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**PARTICIPATION OF WORKERS IN DECISION –
MAKING THROUGH THE RELATIONSHIP BETWEEN
THE WORKERS' COUNCIL AND THE TRADE UNIONS**

Abstract

In this paper, we provide answers to the currently open question of workers' participation in the employer's decision-making process from the perspective of location and the role of trade unions and workers' councils in this process, covering the entire period from the Socialist Federal Republic of Yugoslavia to the Republic of Croatia. Both bodies are charged with protecting, promoting, and advocating the rights of workers, but their place, position, and manner of acting are very different from the basis of labor law. With the aim of understanding the similarities and differences of both bodies, the observation of the social phenomenon was approached from an ideological, theoretical and practical point of view and through the ontological meaning of "why something is the way it is" and the emergence of unions and workers' councils. Through a scientific and professional understanding of trade unions and workers' councils and their normative-legal regulations, their ideological and theoretical aspect of social phenomena in practice is determined. Consistent with the above, the authors answer the following question in the paper, "To what extent are unions and workers' councils complementary, and to what extent do they affect the achievement of a common goal with respect to the protection of workers' rights?". In order to answer the question, the authors have applied the method of induction and deduction in the determination of terms from the field of labor rights, especially trade union/works council law, on the basis of which they have then analyzed their similarities and differences by describing and concretizing them, and then applied the method of comparison and the normative-dogmatic method to individual institutes through the labor law regulations of the Socialist Federal Republic of Yugoslavia and the Republic of Croatia in the period from 1973. to 2019. Based on the previously drawn conclusions, in the further consideration the method of analysis and synthesis was applied to randomly selected research related to labor law institutes in the period from 1978. to 2021., namely: Berberović J. (1990); Brajić, V. (1987); Ćupurdija M., Subašić, S. (2019); Ćupurdija M., Subašić S. (2017); Ćupurdija, M. Subašić S., (2013); Ćupurdija M. (2013), Trade unions as a factor of labor law in the Republic of Croatia; Ćupurdija M. (2013) European social dialog as a prerequisite for social security, Ćupurdija M. (2009); Gotovac V., (2007); Herman V., Ćupurdija M. (2011); Herman V., Ćupurdija M., (2010); Marinković Drača D. (2004); Ravnić A., (2004); Šokčević S., (2006); Učur M., Zlatović D., Moslavac B., Malenica I., Ćupurdija M., (2021); A while ago. M. Moslavac



B., (2020) and Weiss D. (1978)¹. The thesis was confirmed that there are significant differences between the trade union and the works council in terms of organization, working methods, but also in the area of organization, participation in labor disputes and, finally, participation in collective labor disputes against employers. From the above, it is clear that there is a need for further research in the area of improvement of labor law, namely in the extension and clearer definition of the scope of each body, the protection of workers and the application of the principle of efficiency.

Keywords: workers' council, trade union, authority, participation, employee decision making.

UCZESTNICTWO PRACOWNIKÓW W PODEJMOWANIU DECYZJI POPRZEZ RELACJE MIĘDZY RADĄ PRACOWNIKÓW A ZWIĄZKAMI ZAWODOWYMI

Streszczenie

Artykuł ma na celu przedstawienie zjawiska uczestniczenia pracowników w procesie decyzyjnym pracodawcy oraz roli związków zawodowych i rad pracowniczych w tym procesie w okresie od Socjalistycznej Federalnej Republiki Jugosławii do Republiki Chorwacji. Zarówno związki zawodowe, jak i rady pracownicze mają za zadanie chronić, promować i propagować prawa pracowników, jednak ich pozycja i sposób działania znacznie odbiegają od podstaw prawa pracy. W celu zrozumienia podobieństw i różnic obu ciał, poczyniono obserwację tego zjawiska społecznego z ideologicznego, teoretycznego i praktycznego punktu widzenia oraz poprzez ontologiczne znaczenie „dlaczego coś jest takie, jakie jest”, a także z punktu

