

# The relationship between legislation and the collective agreement in labour law. Some European options

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## **Abstract**

*Is the intervention of the state in regulating collective labour relations a useful and beneficial tool, or rather a discouraging one? This is a long time concern of the doctrine, of the law-makers and of the practice of European industrial relations. And, on the background of different traditions and goals, the options are most diverse. Almost everywhere, the economic crisis and the digitalisation have altered the ratio of what the legislator has assumed and what is left to the social partners to regulate. Sometimes, the state has withdrawn to a certain extent from the process. Freed from constraints, the social partners have become more responsible than in the previous decade for the concrete way of negotiating and regulating collective relations. In other cases, the legislator felt the need to intervene more forcefully to offset the fragility of social dialogue. The paper aims to present some of the European options in the field and to place the experience of the Romanian law in context.*

**Keywords:** labour law, collective agreement, legislation, industrial relations.

**JEL Classification:** K31, K33

## **1. Introduction**

A first question that can be addressed concerns the purpose of the legislative intervention itself: why would the law intervene in the field of collective relations? There are, in principle, two levels where the impact of legislative intervention can be felt:

First, there is a procedural level: the intervention of the legislator in the sphere of collective relations, in order to regulate them, especially by procedural rules, establishing conditions of representativeness, terms, stages, outcomes etc. From this point of view, the regulation of collective relations would aim at promoting trade union activity, limiting industrial conflicts and promoting trade union democracy.<sup>2</sup>

The law and collective agreements are often mutually reinforcing, and from this point of view, European experiences range from ensuring the full freedom of the social partners, which they will use to set their own rules (self-regulation) – to deep legislative intervention, determining the limits and content of the social dialogue. Similarly, the law can support the centralization of collective

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<sup>2</sup> Dau-Schmidt, Kenneth Glenn, *Regulating Unions and Collective Bargaining*, in K. Dau-Schmidt, S. Harris and O. Lobel (eds.), “Labor and Employment Law and Economics”, Edward Elgar Publishing, 2009, p. 96.

bargaining or just the opposite - its decentralization, as it seems appropriate in relation to the social and economic realities of the moment. Moreover, the role of the state could be "to balance the different levels of bargaining in order to avoid fragmentation of the whole system"<sup>3</sup>. Besides, the legislation may not necessarily encourage collective bargaining as a whole, but may intervene "surgically" at a certain level of bargaining to favour it in relation to the others.

Second, there is a substantive level: the legal regulation of employees' rights, as a minimum from which collective labour agreements may derogate, most often, only to workers' advantage. The social partners are called upon "to put flesh on the skeleton of the legal norms" (in the expression of Bruno Veneziani)<sup>4</sup>. They are entitled to negotiate either higher rights for employees than those already provided in the legislation, or new rights, which will have completely escaped from the legal regulation. But the two specific sources of labour law – the legislation and the collective agreements<sup>5</sup> – can sometimes become competing, the legislator's intervention diminishing the substance and the meaning of collective agreements. Although the derogation from the law to the benefit of employees is in most legal systems possible through collective agreements, sometimes the social partners may find it superfluous to conduct collective bargaining on topics already detailed legislated.

The two levels of legal interference are interconnected: if procedural rules are fully effective and social partners mature enough to take advantage of them, substantive rules may sometimes prove to be less necessary<sup>6</sup>.

Let's see in this context the Romanian legislator's options, as well as certain effects of these options.

## 2. The intervention of the Romanian legislator in procedural terms

How is collective bargaining regulated? In essence, through collective bargaining itself. For example, collective agreements may include rules on the next collective bargaining, which gives the system its auto-poietic character. The system should be capable of self-generation. Self-regulation has the advantage of legitimacy, as well as adaptability to the concrete situation at work. It increases the unionization rate and strengthens union solidarity, justifying the very existence of the unions, as well as reducing collective conflicts.

Beyond these premises, however, there is a whole universe of shades.

The option for more or less discreet state intervention in social dialogue differs from system to system and from period to period. From the collective

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<sup>3</sup> B. Veneziani: *The intervention of the law to regulate collective bargaining and trade union representation rights in European countries: recent trends and problems*, "European Review of Labour and Research", Volume 5 (1-2): 36 – Mar 1, 1999, p. 108.

<sup>4</sup> *Idem*, p. 114.

<sup>5</sup> Regarding collective agreement, as a specific source of law in labour law, see I. T. Stefanescu, *Tratat teoretic si practic de drept al muncii*, Ed. Universul Juridic, Bucharest, 2017, p. 161-163.

