

TRADE UNIONS IN THE CZECH REPUBLIC: LOOK INTO THE PAST, PRESENCE AND FUTURE

Jakub Tomšej*¹

Abstract: *This study analyses the legal and sociological position of trade unions in the Czech Republic from the viewpoint of recent history, current position and potential further development. First part of the paper provides a summary of the history of employee unionisation in the Czech territory. Second part of the paper describes the current legal framework, which is mostly composed of the Czech Civil Code, Labour Code, Act on Collective Bargaining and applicable international treaties. Attention is also paid to relevant decisions of the Czech Constitutional Court. Final part of the study contains reflections of the author related to future development of trade unions in the Czech Republic. The author documents that despite the regulatory framework, the current position of trade unions in Czech society is not strong, and proposes measures to enhance their position.*

Keywords: *Trade unions; employee representatives; collective bargaining*

1. HISTORY OF TRADE UNIONS

Within the territory of the Czech Republic, first traces of trade union activity can be found in the 1860s. At this time, this territory represented a part of the Austro-Hungarian Empire. Since the reform in 1867, the country was a constitutional monarchy, ruled by the House of Habsburg.

Austro-Hungarian Empire was strong in industry; it built up the fourth-largest machine building industry in the world (after the US, Germany and UK) and was a market leader in many segments of production.² With a growing number of workers, there was a growing demand for unionisation rights, including the collective bargaining. The country's traditional position was a full ban on unionisation and strike. Following numerous riots and demonstrations in the 1860s, a new Constitution from 1867 allowed workers to unionise and subsequently, the Parliament approved a bill on a freedom to unionise (traditionally referred to as the coalition freedom) in 1870.

Since then, trade union organizations started to operate within the whole territory of the Austro-Hungarian Empire. This has led to an improvement of the overall working conditions in the next decades. This included new rules on supervision of employers particularly in the field of health and safety, prohibition of child labour in certain areas, limitation of length of working hours to 11 hours a day, along with other measures.

* JUDr. Jakub Tomšej, Ph.D., Faculty of Law, Charles University, Prague, Czech Republic

¹ The author is a researcher at the Department of Labour and Social Security Law of the Law Faculty of the Charles University in Prague, Czech Republic. The paper was drafted within and under the support of the project "Private law and challenges of today" („Soukromé právo a výzvy dneška“), project ID PROGRES Q03, at the Charles University. The article reflect the legal state as of 31 December 2017.

² SCHULZE, M. S. *Engineering and Economic Growth: The Development of Austria-Hungary's Machine-Building Industry in the Late Nineteenth Century*. Frankfurt: Peter Lang, 1996, p. 295.

In 1918, following the end of the 1st World War in which the Austro-Hungarian empire belonged to the defeated parties, an independent country of Czechoslovakia was formed. The country has taken over the entire legislation of its predecessor, including the labour legislation. The newly established country has pursued further efforts to improve the working conditions. Further to long-lasting calls of union representatives, a new Act No. 91/1918 Sb. has introduced an eight hour working day. Other areas governed were inter alia the unemployment support, child labour and other.³

After the 2nd World War, further political development in Czechoslovakia was predominantly influenced by the Soviet Union which played a dominant role at the liberation of the country from the Nazis. Under the influence of the Soviet law, a new union organisation “Revolutionary Union Movement” (in Czech “Revoluční odborové hnutí” – abbreviation ROH) was set up in 1946. In 1948, following the communist coup d’état, a mandatory membership of all employees in the ROH was envisaged. This obligation was introduced together with a number of other measures, including an obligation to work, authority of the state to determine the employer for graduates, and other measures.⁴

During the years of the communist governments in Czechoslovakia, unions have usually acted in the best interest of the governments and have been perceived as an extended arm of the communist party.⁵ At the same time, it must be acknowledged that while human and political rights of citizens have often been neglected, the social status of workers has not been worsening.