¹ Berberović J., *Filozofija i svijet nauke*, Svjetlost, Sarajevo 1990; Brajić V., *Radno pravo*, Beograd, Savremena administracija 1987; Ćupurdija M., Subašić S., *Konvergencija uloga sindikata i radničkih vijeća u sustavu ostvarivanja kolektivnih prava radnika*, „Radno pravo” 2019, 5/19; Ćupurdija M., Subašić S., *Transformacija bitnih elemenata radnog odnosa s motrišta korištenja ljudskih resursa*, „Radno pravo” 2017, 3/17; Ćupurdija M., Subašić S., *Aktualni trendovi politike rada i uloga sindikata u Republici Hrvatskoj*, „Radno pravo” 2013; Ćupurdija M., *Sindikati kao čimbenik radnog prava u Republici Hrvatskoj*, Pravna riječ, Banja Luka 2013; Ćupurdija M., *Europski socijalni dijalog kao pretpostavka socijalne sigurnosti*, Univerzitet Sinergija, Bijeljina 2013; Ćupurdija M., *Uloga i značenje sindikata u hrvatskom radnom pravu*, „Pravo i porezi” 2009, 4; Gotovac V., *Sudjelovanje radnika u odlučivanju*, Potočnjak, Ž. (ur.), Organizator, Zagreb 2007; Herman V., Ćupurdija M., *Osnove radnog prava*, Veleučilište Lavoslav Ružička u Vukovaru, Vukovar 2011; Herman V., Ćupurdija M., *Pravno-politički aspekti funkcioniranja sindikata u hrvatskom radnom pravu*, „Radno pravo” 2010, 7-8; Marinković Drača D., *Sudjelovanje radnika u odlučivanju*, Tim press, Zagreb 2004; Ravnić A., *Osnove radnog prava*, Pravni fakultet, Zagreb 2004; Šokčević S., *Učinci kolektivnog pregovaranja*, TIM press, Zagreb 2006; Učur M., Zlatović D., Moslava B., Malenica I., Ćupurdija M., *Veliki komentar Zakona o radu, 2. izmijenjeno i prošireno izdanje*, Knjiga druga, Libertin naklada, Rijeka 2021; Weiss D., *Industrijska demokracija*, Globus, Zagreb 1978.

widzenia pojawienia się związków zawodowych i rad pracowników. Poprzez naukowe i fachowe rozumienie związków zawodowych i rad pracowników oraz ich regulacji normatywno-prawnych, określono ich ideologiczny i teoretyczny wymiar oddziaływania społecznego. Zgodnie z powyższym, autorzy w artykule odpowiadają na następujące pytanie: „W jakim stopniu związki zawodowe i rady pracownicze uzupełniają się i w jakim stopniu wpływają na osiągnięcie wspólnego celu w zakresie ochrony praw pracowniczych?”. Aby odpowiedzieć na to pytanie, autorzy zastosowali metodę indukcji i dedukcji w określaniu terminów z zakresu praw pracowniczych, w szczególności prawa związkowego / rady zakładowej. Następnie dokonali analizy ich podobieństw i różnic, opisując je i konkretyzując oraz zastosowali metodę porównania i metodę normatywno-dogmatyczną do poszczególnych instytucji poprzez regulacje prawa pracy Socjalistycznej Federacyjnej Republiki Jugosławii i Republiki Chorwacji w okresie od 1973 do 2019 roku. Bazując na wcześniej wyciągniętych wnioskach, w dalszych rozważaniach, metodą analizy i syntezy zestawiono losowo wybrane badania dotyczące instytutów prawa pracy w okresie od 1978 r. do 2021 r., a mianowicie: Berberovic J. (1990); Brajić V. (1987); Ćupurdija M., Subašić S. (2019); Ćupurdija M., Subašić S. (2017); Ćupurdija M., Subašić S., (2013); Ćupurdija M. (2013); Ćupurdija M. (2013), Ćupurdija M. (2009); Gotovac V., (2007); Herman, V., Ćupurdija M. (2011); Herman V., Ćupurdija M., (2010); Marinković Drača D. (2004); Ravnić A., (2004); Šokčević S., (2006); Učur M., Zlatović D., Moslavac B., Malenica I., Ćupurdija M., (2021); M. Moslavac B., (2020) i Weiss D. (1978). Potwierdzono tezę, że pomiędzy związkiem zawodowym a radą zakładową istnieją istotne różnice w zakresie organizacji, metod pracy, ale także organizacji, udziału w sporach pracowniczych i wreszcie udziału w sporach zbiorowych z pracodawcami. Z powyższego jasno wynika, że istnieje potrzeba dalszych badań w obszarze doskonalenia prawa pracy, a mianowicie w zakresie rozszerzenia i jaśniejszego określenia zakresu działania każdego organu, ochrony pracowników oraz stosowania zasady efektywności.

Słowa kluczowe: rada pracowników, związek zawodowy, władza, partycypacja, podejmowanie decyzji przez pracowników.

Introduction

Since the main objective of this paper is to give an answer or stimulate a discussion on the labor law institute of workers' participation in decision-making through the relationship between workers' council and trade unions in methodological terms, it is necessary to combine problematizing the effects of law and its ontological dimensions with the consideration and respect for the axiological dimension of law. For, although law is considered in social reality primarily through application of dogmatic-normative methods that give law a certain exclusivity, or more precisely, according to normativism, law emerges as an independent social phenomenon. However, it cannot be studied in the least separately from other social phenomena and processes. Therefore, it must be said at once that the value system of law does not form norms or rules separate from sociological or moral value systems. Moreover, we tend to think that the

content and basis of legal axiology are fundamentally social philosophical. The first evidence of this is the understanding of social relations. Indeed, it is clear that social relations do not operate according to the notions of justice and fairness, but are determined by different interests². Of course, this is not to neglect that the idea of justice, which is at its core the ontological meaning of law. The concept of law has its scientific and popular implications. It often refers to many phenomena or aspects of the same phenomena: the system of norms (objective law), the powers derived from the norm (subjective law), the principle that everyone should get what is due to him (principle of fairness), the conduct and decision-making of judges, and a particular profession or study or scientific discipline³. Since Roman law, law has been considered the art of what is good and just (*ius est ars boni et aequi*), and which is always good and just. It was also believed that there are three basic postulates on which law is based and to which it should aspire: live honestly, do not harm others, and give to everyone what is due to them (*honeste vivere, alterum non laedere, suum cuique tribuere*)⁴.