<sup>6</sup> B. Veneziani, *op. cit.*, p. 132.

*laissez faire* of the 1950s (as described by Otto Kahn-Freund)<sup>7</sup> to actively encouraging collective bargaining or sometimes even discouraging it (especially during and after the economic crisis) – the models embraced by different European law systems are more than diverse.

Essentially, when it intervenes in the space of social dialogue, legislation may in some cases **allow** the social partners to build their own legal constructions and in other cases may **stimulate** the creativity of social partners, encouraging self-regulation.

Regarding Romania, the model is no doubt interventionist, but the intentions to facilitate the social dialogue seem to be hampered by a series of norms that rather obstructed it than encouraged it. The Romanian Social Dialogue Law from 2011 is concerned here, a source of constant dissatisfaction with the social partners. It remains in place despite numerous attempts to replace it; the last such unsuccessful attempt took place at the beginning of this year.

## 2.1 Decentralization of collective bargaining

In Romania, one cannot but notice that collective bargaining has its limits, some circumstantial, others permanent. Indeed, collective bargaining takes place increasingly more timid and in rather marginal areas. Its results cover a smaller and smaller number of employees. According to some estimates<sup>8</sup>, only 19% of Romanian employees were covered by a collective labour agreement in 2017, while in the private sector only 5% of employees were protected by a collective labour agreement.

As traditional expression of the solidarity among workers, collective bargaining – while this solidarity displays signs of dissolution – has diminished its strength and shows a centrifugal, decentralising tendency. The tendency of decentralization is generally associated with the economic crisis<sup>9</sup>, and Romania is not the only case in which the decentralization of collective bargaining has been legally supported, especially in the Eastern and Central European countries<sup>10</sup>.

Until the end of 2010, in Romania, a collective labour agreement concluded at national level was applicable, regulating in detail, in addition to the legal provisions, the rights of all employees in the country. The provisions of this

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<sup>7</sup> Kahn-Freund, Otto, *Labour Law*, in “Law and Public Opinion in Britain in the Twentieth Century”, ed. M Ginsberg, (Stevens, London 1959).

<sup>8</sup> PAN-EUROPEAN TRADE UNION COUNCIL Meeting. ITUC, Bucharest, 12 April 2018, Workers rights in the post-austerity period in Romania, <http://www.cartel-alfa.ro/uploads/0e8c534e276e.pdf>, accessed on 8 November 2018.

<sup>9</sup> “The individual firm of establishment became the level at which to negotiate change and to encourage employers to decentralize negotiation, the government allowed significant exemptions from common work right of agreed to do so in the firm-level bargaining” - Jim Stanford, Leah F. Vosko (eds.), *Challenging the Market: The Struggle to Regulate Work and Income*, McGill-Queen’s Press, 2004, p. 351.

<sup>10</sup> For an examination of this phenomenon in some Central European countries, see Ivana Palinkaš, *The Legal and Institutional Framing of Collective Bargaining in CEE Countries: Between Europeanisation and Decentralisation*, Kluwer Law International, 2018.

agreement were negotiated "at a central level", imposing often excessive conditions for small companies. They did not feel represented in such national negotiations and did not perceive this type of regulation as self-regulation, but rather as coming from outside, very much like a law. The level of detail of national regulation often deprived collective bargaining at lower levels of its purpose. The social partners had little to add or innovate to what was already mandatory.

Despite these criticisms, the removal of the national level from among the levels of collective bargaining in Romania, which intervened in the beginning of 2011 through the Social Dialogue Law, was met with mixed feelings. Many perceived this situation as a restriction of the principle of free and voluntary collective bargaining, provided for by Article 4 of ILO Convention No. 98, ratified by Romania<sup>11</sup>. And the effects were not delayed: the conditions of representativeness required by the Social Dialogue Law have made it difficult or even impossible to negotiate collectively at the level of the sector of activity (which from the middle has become the highest level of negotiation). So the collective bargaining ended by being de facto only manageable at the level of the unit.

Apparently, through the disappearance of the Collective Labour Agreement at the national level, the Social Dialogue Law from 2011 privileges the collective bargaining at company level. Under these circumstances, the legislator would have been expected to encourage, by any means, at least this last resort of the collective bargaining – the one at the level of unit. However, the Social Dialogue Law did exactly the opposite: imposed almost impossible conditions for union representation, diminished its powers, and removed the obligation of annual collective bargaining.