After the fall of the Soviet Union and switch to fully democratic regime in 1989–1990, a liberalisation of the labour market was envisaged. The employee’s duty of membership in the ROH was replaced by a free association of employees in trade unions. New laws, including Act No. 83/1990 Sb., on Association of Citizens, and Act No. 2/1991 Sb., on Collective Bargaining, have been adopted.

In 1993, Czechoslovakia split into two newly established countries: the Czech and the Slovak Republic. Both countries have taken over the legislation of Czechoslovakia. At the same time, the legislation of each of the countries started to develop in its own manner. With the accession of both countries to the European Union in 2004, local laws had to be harmonised with the EU laws in many aspects, including the introduction of new types of employee representatives. In Czech Republic, an important change to the labour environment occurred with the adoption of the new Labour Code, effective since 2007.

While these changes have been appreciated by most of the workers, they have been accompanied by a drop in interest in union membership, and thus in effect led to a decrease of unionisation rate and importance. This may be mainly due to the adverse effect of the communist times upon the image of trade unions among workers, as well as the overall

³ BĚLINA, M. a kol. *Pracovní právo*. 6th edition. Praha: C. H. Beck, 2014, p. 22.

⁴ JÍŠA, V. *Počátky odborového hnutí v českých zemích*. Praha: Práce, 1980.

⁵ In that respect, the Czechoslovak experience is significantly different from the situation in Poland where local trade unions (Solidarność) represented the most important opposition against the communist regime and played an indisputable role in the country’s liberalisation process.

liberalisation and individualisation of the environment following the political changes. The perception of many of them might have been that there is no room for trade unions and their collective spirit in the new, capitalist labour environment.

This perception might be also influenced by the fact that trade unions have been engaging in political discussions, supporting left-wing parties, and some of the trade union leaders continued their career in politics.⁶ Also, some strikes have been initiated to express disagreement with political decisions of a right-wing government. One could gain an impression that some trade unions have given up the efforts to negotiate with employers, and use the “coalition” with left-wing parties as an easier way to success. This can however result into a perception that engaging in a trade union activity could be interpreted as expressing political opinions of the unions that may not be shared by the employees.

2. CURRENT LEGAL REGULATION

2.1 General observations

The applicable legal framework is mostly composed of the Czech Civil Code,⁷ Labour Code,⁸ Act on Collective Bargaining and applicable international treaties (being in particular those adopted based on the initiative of International Labour Organisation).

The process of establishment of trade unions fully reflects the requirements of the Czech Charter of Fundamental Human Rights, based on which trade union organisations shall be established independently of the state, and their number must not be restricted.

According to the Civil Code, any three natural persons (out of which at least one must be an adult) can set up a trade union organisation. The process of establishment of such organisation shall be accomplished upon notification of the Ministry of Interim Affairs about the establishment of the organisation; unlike in the case of business companies, no decision about an establishment or registration of the entity needs to be issued.

In practice, trade unions are usually set on industry basis: in many branches, there are “umbrella” organisations with branches in many companies; each of the branches, however, has its own legal capacity.⁹ The main advantage of this structure is that the branches can benefit from advice and support of the headquarters (e.g. legal advice and other know-how support, support in negotiations with the employer, defending trade union members in court disputes with employers etc.). There can,

⁶ For example, Richard Falbr, a former leader of the CMKOS trade union organisation, became a member of the Czech Senate (1996–2004) and subsequently of European Parliament (2004–2010) as a representative of the Czech social-democratic party. His successor Milan Štěch has been on parallel leader of the CMKOS trade union organisation and a social-democratic member of the Czech Senate and stands currently in the position of the Head of Senate.

⁷ Act No. 89/2012 Sb., as amended.

⁸ Act No. 262/2006 Sb., as amended.

⁹ The most important organisation is OS KOVO, which unionises employees in metal industry. The organisations are further members of CMKOS – an association of trade union organisations, which replaced the previous ROH organisation mentioned in point 1 above.

however, also be standalone organisations which are independent of any trade union structure.