The scientific approach obligates us to be neutral, but we are obligated to examine the fundamental values of the ethical doctrines stated and their applicability in the context of what is stated. What would that mean? First of all, raising the level of scientific work, especially legal and other social sciences, on the one hand, and more adequate use of scientific results in the law-making process, on the other. Of particular importance for law is the establishment of substantive truth, as Popper asserts: a statement is true if and only if it corresponds to the facts⁵. Therefore, in jurisprudence, the terms and their understanding are of particular importance, and in this work the basic term is "employee participation". The definition of a particular term is of great importance, mainly because certain terms represent a legal and moral reality from the legal point of view. Indeed, terms make up the content of a legal norm, and this is because in legal regulations they determine and explain the exact meaning with the help of words that are considered to be known. From the point of view of nomotechnics as a jurisprudence, defining would mean determining and precisely interpreting the core of the corresponding mental syntheses of essential, common characteristics of identical subjects, which, in addition to theses, has its scope and content. For any definition, the basic rule is that the definition must be clear. We state this because the legal practice in our region knows legal phrases that in a certain social context were de facto "cheap verbal and ideological trick" or, roughly speaking, "cheap lie for naive" and which fact deviated from the democratic and legal standards of immanent countries with a long

² Ćupurdija M., Subašić S., *Konvergencija uloga sindikata i radničkih vijeća...*

³ Ćupurdija M., Subašić S., *Aktualni trendovi politike rada i uloga sindikata...*

⁴ Herman V., Ćupurdija M., *Osnove radnog prava...*

More about this: Ćupurdija, M., Subašić, S., *On the legal nature of law and law as a science*, Croatian Law Review, Zagreb, (July-August 2007.)

⁵ Berberović J., op. cit.

democratic and legal tradition⁶. The sin that Maurice Duverge attributed to socialist systems to be proved appropriate because these societies followed a logic: ideology-politics-economic structure of society. For example, syntagms were introduced into the legal and moral reality: Alienation of property – instead of theft of property; cessation of labor - instead of strike, etc., and in some purely legal institutes hybrids were incorporated such as mutual relations of workers in associated labor - instead of labor relations. Of course, these terms were used in the former system of socialist self-government, which does not mean that the present legal and political system is immune from similar phenomena. Indeed, the legal system of the Socialist federal republics of Yugoslavia was full of abstract (conditional) norms⁷. This means that when legal norms were created reality was not taken into account respect reality, but a desired state of affairs was assumed, which turned the legal order into a utopia. Better said, if legal norms have only elements of dynamics, then they are in sphere of metaphysics and ideology. Such phenomena are possible in all societies, including democratic ones, and they occur when the political decision-makers or, more precisely, the political establishment, unable to change the real situation and create qualitatively different conditions, move to change the name. Similarly, in cases where we have good laws that are not enforced, so instead of working on the functioning of the rule of law, the political establishment resorts to changing the laws. Therefore, the views of M. Zakić (1991.) are significant when he states: “In the past socialist period, the will and interests of the ruling class dominated in the legal regulations, which often led to absurd situations. Thus, constitutions with proclaimed rights resembled store windows with tempting goods that did not exist. The ideological extreme extended further to the precept that those who formulate the law must also apply and interpret it. It is important to understand the political meaning of regulations, and to a lesser extent their legal content. Thus, the political spirit of the law was above the letter of the law. However, everything that is new- has emerged from the old. Thus, the relics of the old system have remained, in the minds and activities of lawyers to this day, even if this is officially denied. Everything that is new, however, came out of the old. Thus, the relics of the old system have remained, in the minds and activities of lawyers to this day, even if this is officially denied. It should be emphasized here that the result, both the formulation of regulations and their application and (interpretation), in the transition of the Republic of Croatia consists of two components. The first consists of our domestic efforts and the second of the foreign factor, which dominates”⁸.

⁶ Marinković Drača D., op.cit.

⁷ Čupurdija M., *Uloga i značenje sindikata...*

⁸ Zakić M., *Potrebna je nova društveno-ekonomska misao u izmjenjenom svijetu Istočne Evrope*, Gospodarstvo Istre, Pula 1991; Čupurdija M., Subašić S., *Konvergencija uloga sindikata i radničkih vijeća...*

Having determined the relevant terms so far in this way, we turn to the definition of the basic term of this work, "employee participation in decision-making"⁹.