Besides, lowering the centre of gravity of collective bargaining from higher levels to company level has made the work of trade union federations and confederations less important than it used to be. As a result, some company-level unions, collecting contributions from members, dispute the distribution of these revenues to higher organizations. They consider themselves entitled to retain a higher percentage of these revenues, since collective bargaining at this level seems to be the most important in the current pyramid of collective bargaining. This causes some financial deficiencies to federations and confederations causing (as a vicious circle) even greater difficulties in their pursuit of the proposed objectives.

## 2.2 Representativity

Lowering the centre of gravity of collective bargaining from higher level to unity has made the work of federations and trade union confederations no longer as

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<sup>11</sup> Chivu L., Ciutacu C., Dimitriu R., Țiclea T., (2013), *The Impact of Legislative Reforms on Industrial Relations in Romania*, ILO, Decent Work Technical Support Team and Country office for Central and Eastern European Industrial and Employment Relations Department (Dialogue), p. 15. Nevertheless, it should be mentioned that the Constitutional Court of Romania ruled that this suppression is possible and does not violate the fundamental law (the Constitution).

important as it used to be. As a result, some union-level unions, collecting contributions from members, sometimes dispute the distribution of these revenues to higher organizations. They consider themselves entitled to retain a higher percentage of this income, since collective bargaining at this level seems to be the most important in the current pyramid of collective bargaining<sup>12</sup>. This causes some financial deficiencies in federations and confederations (as in a vicious circle) causing even greater difficulties in their pursuit of the proposed objectives<sup>13</sup>.

In addition to determining the preferred level of collective bargaining, the state sometimes enforces mandatory rules to determine the legal criteria for acquiring representativeness in order to participate in such bargaining. Most often, the legislator has the choice of either a directly representative system (the number of union member, relative to the total number of workers) or a delegated or presumed representativeness (stemming from the membership of the union to a representative federation). And sometimes the law uses both levers, to support trade union democracy, and the coagulation of powerful federations at the same time.

Unfortunately, in Romanian Social Dialogue Law, the intervention was in reverse order, on both approaches: the number of members required to obtain representativeness increased and also the possibility of acquiring representativeness through the proof of belonging to a superior trade union organisation was eliminated.

Indeed, currently, in Romania, the union's representativeness is conditional upon the existence of at least half plus one of the total number of employees in the company. The new bargaining threshold (a change from the previous threshold of one third of workers) is extremely difficult to achieve in practice. In some views, it does not meet the requirements of the ILO's Committee on Freedom of Association. As a result of this change, unions which traditionally represented employees in collective bargaining can not do it anymore because they no longer fulfil the current representativeness criteria.

Besides, somehow contrary to the recommendations of the ILO's Committee on Freedom of Association, the Romanian legislation allocates a minor role to the unrepresentative union. And this has the effect of diminishing the role of trade unions in general. This was unfortunate, especially for a country where there are no works council, and the non-unionized workers' representatives have not yet proved to be very active.

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<sup>12</sup> For details, see A. Trif, *Dialogul social în timpul crizei economice: Supraviețuirea negocierilor colective în sectorul industrial din România*, 2015, in the framework of the project 'Dialogul social în timpul crizei economice: impactul reformării relațiilor de muncă asupra negocierii colective în sectorul industrial', accessed online <https://library.fes.de/pdf-files/bueros/bukarest/12419.pdf>, consulted on 8 November 2018.

<sup>13</sup> R. Dimitriu, *Dreptul muncii, Anxietăți ale prezentului*, Ed. Rentrop & Straton, Bucharest, 2016, p. 259.

### 2.3 Social peace

In various European systems, the very source of the social peace obligation may be contractual or legal. The social peace obligation is contractual any time the social partners agree on it, and it is legal in systems where the law prohibits strikes during the term of the collective labour contract, regardless whether or not the parties have included a social peace obligation in their agreement. This is the case in Romania: Romanian law provides the possibility of initiating a strike only if a conflict of interests emerges, conditional upon a collective bargaining. As long as the collective labour agreement is still in effect, social peace is compulsory. Therefore, the successful outcome of collective bargaining implies the establishment of a legal duty of social peace and placing any attempt to strike in the realm of illegality. On the contrary, only the failure of collective bargaining makes it possible, within the narrow framework of fairly invasive legislation, to trigger a legal strike.

A popular Turkish story tells of a young boy who managed to get his parents out of poverty by selling a full bag at the market. "If you look, it's coal – he lured the customers. But if you do not look it's gold." And so he managed to sell the bag.

