Todor Kalamatiev and Aleksandar Ristovski

Trade union pluralism – progression or regression in the protection of workers' rights in the Republic of Macedonia?

Abstract

The evolution of unionism has registered turbulent changes produced by multiple external and internal factors. Appearing in a period of economic liberalism, continuing through the phase of state interventionism, but vegetating in the time of real socialism and workers' self-governance, and, finally, persisting in the time of the market economy in the major part of countries across the world, trade unions are still a factor in modern industrial relations. Generally, union movements contain multiple specifics and characteristics but operate within two separate systems. Trade union monism is characterised by a high intensity of union participation and a great concentration of union members in a limited number of plants, whereas pluralism may be expressed by the existence of a greater number of plants that try to impose themselves as carriers of union activity. By integrating the political and legal aspects, this article attempts to answer why union pluralism was introduced, how workers have been affected and what are the future perspectives of the trade union scene in Macedonia.

Keywords: *transition, industrial relations, unionisation models, union monism, union pluralism, social dialogue, collective bargaining, social partners, representative trade unions, representativeness criteria, labour law, union competition, workers' rights*

Introduction

The chronicles of industrial democracies mark the existence of many different models of relationships that are established between the industrial actors, i.e. the social partners. In practice, industrial relations could be interpreted as a type of 'social engineering', which aims to 'balance' relations between employers and workers (Kaufman, 2004: 4). The 'laboratory of industrial relations' promotes various measures and institutions such as: trade unions, and their role in the collective bargaining process; collective agreements, as regulations deriving from the collective bargaining process; labour legislation aimed at protecting the minimum rights of workers; various social security programmes; arbitration courts and courts for labour disputes; human resources management; the establishment of works councils; etc. (Bagić, 2010: 13). According to Kaufman, industrial relations theory assumes two paradigms in defining its object and scope. The first, so-called 'original', paradigm encompasses all the relations between workers and employers in the broadest sense. The second, so-called 'modern',

paradigm focuses only on collective labour relations, i.e. it encompasses only relations between workers in a collective sense (their trade unions) and their employers.

Such a dual paradigmatic division of industrial relations is of exceptional importance to the theoretical foundation of the study of trade unionism, as a movement, and its role in modern industrial relations. The association, role and activities of workers in trade unions register several different stages. They start from a complete denial and incrimination of trade union activities (at the end of the eighteenth and during the nineteenth century); while, several decades later (from the mid-1950s to the mid-1970s), these continue through the so-called 'golden ages' of trade unionism. From then on, concurrent with economic crises caused by oil shocks, there have been more frequent references to crises in trade unionism, along with a decrease in trade union membership.

The result of these trends is that there has been an attempt to answer questions as to whether there is an ideal trade union model, and of what course modern trade union organisation should take in the protection and promotion of workers' rights. Finally, one of the most discussed issues which comes up, especially in countries that have faced social transformation and which have reaffirmed the market economy, the rule of democracy and political pluralism, is the question of the trade union system needed by these countries. Does the political system need to stimulate trade union pluralism, perceived as the establishment of the necessary conditions for the emergence of multiple trade union organisations, or rather trade union monism, perceived as supporting a situation in which there is only one, or a limited number, of trade union organisations?

In this article, the authors address the key aspects of the existing trade union models, as an integral part of modern industrial relations. In addition, they define social dialogue and emphasise its role in the establishment of a system based on trade union pluralism or monism. Finally, they pave the way towards the path of trade union pluralism incorporated within the Macedonian labour legislation.

Social dialogue and trade union models

Trade unionism, and trade union movements in the context of modern social models, show various specifications and features. The very notion of 'trade union movement' is a technical term which arises from the industrial relations field and which describes the trade union scene under existing industrial models. On the other hand, the industrial relations typology leads to a typology of trade union models.