In the preface of the Marinković Dračas book *Workers' Participation in Decision-Making* (2004), Potočnjak & Gotovac write: "In the modern world, in the normative atmosphere of developed human rights, differentiated possibilities of their exercise and comprehensive democracy, participation is one of the basic procedural rights. Participation means influence: participation influences the quantitative design of rights and their effective and timely exercise. Participation is not only a means of expressing the will and interests and shaping the democratic attitude of the majority, but at the same time an expression of responsibility for the future"¹⁰,

The authors applied the method: inductions, deductions, descriptions and concretizations to the following sources of labor law: the Act on Mutual Relations of Employees in Joint Labor, the Act on Joint Labor, Act on Fundamental Rights in Labor Relations Law on Fundamental Rights in Labor Relations, Act on Labor Relations, Labor Act from 1995., Labor Act from 2009., and Labor Act from 2014., in order to determine the basic concepts of labor law, finally to be able to determine the concept of trade union or works council¹¹.

Based on these defined terms, the method of analysis and synthesis was applied to: randomly selected studies in the period from 1978. to 2019., legal opinion of the Ministry of Economy¹², Labor and Entrepreneurship of 18.10.2019., Universal Declaration of Human Rights, Charter of Fundamental Rights of the European Union and randomly selected case law from 2018. and 2019., with the aim of defining more clearly the scope of application of the terms trade union/works council¹³.

⁹ Gotovac V., op. cit.

¹⁰ Marinković Drača D., op. cit.

¹¹ Act on Mutual Relations of Employees in Joint Labor, ("Official Gazette of the SFRY", no.: 22/1973.); Act on Joint Labor, ("Official Gazette of the SFRY", no.: 53/1976., 57/1983., 85/1987., 6/1988., 77/1988. & 40/1989.); Act on Fundamental Rights in Labor Relations Law on Fundamental Rights in Labor Relations, ("Official Gazette of the SFRY", no.: 60/1989. and 42/1990., "Official Gazette", no.: 34/1991., 19/1992., 26/1993. & 29/1994.); Act on Labor Relations, ("Official Gazette", no.: 19/1990., 28/1990., 14/1991., 19/1992., 26/1993. & 29/1994.); Labor Act ("Official Gazette", no.: 38/1995., 54/1995., 65/1995., 94/2009); Labor act, ("Official gazette", no. 149/2009., 93/2014.); Labor act, ("Official gazette", no. 93/2014.).

¹² Legal opinion of the Ministry of Economy, Labor and Entrepreneurship, 18.10.2019., available online: <https://www.iusinfo.hr/misljenja-i-tumacenja/MMIN201D20191018N644> [Accessed: 03.07.2022].

¹³ Universal Declaration of Human Rights, available online: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> [Accessed: 03.07.2022]; Charter of Fundamental Rights of the European Union and randomly selected case law from 2018. and 2019

Based on the research conducted in this way, it was found that there is a significant difference between the trade union and the workers' council, especially in terms of formation, organization and methods of action, but also in terms of participation and organization of workers in the protection of their rights and the possibility of representation of rights in the collective rights of workers before administrative and judicial authorities.

1. Employee participation in decision-making and labor relations – conceptual definition

The employment relationship is the relationship between the employer and the employee, on the basis of which the contract was concluded for the purpose of performing work¹⁴.

The employment relationship as we know it today (conceptually and substantively) appears only in the era of capitalism and especially with the emergence of economic and materialist philosophies about labor¹⁵. Two tendencies can be observed in the development of the labor relationship. One states that the labor relationship takes on the character of a commodity, and the other that the labor relationship has a broader social character¹⁶. For example, in the liberal phase of capitalism, there was a more direct way to create employment, which resulted from the non-interference of the state in the sphere of the free market. According to this concept, the market is the regulator of the relationship between supply and demand on the labor market, and the state is supposed to realize the possibility of unhindered market competition with its legal regulations. This was also affected by the poor organization of workers and unions. In accordance with the logic of capital relations, based on the postulate that the best possible result (profit) is obtained with as little cost as possible, there was naturally no place for a broader social context of employment in such a relationship. Continuing the logic of the "capital-employment relationship" based on the postulate that the best possible outcome (profit) is achieved at the lowest possible cost, there was no room in such a relationship for a broader social context of employment. The employment relationship took on a broader social character when partnerships between trade unions and employers began to develop. In the professional community, these relationships are often called industrial relations. The fact that labor-management relations initially developed exclusively in the industrial sphere contributed to the emergence of this term. Indeed, with the development of democracy, the question arose of how to integrate the democratic principles of co-determination into the system of industrial relations. In other words, it is an idea of economic democracy or industrial democracy to which there is no clear theoretical answer. Is it a que-

¹⁴ Ćupurdija M., Subašić S., *Transformacija bitnih elemenata radnog odnosa...*

¹⁵ Herman V., Ćupurdija M., *Osnove radnog prava...*; Herman V., Ćupurdija M., *Pravno-politički aspekti...*

¹⁶ Herman V., Ćupurdija M., *Osnove radnog prava...*; Ravnić A., op. cit.