The strike, as it is regulated, seems to be right in the boy's bag.

Indeed, in Romania, the strike is constitutionally enshrined. References to the strike are also found in the Labor Code, and the Social Dialogue Law devotes to it a whole chapter. According to the Social Dialogue Law, employee participation in the strike is free. No employee can be forced to participate or not to participate in a strike. Limiting or forbidding the right to strike can only occur in the cases and categories of employees expressly provided for by law.

**Basically, if you do not look, it's gold.**

However, if you look at it, you notice how the conditions imposed by the law to trigger a legal strike are so numerous and significant that this way of collective action has almost disappeared from the landscape of collective labour relations in Romania.

Indeed, in many legal systems, the legal launch of a strike is linked to the fulfilment of certain conditions. As long as they maintain a reasonable character, they are considered acceptable from the point of view of the International Labour Organization. But in Romania, by their number and scope, the conditions seem to no longer constitute exceptions, against the general recognition of the right to strike. Taken together, they turn into unbreakable obstacles. Thus, the strike can be legally triggered only in relation to collective bargaining, in no case if there is already a collective bargaining agreement in place, it can only be triggered with regard to certain categories of claims (notably, not wage claims in the budgetary sector), it is necessary to try to conciliate the conflict before, within procedural terms and conditions also expressly stipulated by the law, it must be preceded by a warning strike, large categories of personnel can not participate in the strike, etc.

Not surprisingly, as a direct effect of this invasion of legal restrictions in the exercise of the right to strike - the number of legal strikes in Romania have dropped sharply since the entry into force of the Social Dialogue Law in 2011.

### 3. The intervention of the Romanian legislator on a substantive level

The scope of collective bargaining may be as wide as legislation or even more extensive. A labour law fully negotiated or open to conventional regulation may also include vocational training agreements, the relationship with the rights of the unemployed and pensioners, the possibilities of their inclusion on the labour market, etc. Many of the regulatory objectives in the field may be taken over by the social partners.

In this regard, there are several models:

- the negotiated regulation prevails. In this case, the law intervenes with additional norms only as a last resort, if the parties fail to agree. This system sometimes favours trade unions, because it justifies their existence. On the contrary, it is rejected by trade unions in countries like Romania where they do not always have the power to negotiate a wide range of clauses in the absence of legislation;

- the legal regulation prevails. In this case, the parties are able to negotiate only marginal issues, adding or derogating from the law. In systems like the Romanian one, the legal provisions contain a minimum of employees' rights. The parties can never deviate *in pejus*. Even if the provision as a whole would be more favourable to employees, it can only produce effects if each component of the derogating clause were more favourable than the law.

And, of course, the employees are electorate. In this capacity, they can become interesting for the Power, which can give them a series of rights directly (by shortening collective bargaining) through normative acts. Moreover, it becomes more productive for trade union leaders to engage in political struggle than collective bargaining, because it can be easier to talk to the government than with your own employer.<sup>14</sup>

In Western Europe, the social partners have stepped up their role in the last decades of the last century, which was later reflected in the policies of the European Communities.<sup>15</sup> The process was lasting and amplified by the intervention of community decision-makers. On the other hand, the new Member States had to burn these steps, at the moment of their integration into the European Union, they are often in an early phase of social dialogue.

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<sup>14</sup> R. Dimitriu, *Unsettling trends in collective bargaining today*, in "Journal of Accounting and Management Information Systems", Vol. 16, No. 3 (2017), p. 392.

<sup>15</sup> B. Veneziani, *op. cit.*, p. 104: "By the end of the 1980s, the model of promoting or auxiliary legislation had spread throughout Europe... Unable to ignore these trends in Europe, the Community legislator took these models, based on national experience, and consolidated the pivotal roles of autonomy and of collective bargaining in amendments to the Treaties, firstly in Maastricht in 1992 and five years later in Amsterdam".

But why has Romania embraced so vigorously the model of the prevalence of regulated norms, and not of those negotiated collectively?

#### 4. Causes for detailed legislation

The degree of legislative intervention in the space of social dialogue, both in procedure and substance, is determined by a number of causes, among which I have selected the most relevant for Romania.

**a) Degree of maturity of the social partners.** In a society like the Romanian one, until 1990 there were no social partners (no employer organisations but, in essence, no trade unions as such in terms of pursuing their fundamental objectives). Social dialogue started by being a result of the application of legal rules, rather than a reality waiting to be framed by the legislation. By regulating collective bargaining, the law seemed closer to *poiesis* than to *praxis*, calling for action and not being the expression of action already taken. Against the background of the lack of social dialogue, the role of the law was to create it, and not, as it did in other European systems, to regulate a dialogue that was already taking place. Under these circumstances, it may have been natural for the law to constitute the main source of regulation, both in the substantive and procedural dimensions of the social dialogue.