Analysing the position of trade unions in European countries, Richard Hyman identifies three typical models of trade unionism: business (market) unionism; class unionism; and integrative unionism (Hyman, 2001). Business (market) unionism is typical of Anglo-Saxon countries, and its basic feature is the protection of trade union members, i.e. the promotion of their economic rights arising from the employment relationship. Class unionism is typical of southern European countries, and is characterised by class-oriented trade unions aimed at the introduction of socialism. Even so, this form of trade unionism is, in modern conditions, being increasingly replaced by business unionism and, more particularly, by integrative unionism. Finally, the last typical model of trade unionism is integrative unionism. This type of unionism is typically found in German and Scandinavian industrial models. It is characterised by cor-

poratism, social partnership, parity representation and a tendency to establish dialogue as well as the amicable resolution of disputes and conflicts between the social partners.

Despite the broad spectrum of social factors, one of the key aspects that determines the three typical models in the different groups of countries is the parameter which creates preconditions in the existence of multiple, or fewer, trade union organisations. Yet, the existence of trade union monism or trade union pluralism is highly dependent on the nature of the social dialogue. Hence, there is therefore a need to define the institution of 'social dialogue'.

Besides the broad range of potential theoretical models, there is, generally, no accepted definition of this concept. Theories vary at different extremes. According to some theorists, social dialogue signifies any form of bipartite or tripartite dialogue, i.e. negotiation and consultation on social issues, taking place at any level of society (national, branch, sectoral or individual level, i.e. at the level of the enterprise). Formed in this manner, the definition of social dialogue incorporates the following nomenclature of social partners: governments, employers (or their organisations) and trade unions (or workers' organisations). According to other theorists, social dialogue represents a process which takes place at a relatively high level (national, regional or branch level), although such a definition neglects the collective bargaining process taking place between trade unions, on the one side, and individual employers, i.e. enterprises or their business units, on the other (Ozaki and Rueda-Catry, 2000).

Practice indicates that, in countries where procedures for conducting collective negotiations and concluding collective agreements are explicitly provided by the law, social dialogue can be used as an effective tool towards a more flexible form of negotiations established outside of formal mechanisms. Sometimes, social dialogue requires further, extensive interpretation. In fact, some countries identify this process through the establishment of a form of dialogue which is not limited solely to the traditional social partners but which also includes broader social factors, such as non-governmental organisations (NGOs), as well as other representatives of 'civil society'.

Despite the ambiguity and vagueness that follows this concept, there is a growing number of employers, unions and governments that accept social dialogue as a preferred form of mutual interaction. It encompasses certain values, which are inherent to the ideals of democracy, and acknowledges the existence of a need for equality and efficiency in terms of industrial relations, i.e. between the parties involved in its realisation.

When social dialogue is tripartite, it usually assumes the existence of a process that draws in all three sides of social dialogue. The tripartite social dialogue reflects the organised form of co-operation and exchange of opinions between governments, employers and workers when creating national and local policies related to social or socio-economic issues. When social dialogue is bipartite, it usually covers the relationships between workers and employers, or their collective organisations. In this case, social dialogue refers to a process which allows workers to participate in creating policies in a particular branch or industry, and is closely associated with the process of collective bargaining, whose outcome is the conclusion of collective agreements.

Furthermore, there is another additional dilemma that presumes the need to resolve fundamentally certain terminological, but also essential, differences. So, in terms of the relevance of social dialogue, we need to attempt an answer to the following linked

questions: why is the concept of social dialogue emerging as a considerably more attractive concept for governments, employers and workers than the concept of collective bargaining, and where is the existing line of divergence between these two terms?

From the perspective of employers, social dialogue emerges as an extremely useful mechanism because, unlike traditional collective bargaining, its function is to inspire a spirit of co-operation and harmony between the social partners and to facilitate the existence of a so-called 'win-win' situation, where there are no winners and losers.

From the workers' point of view, the emergence of social dialogue is associated with the increased participation of workers in decision-making processes within enterprises, or in the process of co-operation with governments. Unlike social dialogue, which implies the existence of a proactive role for the social partners (including workers), traditional collective bargaining still functions within the form of a mechanism created in order to deal with the consequences of decisions that are adopted by other entities (governments and employers). Consequently, an issue that arises is related to the opportunity of workers to influence the adoption of such decisions. An additional difference, which implies an advantage for social dialogue compared to collective bargaining, is that social dialogue can be interpreted in a broader manner. Namely, workers, as participants in social dialogue, have the possibility of opening up alternative topics of wider social interest, unlike the situation in which workers are participants in the collective bargaining process.