In order for a trade union to become active within a company, at least three of the union members must be employed in such company and the employer must be notified thereof. This makes the unionisation process very easy for employees: regardless of the total headcount of the company: A powerful legal body (authorised inter alia to conduct collective bargaining on behalf of all employees) can be established as a result of an activity of no more than three employees. At the same time, the above rule can lead to significant complications if more trade union organisations are established in one company and do not act in agreement. While other European countries have implemented a more complicated union recognition process (e.g. United Kingdom) or at least require a certain percentage of employees in order for a trade union organisation to win a legal capacity within a company (e.g. Romania), the Czech regulation seem to make trade unions a tool which is easily accessible but at the same time relatively vulnerable in case a small group of employees decides to act against the interests of the majority. A more rigid approach would be easily justifiable.

Any employee (including those working on the basis of fixed-term and part-time contracts) can become a member of a trade union organisation. Under Section 316 (4) of the Labour Code, employers may not request employees to disclose whether they are members of a trade union organisation. As a result, an employer shall only know which trade union organisation is active in its enterprise, how many employees it represents and who are the persons entitled to act on its behalf. An employer, however, cannot access a list of the trade union organisations members or ask the organisation to confirm the status of a certain employee.

A trade union organisation can only be active in a company as long as at least three employees of such company are members of such organisation. If this threshold is no longer met, the trade union organisation does not cease to exist but they lose the right to represent employees of the relevant company. The trade union organisation may cease to exist on the basis of a decision of its members on its dissolution.

2.2 Competences of trade unions

Generally, the participation of trade unions at the life of a company can have the form of either:

- a) collective bargaining,
- b) prior consent / agreement between employer and trade unions,
- c) consultations,
- d) information sharing,
- e) inspection rights.

2.2.1 Collective bargaining

Under Czech law, collective bargaining represents a core power of a trade union organisation. Notably, trade unions are the only employee representatives with this competence.

The procedure of collective bargaining is described in the Act No. 2/1991 Sb., on Collective Bargaining (the “Collective Bargaining Act”). Under the Collective Bargaining Act, it is up to the trade union organisation to determine whether they want to initiate the collective bargaining process. Such process can be commenced by the delivery of a draft collective bargaining agreement to the counterparty (i.e. the employer).¹⁰ If they do so, the employer is obliged to respond to it within 7 working days, and negotiations about the content of the agreement must be held until an agreement is reached.¹¹

In practice, most of the collective bargaining negotiations happen in a rather amicable way. If, however, the parties are not able to find consent, the Collective Bargaining Act envisages a special procedure which should lead to conclusion of a collective bargaining agreement.

At the first stage, parties can enter into mediation proceedings.¹² Anyone can assume the role of a mediator if both parties agree with the appointment. If no agreement on the person of mediator can be reached, the parties can reach out to the Ministry of Labour and Social Affairs which can appoint the arbitrator from a list of registered mediators and arbitrators for collective disputes.¹³

A mediator should hear the views of both parties and submit them a proposal of a compromise solution. It is, however, up to the parties if they accept such proposal, or not.

In the event that a mediation is not successful, parties may submit the case to an arbitrator.¹⁴ This is a voluntary step in cases where strike is permitted; in some exceptional situations where strike is not allowed (in particular certain specific professions such as judges, public prosecutors, members of armed forces etc.), arbitration can be initiated by any of the parties and the other party must submit to it.

A collective dispute can only be heard by an arbitrator selected from the list of registered mediators and arbitrators for collective disputes.

The arbitrator has the authority to issue a decision about the dispute which is final and binding upon the parties. Such decision can for example state that the parties shall conclude a collective bargaining agreement with a certain content.

If all other measures have been exhausted without success, the trade union organisation can – as a last resort – enter into strike, and an employer can decide about a lockout. Both measures are rare in practice. In those exceptional cases where trade unions decide to initiate a strike, such strike usually takes just a few days.