stion of economic democracy supplemented by industrial democracy, or of a transition from one to the other, as set out in Meidner's report? Some believe that the concept of industrial democracy actually includes three aspects, namely: what is regulated under the concept of industrial democracy through the influence on the managerial functions and the immediate work environment; the way in which they acquire ownership of the means of labor to overcome inequalities in the distribution of income and other material goods, and decide on the social use of capital to strengthen the element of their co-influence in the company¹⁷. From the appendix it can be seen that democracy in the field of social rights influences the development of individual and collective labor relations. Namely, employees and employers, in addition to individual rights, have collective rights, duties and responsibilities, which they exercise as members of trade unions, i.e., corporate collectives, in which they articulate and shape their interests¹⁸. Thus, employees 'unions and employers' corporations enter the labor market with their articulated and shaped interests and find compromise solutions through social dialogue. The essence of social dialogue is to reach joint decisions, i.e., an agreement. In today's era of globalization, dynamic and radical changes brought about by the market economy and the logic of capital relations, characterized by social conflicts, social dialogue becomes one of the possible solutions to overcome the economic, social and political crisis. "Social dialogue is institutionalized so that it can be a tripartite process involving the government, employers and workers and their associations, or a bipartite process involving the representatives of labor and capital, i.e., workers and employers and their associations"¹⁹. The participants in the social dialogue are called social partners. However, employee participation takes place not only in the context of social dialogue, but also in the context of social partnership. According to many authors, social partnership is a form of constructive participation in which the ties and influence of the actors are stronger. This form of participation involves information, consultation and co-decision-making, with employees mostly making use of specific structures (workers' councils, workers' representatives on administrative and supervisory boards, etc.). It is important to emphasize that the issue of representation and liaison with trade unions and their members is of great importance for the effective enforcement of workers' interests and their participation. It is therefore necessary to determine the range of issues in which employees can be involved as subjects of the decision-making process. In particular, it is important to answer the question of whether and to what extent the existing normative-legal framework in the current social context of the capitalist system enables the cooperation of workers and capital. Furthermore, it is necessary to ask whether the participation of trade unions and works councils, on the one hand, and employers, on the other, is limited to the development of co-decision-

¹⁷ Herman V., Čupurdija M., *Osnove radnog prava...*; Weiss D., op. cit.

¹⁸ Herman V., Čupurdija M., *Osnove radnog prava...*;

¹⁹ Šokčević S., op. cit.

making or only to informing about basic economic and social rights, problems and situations in the enterprise process, without actually influencing the decision-making process²⁰.

2. The trade union and its role in the system of exercising collective rights

The ontology of the right to organize has undergone centuries of development. It is important to emphasize that trade union as a social phenomenon belongs to the conceptual and categorical system of labor law and its development was parallel to the development of labor law. This is due to the fact that the trade union is normatively and legally limited by the sources of labor law in terms of form and content (organization, activity, termination, etc.). Since the Universal Declaration of Human Rights (adopted and proclaimed by the General Assembly, Resolution 217 A (III), December 10, 1948., onwards: UDHR) enshrined the right to free, peaceful assembly and association as a fundamental right and enshrined the right of every person to defend his interests together with others, to form and join trade unions²¹. The trade union has had a turbulent history, and its forms and ways of working have depended on the social context. Originally, workers' organization was oriented as a movement to defend and protect workers' rights, and in addition to the economic and social spheres, it also expressed its demands in the political sphere, which often led to a ban on its activities. To protect themselves from cruel exploitation and inhumane working conditions, workers took various actions. Among these actions, strikes were the most common form of collective struggle, often escaping the control of the organizers and developing into riots on a larger scale. Of course, the ruling structures did not view the workers' unrest favorably, as they were aware that any action that got out of control and took violent forms could threaten the stability of the social order²². A particular problem for government structures was the fact that some of the collective actions were carried out by workers to achieve political goals. Namely, many workers and especially trade union leaders were under the influence of political parties that represented the interests of the working class in their programs (social democratic, trade union, communist, etc.). All these facts led to the need to regulate the work of trade unions, including industrial action, especially strikes. In Croatia, the development of the labor movement (at the end of the 19th and beginning of the 20th century) was strongly influenced by the international labor movement, especially after the founding and activity of the Second International (1889–1914).

²⁰ Učur M., Zlatović D., Moslava B., Malenica I., Čupurdija M., *Veliki komentar...*; Učur M., Moslavac B., *Rječnik radnog prava*, Libertin naklada, Rijeka 2020; Labor act, ("Official gazette", no. 93/2014) Article 140., 149. & 150.

²¹ Universal Declaration of Human Rights, op.cit.

²² Čupurdija M., Subašić S., *Aktualni trendovi politike rada i uloga sindikata...*; Čupurdija M., *Europski socijalni dijalog* kao...