Furthermore, social dialogue also allows the involvement of broader social groups. As such, the most distinguished groups consist of representatives of civil society as well as other concerned groups who have a direct or indirect interest in the outcomes of this process.

Another issue associated with the concept of 'social dialogue' is consequently related to the basic dilemma arising in the title of this paper. A firmly-established social dialogue, which aims to open discussion between the social partners, pre-supposes the existence of relevant (and representative) social partners, who have the capacity to advocate the interests of the groups that they represent but also to make valid decisions within the framework of this institutionalised form of dialogue. Hence, an extremely important challenge which is formed within the core of modern industrial democracies is the challenge related to the selection of one of the following models: trade union monism or pluralism.

Historically, the concepts of trade union monism and pluralism created certain difficulties in the process of approving the accreditation of workers' representatives, as part of the tripartite delegations of particular member states in the International Labour Organisation. Trade union monism was often convergent with non-democratic regimes in certain countries where they lacked union freedom (for example: Mussolini's Italy in the time before World War II; Franco's Spain during the 1950s; and Portugal during the regime of Salazar in the 1960s) (Ravnić, 2004: 395). On the other hand, the history of the ILO also points to accreditation difficulties among delegations of workers' representatives produced by trade union pluralism (for example: the legal dispute over the nomination of workers' representatives from the trade unions of the Netherlands in 1921; and in France just after World War II) (Šunderić, 2001: 66).

The notion of trade union pluralism provides an extensive conglomerate of explanations. Generally, trade union pluralism denotes the possibility of associating workers in multiple independent, and mutually competing, trade unions (Stojiljković, 2008). According to the international labour standards of the ILO, trade union pluralism is mainly associated with freedom of association and the right to organise and collectively bargain, incorporated in the following measures:

- Convention concerning freedom of association and protection of the right to organise, 1948 (No. 87)
- Convention concerning the right to organise and collective bargaining, 1949 (No. 98)
- Convention concerning tripartite consultations, 1976 (No. 144)
- collective bargaining Convention, 1991 (No. 154).

According to the experiences and empirical indicators of different countries, trade union pluralism is embodied through the existence of a 'plurality' of trade union organisations. This feature is one of the issues that distinguishes trade union pluralism from monism. Thus, unlike the practices of northern Europe states, which are based on a high intensity of union participation, anticipation of the advantages carried by trade union membership and a high concentration of union members in a small and limited number of trade union federations, most countries in southern Europe register evidently lower participation rates for workers in existing trade unions. In southern European countries, traditional trade union monism, which is also present in certain Nordic countries, has been replaced by a pluralism expressed through multiple representative federations that try to impose themselves as the holders of the trade union movement in individual countries (Kalamatiev and Ristovski, 2012).

Yet, trade union pluralism should not be reduced to classical union proliferation, or a tendentious increase in the number of independent and autonomous trade union organisations. Such a situation can produce detrimental consequences for existing trade union plants via attenuation, deprivation and a decrease in their current representative status (ILO, 2010). Fragmentation of trade unions and their mutual disputes and misunderstandings could easily lead to a state of inferiority among workers in general. If there are multiple branch unions, which act separately or in the framework of diminutive and opposing trade union federations (the state of union organisation called 'parallelism', followed by an absence of will for corporation), they bring into question the maintenance of solidarity as a fundamental value. Joint actions in terms of the creation of labour legislation, the protection of fundamental trade union rights and the improvement of the working and living conditions of workers can occur only as an advantage of union pluralism and positive competition in the protection and promotion of labour rights.

Trade union pluralism and the labour legislation of the Republic of Macedonia

The path towards trade union pluralism in the Republic of Macedonia can best be described through an analysis of the development of the Macedonian labour legislation.

The rights of trade unions in the Republic of Macedonia are regulated by the Constitution[1] and the Labour Relations Act.[2] The Labour Relations Act is the general and primary law governing collective rights in the labour process, including: freedom of association; the right to organise and collective bargaining; the right to conclude collective agreements; the right to strike; and the right to participate in the Economic-Social Council of the Republic of Macedonia.