¹⁰ In theory, it could also be the employer who would commence the collective bargaining process by sending a draft CBA to the trade unions. In practice, employers usually have little motivation to do so as the content of the CBA is usually primarily addressing the needs and requirements of the trade unions and their members. From the employer's viewpoint, it is more profitable to govern the usual content of the CBA based on internal policies that can be changed by the employer anytime.

¹¹ Section 8 of the Collective Bargaining Act.

¹² Sections 11–12 of the Collective Bargaining Act.

¹³ Such list can be found here: <http://www.mpsv.cz/cs/61>.

¹⁴ Section 13 of the Collective Bargaining Act.

The trade union declares a strike if two thirds of employees vote for a strike, assuming at least half of the employees concerned attend the voting.¹⁵ The trade union must inform the employer in writing about the strike (the commencement, reasons and goal, and number of employees who will be on strike) at least three days in advance.¹⁶ An employee is not entitled to salary for the time spent on strike. An employer may challenge the legality of a strike before the competent regional court.

A lockout is also declared at least three days prior to its occurrence. The employer must inform the trade unions and the employees concerned. An employee is entitled to salary compensation in the amount of half of his/her average earnings, unless a lockout is held to be illegal. In that case full salary compensation must be granted. A trade union may challenge the legality of a lockout before the regional court.

At the end of each collective bargaining agreement, a collective bargaining agreement should be signed. Besides collective bargaining agreements concluded at company level, trade unions and employer associations may also conclude so-called higher level collective bargaining agreements, which are binding for all employees of the employers involved.¹⁷

Collective bargaining agreements are usually concluded for fixed term and re-negotiated on regular basis.¹⁸ Such an agreement would typically include usual contractual terms, governing the cooperation between the employer and the trade union organisations, and normative parts, giving rise to various rights of employees. In practice, collective bargaining agreements are a popular tool to grant employees additional rights, not envisaged by statutory regulation, such as right to regular salary increase.

2.2.2 Prior consent / agreement between employer and trade unions.

The Czech Labour Code envisages various cases where an employer is obliged to seek prior consent of the trade unions before performing a certain act. A failure to do so will usually result into invalidity of the relevant legal act. On top of that, Czech labour inspection authorities may impose a fine upon the employer due to non-compliance with the employment regulation.¹⁹

Examples where prior consent of the trade union organisation is needed include termination of employment of a trade union officer, schedule of holiday taking or issuance of working rules and regulations.

¹⁵ Section 17 of the Collective Bargaining Act.

¹⁶ A failure to comply with this step leads to illegality of the strike. In that case, the employer may ask the court to issue an injunction prohibiting the strike, and seek damages from the trade union organisation.

¹⁷ Czech law also envisages a process based on which the validity of such higher level collective bargaining agreement can be extended to not associated companies within the same industry.

¹⁸ Under Section 26 of the Labour Code, a collective bargaining agreement can be terminated by one of the parties during its term. Such notice, however, cannot be given before expiry of 6 months of validity of the agreement, and the notice period must be at least 6 months. As a result, the minimum length of validity of a collective bargaining agreement is one year.

¹⁹ Act No. 251/2005 Sb., on Inspection of Labour, as amended.

The Czech Labour Code further requires that certain regulation may only be adopted in an agreement with the trade unions (different from the collective bargaining agreement). In fact, this is very similar as prior consent, as in both cases, certain acts cannot be lawfully performed if the unions fail to approve them. The main difference, however, consist in the fact that a prior consent may be deemed to be given following expiry of certain timeframe in which the trade union fails to respond (e.g. a 15 day period in case of request for approval of termination of employment of a trade union officer), while an agreement cannot be deemed to be provided in the silence of the trade union organisation.

Agreements with trade unions are often used in situations where law defines certain rules but allows employers to deviate from them if they win the trade union's agreement with such deviation. This may happen, for instance, in case of rules regarding fixed term contracts or salary compensation in case of partial unemployment.