The trade union movement in Croatia took place within Austria-Hungary²³. After the establishment of the Kingdom of Serbs, Croats and Slovenes, the situation of workers was extremely difficult and unjust, which led to frequent strikes and unrest. The strengthening of the trade union movement created the conditions for trade union unification in the countries of the former Yugoslavia. In 1919., the Congress of the Trade Union Association was held, which was soon banned again with the publication of Obznana. In fact, in this period, trade unions were banned more than they worked, so it is difficult to talk about the place and role of trade unions in Croatia before the Second World War and draw conclusions²⁴.

In the Socialist Federal Republic of Yugoslavia, after World War II, the normative and real trade union did not take the form of mediation between the working class and the state, but a form of self-organization of the working class. The trade union had the role of a democratic institution and the transfer function of the ruling party (League of Communists). Since the working class was nominally in power, at the beginning of self-government there was an opinion that the trade union as an organization for the protection of workers' rights was not needed at all, since the working class was fully involved in the important decisions & of society through the self-government process²⁵. With the independence of the Republic of Croatia and the establishment of a democratic society based on the principles of private property and market economy, trade unions become citizens' associations. Thus, instead of the former monistic approach, the era of trade union pluralism began. In the normative-legal sense, this is a form of voluntary association of workers in sui generis associations. In the area of collective labor rights, the Republic of Croatia created a legal framework guaranteeing the right to organize, the right to collective bargaining, the right to collective action (strike) and the right to participate in the management of enterprises. This marked the beginning of the era of trade union pluralism in place of the earlier monistic approach. In the normative-legal sense, this is a form of voluntary association of workers in sui generis associations. In the area of collective labor rights, the Republic of Croatia has established a legal framework that guarantees the right to organize in trade unions, the right to collective bargaining, the right to collective action (strike) and the right to participate in management. The main tasks of trade unions are collective bargaining and the conclusion of collective agreements, as well as the organization and implementation of industrial action, including strikes. Trade unions, as workers' organizations, act at the workplace, local, national, regional and global levels, so that European trade union organizations represent the views of their members up to the level of sectoral committees, but can also take decisions within their democratic structures, which are transferred to the members. in the broadest sense. The Charter of Fundamental Rights of the

²³ Herman V., Čupurdija M., *Osnove radnog prava...*;

²⁴ Ibidem.

²⁵ Brajić V., op. cit.

European Union played an important role in establishing increased trade union activities²⁶. The Charter assumes that social consensus is an important factor for economic development, and states in terms of collective rights: - freedom of association of workers²⁷, freedom of collective bargaining²⁸, the right to strike²⁹, the right to information, consultation and participation of workers³⁰. In our practice since the adoption of the Charter, there have been no cases to date where trade union organization has been strengthened in the sense of a federation of trade union organizations. Today, trade unions are classic interest organizations that fight for the interests of their members as civic associations. The number of unions, and especially the fact that some employers have more unions, weakens unionization. This disunity benefits employers, and unions in such cases play a marginal role in the process of employee participation³¹.

3. Significance and role of Workers' Councils

Workers' councils is, on the one hand, the result of the long struggle of employees to participate in the decision-making process and, on the other hand, the result of the growing awareness of employers that employees must be effectively involved in certain company and work decisions. This co-determination aims to participate in decisions that change the labor law and the general position of employees, it is therefore about the future position and rights of employees. The Workers' Council is a collective body through which employees exercise their right to participate in decision-making with the employer. In principle, it is not a body that the employer must have, but the possibility of the employees to establish it. The employer is obliged to initiate the procedure for establishing a workers' council when the number of employees normally employed reaches 20 employees per calendar year on a permanent basis, regardless of the basis of employment (employment contract, work contract, vocational training contract, etc.). The exercise of the right of employees to participate in decision-making presupposes the obligation of the employer to provide its employees with the opportunity to organize themselves through the workers' council. The initiative to establish a workers' council, which is a representative body of employees, should come from the employees themselves, through their trade union representatives if they are organized, or through direct initiative³². Workers have the right to elect, through free and direct elections by secret ballot, one or more of their representatives to represent them to the employer in protecting and promoting their rights and

²⁶ Charter of fundamental rights of the European Union ("Official Journal of European Union", no. C202/389); Herman V., Čupurdija M., *Osnove radnog prava...*;

²⁷ Charter of fundamental rights of the European Union ... Article 12.

²⁸ Charter of fundamental rights of the European Union ... Article 28.

²⁹ Ibidem.

³⁰ Charter of fundamental rights of the European Union ... Article 27.

