undefined at the European level. Although several studies showed the need for a modernised concept of the contract of employment, there is no consensus among social partners and in member States on how to proceed (Pennings, 2011: 41).

In fact, what can be the sense of European solidarity, if the competition among workers, among workers of the old Member States and the new Member States, or among those with standard labour agreements and those with precarious work labour agreements - are higher than ever? The Laval case, for instance, with all its controversies emphasized precisely the absence of solidarity among the workers of the old Member States and those of the new Member States, which is a primary source of any European collective negotiation.

CONCLUSIONS

Workers are in divergent relations not only with the employer but also with the other workers belonging to the same state or other EU Member States. The freedom of movement of the individuals and the freedom to establish services cause workers have the freedom to work on the territory of any Member State; when the number of jobs is limited, and unemployment is increasing, workers are in fierce competition with other European workers.

Far from speaking of a centralization of the European collective bargaining, we are witnessing decentralization, even atomization, down to the level of the national enterprises.

If we can admit there is a centrifugal trend in collective negotiation, moving the weight centre towards the level of the unit within the pyramid of collective labour agreements, we must appropriately encourage, by all means, this last fortress of collective negotiation – the unit level.

And indeed, the collective contract at this level is the real “labour law” for the companies’ employees (Ticlea, 2012: 237).

However, the Law no 62/2011 on Social Dialogue did the opposite: it imposed requirements that are almost impossible to meet in order to get representativeness by the union, diminished the union’s powers and enhanced the powers of the representatives of the employees – although practice had proved the low usefulness of this institution – and removed the obligation of the annual collective negotiation.

Against the paradigm change regarding the modality of performing work, in the sense of significant reduction of the number of standard workers, against the European centrifugal trend of the collective negotiation, against the apparition of competition rather than solidarity in the labour relations, against the newly adopted discouraging legislation in this field – the predictable result is the diminishing down to disappearance of the collective bargaining.

As this remains the core of the labour law, the law branch itself seems to be in jeopardy.

REFERENCES

- Arthurs, H. (2013) “Labour law after labour”, in Davidov, G. & Langille B. (Eds.) *The Idea of Labour Law*, Oxford: Oxford University Press
- Bercusson, B. (2007) “Restoring balance of economic power in Europe”, in Dorssemont, F., Jaspers, T. & Van Hoek, A. (Eds.) *Cross-Border Collective*

- Actions in Europe: a Legal Challenge*, Antwerpen-Oxford: Intersentia Publishing House
- Bruun, N. & Hepple, B. (2009) "Global capitalism: The European response", in Hepple, B. & Veneziani, B. (Eds.) *The Transformation of Labour law in Europe*, Oxford and Portland: Hart Publishing
- Dimitriu, R. (2011) "Collective labour Conflicts in companies and public institutions: Some prospects", *Transylvanian Review of Administrative Sciences*", no. 34: 80-97
- Dimitriu, R., Vartolomei, B. & Vidat, A. (2009) "Negocierea colectivă și protecția lucrătorilor migranți în cadrul Uniunii Europene", *Romanian Journal on Labour Law*, vol. 1, no 5: 24 – 35
- Hepple, B. & Veneziani, B. (Eds.) (2009) *The transformation of Labour Law in Europe*, Oxford and Portland: Hart Publishing
- International Labour Conference (2012) 101st Session of the ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) General Report and observations concerning particular countries, ILO – Geneva
- International Labour Organization (1996) *Libertatea sindicală*, ILO - Geneva
- Jaspers, A. (2007) "The right to collective action in European Law", in Dorssemont, F., Jaspers, T. & Van Hoek, A. (Eds.) *Cross-Border Collective Actions in Europe: a Legal Challenge*, Antwerpen-Oxford: Intersentia Publishing House
- Pennings F. & Bosse C. (2011) *The Protection of Working Relationships*, Kluwer Law International
- Rebhahn, R. (2003) "Collective Labour Law in Europe in a Comparative Perspective", *The International Journal of Comparative Labour Law and Industrial Relations (I)*, vol. 19, no. 3: 271–295
- Sankaran, K. (2013) "Informal employment and the challenges for labour law", in Davidov, G. & Langille B. (Eds.) *The Idea of Labour Law*, Oxford: Oxford University Press
- Stefanescu, A. (2013) "Discussions regarding labour law and «Vocational Law»", *Romanian Journal on Labour Law*, no 3: 49 -58
- Stefanescu, I.T. (2012) *Theoretical and Practical Treaty on Labour Law*, Bucharest: Universul Juridic Publishing House
- Ticlea, A., (2012) *Treaty on Labour Law*, Bucharest: Universul Juridic Publishing House
- Warneck, W. (2007) "Transnational collective action – already a reality?", in Dorssemont, F., Jaspers, T., Van Hoek, A. (Eds.) *Cross-Border Collective Actions in Europe: a Legal Challenge*, Antwerpen-Oxford: Intersentia Publishing House
- Weiss, M. (2013) "Re-inventing labour law?", Davidov, G. & Langille B. (Eds.) *The Idea of Labour Law*, Oxford: Oxford University Press