In the attempt to draw a chronology of the development of these legal instruments (from independence until today), we may actually identify two different laws in the area of labour relations referring to three phases in the development of the collective bargaining process.

The first phase began with the adoption of the first law in the sphere of labour relations after the independence of the Republic of Macedonia, i.e. the Labour Relations Act of 1993, which represents the first attempt to guarantee collective employment rights. This law defined the terms and conditions for the conclusion of collective agreements which, indirectly, drew the outlines of the trade union landscape in Macedonia. A typical attribute of this law is that it omitted the production of clear criteria for determining the representativeness of the social partners. This situation led to the incorporation of a problematic provision, which stated that:[3]

> *A basic collective agreement shall be concluded by the majority trade union and the majority employer organisation.*

This provision did not contain accurate terms and conditions with which the social partners might acquire eligibility criteria and thus participate in collective bargaining and conclude collective agreements. Taking into consideration these legal criteria, only one trade union association had a legitimate opportunity to conclude collective agreements with employers, and that was the Federation of Trade Unions of Macedonia (SSM). The conclusion is that the Labour Relations Act of 1993 incorporated the majority model instead of the modern representative model of trade union representation.

The second phase in the development of collective bargaining began with the adoption of the current legal regulation – the Labour Relations Act of 2005.

The Labour Relations Act of 2005 systematises employees' right to organise in Chapter XVIII, which is titled 'Trade Unions and Employer Associations', while the issue related to the representation of trade unions is regulated in Chapter XIX, which is titled 'Collective Agreements'. In contrast to the Labour Relations Act of 1993, the Labour Relations Act of 2005 provided a representational clause concerning the representativeness of the social partners in place of a majority clause concerning representativeness. This was identified in the text of the law itself, which established that a

1 *Official Gazette of the Republic of Macedonia* No. 52 from 17 November 1991.

2 After 1991, when the Republic of Macedonia gained its independence, two laws governing labour relations have been enacted: the first Labour Relations Act of 1993; and the second, current, Labour Relations Act of 2005 (*Official Gazette of the Republic of Macedonia* No. 62/05), which contains ten changes and amendments.

3 Article 88 of the Labour Relations Act of the Republic of Macedonia *Official Gazette of the Republic of Macedonia* No. 80/93.

collective agreement should consist of an employer, or representative association of employers, and a representative trade union.[4]

In regard to the terms and conditions of representativeness, the Labour Relations Act of 2005 laid down provisions that lowered the criteria of acquiring representativeness compared to the previous law. Thus, a representative trade union capable of concluding an individual collective agreement was considered to be a trade union which comprised at least 33 % of the workers employed by the employer; or a trade union that is a member of a representative trade union at a higher level of organisation. A representative trade union capable of concluding a branch or national collective agreement was considered to be a trade union which comprised at least 33 % of the total number of employees working in the branch or occupation covered by the collective agreement; or a trade union that is a member of a representative trade union at a higher level of organisation.[5]

However, this representative threshold also produced difficulties in opening up the path towards union pluralism in the country. The requirements for obtaining representativeness, as well as the representative threshold itself (the 33 % membership coverage figure), once again effectively extended the legitimacy to participate in collective bargaining and to conclude collective agreements to only one trade union association. The vague legal provisions related to the requirements for the social partners to obtain representativeness resulted in reactions from the Macedonian trade union public and in permanent critically-oriented annual reports from the European Commission[6] and the International Labour Organisation.[7]

The third phase in the development of the collective bargaining process arises from amendments to the basic legislative text of the Labour Relations Act of 2005. With these amendments, passed in October 2009, the Republic of Macedonia joined developed European countries with clearly-defined requirements for representativeness.

The relevant changes apply also to employers and their associations. The amendments to the Labour Relations Act lowered the threshold of representativeness from 33 % to 10 % (at the national level) and to 20 % (at the branch level and the individual enterprise level). In doing so, they created a favourable environment for the formation of other representative unions and employer associations, as well as the establishment of competition in offering improved quality of service and the protection of employment rights of their members and employees in general.