³¹ Herman V., Čupurdija M., *Pravno-politički aspekti...*

³² (Čupurdija, 2011.)

interests. The procedure for establishing a workers' council is initiated upon the proposal of a trade union or at least 10% of the workers employed by a given employer"³³. When we speak of worker's councils in labor law theory, we mean participation, i.e., the institutionalized form of participation of employees and their representatives in the decision-making process (management) of the employer³⁴. In labor law theory, participation in management by worker's councils is determined by the competences of the council. These competences can be informative, consultative and co-decision-making. This is implemented in such a way that the worker's council has the right to receive information and the employer has the duty to inform it about the achievement of business policy objectives and the results of the current operation³⁵. Consultative competence consists of the right of the worker's council to issue opinions and recommendations, and the duty of the employer to conduct a consultation procedure before making a decision that is important for the position of employees. The right of co-determination of responsibilities is of paramount importance in the process of employee participation in decision-making, as this right prevents the employer from making certain decisions without the consent of the worker's council. The corpus of these decisions that restrict the employer is small, which means that the worker's council has a relatively reduced power of actual co-decision³⁶. Indeed, it should be emphasized that the advisory powers of the workers' council in the form of opinions and recommendations of the employer are not binding. It is therefore bound by the procedure and not by the opinion and position of the workers' council on certain issues. If one takes into account the relatively small number of issues on which the works council has a say, it is easy to conclude that the works council does not play a major role in decision-making. Moreover, the introduction of workers' councils into the labor law system has led to some overlap with the functions of the union, although there are some differences in the way they organize and operate. To better understand this issue, he lists the basic powers of the workers' council under the provisions of the Labor Act: 1. To protect and promote the interests of workers employed by a particular employer by advising, co-deciding, or negotiating with the employer or a person authorized by the employer on matters of importance to the position of the workers; 2. To ensure compliance with the Labor Law, labor regulations, collective agreements and other regulations issued for the benefit of employees, 3. To ensure that the employer duly and accurately fulfills its obligations to calculate and pay social security contributions and, to this end, to have the right to inspect the relevant documents³⁷. The main difference between the workers' council and the trade union is that the workers' council represents the totality of the employees vis-

³³ Učur M., Moslavac B., *Rječnik radnog...*

³⁴ Čupurdija M., Subašić S., *Konvergencija uloga sindikata i radničkih vijeća...*

³⁵ Herman V., Čupurdija M., *Osnove radnog prava...*

³⁶ Ibidem.

³⁷ Čupurdija M., Subašić S., *Konvergencija uloga sindikata i radničkih vijeća...*

à-vis the employer and is elected by the employees in free and secret elections according to a prescribed procedure, unlike the trade union, which is an association of citizens to promote their labor and social interests. Furthermore, the workers' council may not organize or participate in industrial actions, especially strikes as the last and aggressive form of industrial action, nor may it intervene in any way in collective disputes that could lead to such actions, but only the trade union. Analyzing the functions assigned by the legislator to the workers' council, it becomes clear that it plays an important role in the communication process between employees and employers, i.e., it is a means of communication and an effective means of preventing conflicts or mechanisms for their resolution³⁸.

4. Legal understanding and opinions of the legislator with court practice

In the course of many years of labor law practice in the area of conflicts of competence of the trade union or the Workers' Council, various interpretations of the competent and noncompetent bodies have arisen to give them. Therefore, the following is the non-binding legal opinion of the Ministry of Economy³⁹, Labor and Entrepreneurship on the question of whether there is an obstacle that a trade union representative can overcome in order to be proposed as a member of the works council or to be elected as a member of the works council. In the above-mentioned opinion, by applying Articles 145 and 153 LA, it was stated that there is no legal obstacle to challenge the former trade union representative for holding the office of a member of the workers' council, since the employee is employed by a specific employer and can continue to work in the trade union as a member of the works council.

As a result, the question of whether the workers' council or its member participated in the preparation or implementation of a strike, exclusion from work and other industrial action that would disrupt a collective labor dispute, resulting in a serious violation of the obligation of the Labor Act, which is why the trade union whose members are employees of a particular employer can ask the court to dissolve the works council or exclude a particular member of the workers' council, which can also be done by 25% of the workers employed by the employer.

By randomly selecting the decisions of a particular court, the authors have singled out a few court decisions in which the courts indicate the jurisdiction of a particular body.

The County court in Split, in the decision, no.: Gž R-667/2019-2, ruled:

³⁸ Herman V., Čupurdija M., *Pravno-politički aspekti...*

³⁹ Legal opinion of the Ministry of Economy, op. cit.

In the proceedings, it was disputed whether the employer consulted the workers' council/representation of interests before deciding to terminate the employment contract, on which the employer claimed that it did not have a workers' council. Which wasn't relevant when it is known that in the case where no workers' council was formed, its role is assumed by a trade union representative pursuant to Article 153(3) of LA, which has the same rights as a workers' council, except for the right to be appointed as an employee representative in the employer's body in relation to Article 164(1) and (2) of LA. The question of whether the employer consulted the trade union representative in his capacity as a workers' council prior to issuing the decision on the ordinary termination of the employment contract, or whether he did so only after the issuance of this decision by sending a copy of the decision to the trade union representative for his opinion, remained controversial after the first instance judgement. In the result, the Court of Appeals reversed the judgement of the first instance and gave clear instructions to find all the facts and to state clearly and fully all the facts relevant to the outcome of the disputed relationship between the parties⁴⁰.