In Western Europe, the social partners have consolidated their role in the last decades of the last century, which was later reflected in the policies of the European Communities. The new Member States had to progress faster through these stages, at the moment of their integration into the European Union. Often they were at an emerging phase of the social dialogue. Sometimes genuine, sometimes formal, this dialogue was in some cases a reaction of adaptation and alignment to European standards rather than the result of internal evolution. European directives concerning employment relations often refer to future social partners' choices, allowing them to derogate, detail or refine. But in Romania and in other countries in the region, whenever it was not mandatory for certain issues to remain conventional regulatory issues, the law-maker opted for a detailed and complete transposition by normative acts.

For instance, some states have reacted, during the economic crisis, by giving the social partners greater rights to self-regulate, even by a peculiarly derogating from the legal provisions. This is the case for France in 2004 or Italy in 2011<sup>16</sup>. But for this it would have been necessary for the partners themselves to have the maturity of doing it, that is, to wisely identify the areas in which the deviation from the legal norms could have been exploited in the future welfare of the enterprise so that the sacrifice makes sense.

On the other hand, an element of specificity of the social partners is their level of availability for dialogue and amicable settlement of social disputes,

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<sup>16</sup> A. Jacobs, *Decentralisation of Labour law standard setting and the financial crisis. In The economic and financial crisis and collective labour law in Europe*, Hart Publishing, Oxford and Portland, 2014, p. 173 et seq.



cooperation and compromise. If in the new Member States or in some Mediterranean systems we often find social partners "on the brink of war", the relationship between them is very different, for example in the Nordic states.

But the maturity of the social partners is massively reflected in the extent to which they manage to preserve their autonomy. In Romania, the social partners' autonomy was affected in the context where the principle of political independence was breached, through alliances with political parties and acceptance of parliamentary seats by notorious trade union leaders. The deterioration in the image and the ability of the trade unions to attract new members, as well as the increasing dependence of some of the unions on the political power have also taken place in the context of the criminal prosecution of some of the trade union leaders.

The non-union representation of employees has found its way in the practices of European law systems. However, the unionization rate continues to be an indicator for the magnitude of collective bargaining itself. As a result, the steeper the decline in workers' unionisation, the more the negotiated regulation itself is in decline, sometimes in favour of the legal one, sometimes leaving nothing in its place.

**b) General expectations of the workers.** There is a horizon of expectations from society as a whole, trade unions and even employers' organizations, for regulating labour relations by means of the law. The persistence of a massive budgetary sector, where the collective bargaining margin is still low, also contributes to shaping this perception.

In a landscape where employees have fierce tools in collective negotiation and, as we have seen, where the right to strike can difficultly be exercised, there is a certain temptation for the workers to address their claims not to their own employer, but to the law-maker himself. Because, naturally, employees are voters. In this capacity, they may become interesting for those in power, who may confer certain rights directly (bypassing collective bargaining) by means of normative acts. Moreover, it thus becomes more lucrative for trade union leaders to engage in political struggle than in collective labour relations. It may be easier to discuss with the government than with one's employer.

Of course, there is a catch here: the politicization of the trade union movement sooner or later leads to its being discredited. Association with one political party or another can be fruitful only on short-term. Participation of trade unions in the political arena, be it manifest or covert, the numerous compromises without mandate from the workers and a certain general perception regarding their rather anti-reformist position led to a permanent decline in popularity of trade union organizations. The phenomenon of deterioration of the image of trade unions finally affects the scope of collective labor agreements, the empty space being occupied by legislative intervention.

**c) Limitation of the right to strike.** As we have seen, in Romania the triggering of a legal strike is particularly difficult, which greatly diminishes the subtext of potential conflict that collective bargaining may involve. As a result, employees have more chances to negotiate with the public power, against which

they can play the political card. And even for trade unions, it is easier to obtain a benefit by exerting pressure on the legislator (through the use of members as voters) than through action directed at their own employer.

**d) Limited tripartite social dialogue.** Even in the context of the option for detailed regulation, the social partners could still be directly involved through the tripartite bodies they are participating in. But this is not the case in Romania, where the representation of the social partners in the Economic and Social Council was affected by a sinuous legislative evolution and countless organizational obstacles<sup>17</sup>.