4 Labour Relations Act, Article 210, para. 1.

5 Labour Relations Act, Article 212 (respectively: paras. 1 and 2).

6 *Republic of Macedonia Progress Report* of 6 November 2007, Part 4 (Ability to take on the obligations of membership): Chapter 19 – Social policy and employment; and *Progress Report* of 5 November 2008, Part 4 (Ability to take on the obligations of membership): Chapter 19 – Social policy and employment.

7 Direct request of the International Labour Organisation regarding implementation of Convention concerning freedom of association and protection of the right to organise, 1948 (No. 87) and the Convention concerning the right to organise and collective bargaining, 1949 (No. 98), published in 2007 and 2008.

Conclusion

After acquiring independence from the Socialist Federal Republic of Yugoslavia, the Republic of Macedonia was witness to an evident revival of the idea of trade union pluralism. Unlike the previous period, which was characterised by union monism expressed through the existence of a single union federation (the Federation of Trade Unions of Macedonia), in the early years of independence, two trade union confederations were created: the Federation of Trade Unions of Macedonia – SSM, a successor of the previous socialist federation; and the Union of Independent and Autonomous Trade Unions – UNASM, with a marginal status in the process of the social dialogue.

In 2005, the trade union branch for education, science and culture workers seceded from SSM and later formed the Confederation of Free Trade Unions of Macedonia (KSS). The establishment of a new trade union federation opened a new chapter within the autarchic trade union scene in the country.

Today, there are two representative trade union federations in the Republic of Macedonia: SSM and KSS. The adoption of the new amendments to the Labour Relations Act of October 2009, which redefined the criteria for the representativeness of the social partners and opened the door to trade union pluralism, have so far proven themselves to be relatively successful solutions. The foundation for such a conclusion is that, immediately after the amendments to the law, the work of the Economic-Social Council of the Republic of Macedonia was formalised for the first time, with SSM and KSS as its members. With this body being defined as the supreme forum for the Macedonian social dialogue, its increased activities have become evident. This ultimately derives from the will and firm determination of representative social partners as a means of creating an optimal social dialogue which will produce benefits for all stakeholders and workers in general.

Hence, we believe that the activities of the social partners are beginning to reintegrate the trust of their members and are paving the way towards a 'healthy' social dialogue. Most of these primary successes are owed to the changes in the labour legislation, which have structured a platform for the future movements and functions of Macedonian industrial democracy.

References

Bagić, D (2010) Industriski odnosi u Hrvatskoj – Druśtvena integracija ili trźišni sukob TIM Press: Zagreb.

Davies, A. C. L (2009) Perspectives on Labour Law Second Edition, Cambridge University Press.

Deakin, S and Gillian S. Morris (2009) Labour Law Hart Publishing: Oxford and Portland, Oregon.

Hyman, R and A. Ferner (Eds.) (1993) Industrial relations in the new Europe Oxford: Basil Blackwell.

ILO (2010) Trade union pluralism and proliferation in French-speaking Africa International Labour Office: Geneva.

Kalamatiev, T. and A. Ristovski (2012) 'Trade union pluralism in the Republic of Macedonia' Business Law – Edition of law theory and practice Year XII, No. 26, Skopje.

Kaufman, B. E (1993) The origins and evolution of the field of industrial relations in USA Cornell University.

Kaufman, B. E (2004) The global evolution of industrial relations – events, ideas and the IIRA International Labour Office: Geneva.

Ozaki, M. and M. Rueda-Catry (2000) 'Trade unions and social dialogue: Current situation and outlook' Labour Education 120(3): 'Social dialogue: An international overview'.

Ravnić, A (2004) Osnove radnog prava – domaćeg, usporednog i medjunarodnog Pravni fakultet u Zagrebu: Sveučilišna tiskara.

Stojiljković, Z (2008) Konflikt i/ili dijalog – ogledi o sindikatima, tranziciji i demokratiji Beograd.

Šunderić, B (2001) Pravo Medzunarodne Organizacije Rada Beograd.

'Constitution of the Republic of Macedonia' Official Gazette of the Republic of Macedonia 52 of 17 November 1991.

'Labour Relations Act of the Republic of Macedonia 1993' Official Gazette of the Republic of Macedonia 80/93.

'Labour Relations Act of the Republic of Macedonia 2005' Official Gazette of the Republic of Macedonia 52 of 17 November 1991.