The next procedural legal question to be answered is whether the workers' council has the right to initiate proceedings to establish the invalidity of the employer's work rules.

Therefore, the decision of the Supreme Court of the Republic of Croatia, no: Rev-1996/2018-2 of February 11, 2020., granting the employer's appeal and the judgment of the District Court of Rijeka, no: Gž R-572/2017 of April 18, 2018., was annulled⁴¹.

In the proceedings, the issue of active identification of the works council was raised due to the procedural role of the prosecutor, as the three-year mandate for which he was elected expired.

The court of first instance explained in the proceedings that the workers' council was constitutively elected on 07.04.2014. for a three-year mandate, that the said workers' council-initiated proceedings on 13.01.2017. by filing a lawsuit to the court, and that the proceedings were still ongoing on 07.04.2017., the day on which the three-year mandate expired. The District Court in Rijeka, as the Court of Appeal, accepted the appeal of Workers' Council and changed the decision of the first instance, declaring the Work Rules null and void, relying on Article 232. Paragraph 4 of LA, which states that the members of the Workers' Council elected in accordance with LA /'09 retain their mandates. Contrary to this position is the position of the Audit Office, which stated that Article 232, paragraph 4 of LA /'14 states that the election procedures for the Workers' Council are initiated before the entry into force of LA /14 and are carried out according to the rules of LA /'09, while the mandates of Workers'

⁴⁰ Decision of County court in Split, no.: Gž R-667/2019-2.

⁴¹ Decision of Supreme court of Republic of Croatia, no.: Rev-1996/2018-2.

Council elected before the entry into force of LA /14 remain until its expiration. Therefore, it was necessary to accept the employer's revision and to annul the second instance judgment, since at the moment the revision office cannot accept as a correct assessment of the second instance judgment that the mandate of the workers' council will be extended after its expiration.

Since the court of second instance failed to assess the significance of the fact that in a situation where no workers' council has been formed, the trade union representative assumes the rights and duties of the workers' council, it should have annulled the judgment of second instance and referred it back to the same court in order to fully and properly ascertain all the facts relevant to this legal issue.

Conclusion

In the paper, the authors come to a clear conclusion about the role of the trade union and the role of the works council and their importance in the process of participation in the decision-making about the rights of employees at individual employers. Once determined, the question becomes, "Is there overlap in its scope?" and if so, "To what extent does the scope of an individual entity overlap in achieving the goal of protecting workers' rights?". Namely, with the aim of a clear and unambiguous determination, the historical development of the trade union as one of the most important institutions of the conceptual-categorical system of labor law was approached by trying to trace and connect it with the development of labor relations, i.e., labor law. Before that, it poses a contextual question based on the theory of labor law. In the introductory part, we pointed out, on the basis of the methodological framework and the approach to the problem, that the reasons for the creation of trade unions and workers' councils are conceptually the same as the reasons for the creation of rights. The object represents in the ontological sense the emergence of socio social phenomena i.e., from the concept of trade union/workers' council (as a legal concept) arises fairness, the striving for the fairest possible labor organization of society. It is undisputed that the employment relationship is, in addition to the legal one, also a social relationship, to which the state has given a legal character through regulations in such a way that the employee is enabled by both instances to participate in the decision on his rights. In the analysis of the same, a methodological consideration of the effects of law and its ontological dimension has been undertaken, which necessarily includes the appreciation and respect of the axiological dimension of law. In the course of the present study, it was found that the functions of the trade union and the works council overlap to a certain extent. Indeed, in a theoretical sense, the union as a body represents an interest group that differs from political parties in that it does not fight for the conquest of power, but rather advocates for the rights of workers as a collective of interests, and in this context appears as an economic and social organization. While the same body in a normative-dogmatic sense represents a form of voluntary association of employees

in associations sui generis. In the Republic of Croatia, a legal framework has been established that guarantees the right to unionize, bargain collectively, take collective action (strike), and participate in management. Accordingly, the union's main function is to collectively negotiate and conclude collective bargaining agreements and to organize and conduct industrial action, including strikes. The inclusion of the workers' council as a body in the labor law system of the Republic of Croatia resulted in an overlap of its functions with those previously performed by the trade union, even though there are significant differences in the organization and working methods of the two bodies. One of the conclusions is that the workers' council, as a body, is a representative of all the employees of a single employer, elected by the employees in free and secret elections according to an established procedure, while the trade union is a civic association intended to promote the rights of employees and social interests. A further conclusion is that the workers' council may not organize or participate in industrial action and, in particular, may not participate in industrial action or intervene in collective disputes that may ultimately lead to the aforementioned actions that the union is entitled to take. The study is limited in time, as it was conducted during the legislative process of amending the Labor Act, which introduces new labor law institutes into the labor legislation, namely: work from home and remote work. In this context, a further investigation of the protection of labor rights by the trade union and/or the workers' council in relation to the institute of homeworking or remote work suggests itself in order to prove the violation of one of the tangible and intangible rights of the workers.

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