The studies on capacity building of the social partners attest a certain formalism of tripartite social dialogue, often determined by the organizational weakness of the trade union and employers' parties involved. According to some critics, the state authorities are taking advantage of this weakness to simplify the decision-making process by effectively circumventing the social dialogue.

The tripartite dialogue was also hampered by the abolition in January 2018 of the Ministry of Social Dialogue. Some tasks were taken over by the Ministry of Labor and others by the Ministry for Relations with the Parliament, but the results of the dialogue already carried out in 2017, such as the draft law amending the Social Dialogue Law no. 62/2011, could no longer be used, consequently the project was abandoned.

The lack of substance of the tripartite dialogue does not remain without an echo in the bipartite one, the social partners being thus marginalized in the decision-making process that is relevant to labour relations, which only diminishes the space of the negotiated regulations in favour of the legal ones.

## 5. Effects of detailed regulation

The maturity of the social partners and of the social dialogue they carry out seems to evolve faster in societies where the law itself has a certain degree of flexibility to allow derogations - sometimes even *in pejus* - and negotiated constructions outside the legislation.

Because often, there is a direct relationship between the maturity and vigor of the social partners and the degree of detail of the legal regulations. When social partners diminish their force, one of the first social reactions is (over) legalization. If employees and their unions do not have enough power to directly impose the recognition of certain interests on the employer, the law can do that directly. But the opposite may be also true: the more detailed regulations are, the less room is left for collective bargaining, especially in a system that does not allow derogation from the law unless it benefits the employees.

In most cases, the text of the law can not *de plano* achieve the nuances of a collective agreement, specifically tailored to the interests of those who have

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<sup>17</sup> Guga and Constantin, *Analiza impactului legislației dialogului social adoptate în 2011. Cercetare sociologică și Juridică [Analysis of the Impact of The Social Dialogue Law Adopted In 2011 – Sociological and Legal Research]*, 2<sup>nd</sup> Edition, Bucharest, Conect Association (2017), p. 23.

negotiated it. Additionally, the assumption in the law of the rules laid down in a collective agreement is most likely incomplete. (And the most significant example is precisely the Collective Agreement at national level. Its clauses have only been partially taken up by legislation, at the moment when it was eliminated).

Limiting collective bargaining – for example, only to certain issues, or excluding wage negotiations – for the budgetary sector – diminishes the role of the social partners. Further, limiting the strike by imposing very restrictive conditions may have a role to play in limiting the position of trade unions. The more the law limits the scope of trade union action, the less their social importance. Consequently, in a vicious circle, they may no longer be able to provide the union services for which the employees would become members. The consequences of these changes – of which I have listed only a few – have deeply affected the trade unions and the Romanian unionism in general.

But is this a natural or induced process? The current decline of the trade union movement, felt in many systems of law – whether irreversible or temporary – may sometimes be the very result of legislative policies aimed at weakening their force. Gradually, trade unions were delegitimized, with a certain shift of emphasis from social justice to the individual. The tendency was also followed by the legislative trend that allowed or even stimulated the non-union ways of organizing (for example, employees' representatives).

Thus, detailed regulation may have two opposite results: sometimes it fosters the social dialogue, stimulates collective bargaining and strengthens social partners (for example, by prohibiting the dismissal of trade union leaders, the prohibition of discrimination, etc.). However, sometimes – as it seems to have happened in Romania – it can weaken them.

## 6. Conclusions

The balance between the sphere of self-regulation and of legislation is very fragile, and only the wise strategies of both the social partners and the law-maker can lead to this balance being maintained. Romania has remained tributary to a detailed regulation that far from stimulating social dialogue, often suffocates or even explicitly discourages it. The decline of the trade union movement seems to be less the effect of a deceitful employers' strategy, and rather the consequence of a sequence of errors and oversights. It has been amplified by discouraging and contradictory legislation. The reduction by law of the functions of the trade union and employers' confederations led to a narrowing of their influence in the social sphere. Once weakened, they could no longer act decisively for the amplification of their own role by legislative means.

Almost everywhere, the economic crisis and the digitalisation have altered the ratio of what the legislator has assumed and what is left to the social partners to regulate. Sometimes, the state has withdrawn to a certain extent from the process. Freed from constraints, the social partners have become more responsible than in the previous decade for the concrete way of negotiating and regulating collective

relations. In other cases, the legislator felt the need to intervene more forcefully to offset the fragility of social dialogue.

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