2.2.3 Consultations

In other cases, the Labour Code contains a duty of an employer to consult certain issues with the trade unions. Under the definition enacted in the Labour Code, consultations shall mean *negotiations between the employer and the employees, the exchange of views and explanations with an objective of reaching an agreement.*²⁰

In practice, trade unions do not have an option to veto or change employer's decision by other means than persuasive arguments. Notwithstanding that, any consultations should be performed in good time in advance before a decision is adopted, so that the employee representatives have an option to influence it. According to best practices, a face-to-face meeting should be scheduled, and if trade unions raise any questions or concerns, the employer should address them.

Examples of topics that trade unions must be consulted on include collective dismissals, individual terminations by way of notice, automatic employee transfers, employee complaints and other topics. Some other topics, such as economic development of the company, must be raised on regular basis. In that case, the Labour Code does not include any specification on how often these duties have to be performed. The timing can be agreed mutually with the trade union organisation. It must reflect the importance of the issue and interests of the employees/trade unions.

2.2.4 Information sharing

In other cases, the Labour Code stipulates that an employer has to inform the trade unions of certain issues. Under the Labour Code, information process shall mean *transmission of necessary data based on which the state of the communicated fact can be ascertained by the trade unions and (if relevant) an opinion on such fact can be formed.*²¹

²⁰ Section 278 (3) of the Labour Code.

²¹ Section 278 (2) of the Labour Code.

Again, any and all information duties of an employer should be executed in good time before the respective issue happens. The trade unions need to be provided with complete and true information, and upon their reasonable request, additional information should be granted. It is a good practice for an employer to appoint a contact person to whom the trade unions can file any opinions or comments to the respective issue.

Topics covered by the information duty include new hires, work accidents and other health and safety issues, and regular topics such as the company's results and development, changes of its business activity and similar topics.

2.2.5 Inspection rights

Trade unions have the right to review that the employment regulation is observed. This encompasses in particular the entitlement of the trade unions to exercise inspections of occupational safety and health at the company. For this purpose, the employer is obliged to

- 2.2.5.1.1 arrange for the trade unions to have the possibility of checking whether the employer fulfils the duties relating to occupational safety and health and whether the employer systematically creates the conditions for safe work;
- 2.2.5.1.2 arrange for the trade unions to have the possibility of regularly inspecting the workplaces and facilities and checking the management of personal protective equipment;
- 2.2.5.1.3 arrange for the trade unions to have the possibility of checking whether the employer duly investigates work accidents;
- 2.2.5.1.4 enable the trade unions to be involved in the ascertainment of industrial injuries and work diseases and, if relevant, in their clarification; and
- 2.2.5.1.5 enable the trade unions to take part in negotiations on issues concerning occupational safety and health.²²

If the trade unions discover an issue, they shall report it to the employer. If the employer fails to rectify it, they can complain to Czech labour inspection authorities. The Czech Labour Code contained a provision based on which the trade unions could, if a serious issue was discovered, issue a binding instruction upon the employer, based on which rectification of defects in operations would have to be sought, and to prohibit overtime work or night work in cases where it would represent a health and safety risk (Section 322 (3) of the Labour Code in the wording valid until 13 April 2008).

Following a constitutional complaint, the Czech Constitutional Court has however declared such provision unconstitutional and thus repealed it.²³ Under the Constitutional

²² Section 322 of the Labour Code.

²³ Judgement of the Czech Constitutional Court dated 12 March 2008, case no. Pl. ÚS 83/06.

Court's view, trade unions as employee representatives cannot be superior to employers and thus cannot give them any instructions.

2.3 Other employee representatives

Czech Labour Code envisages that besides trade unions, employees may decide to set up different types of employee representatives: a works council or a health and safety representative. The process of establishment of these representatives is more complex as they need to be elected in a secret ballot following a request of at least one third of the employees.²⁴ They do not represent a legal entity and cannot e.g. sue their employer. Their competences lie exclusively in the field of consultation and information duties of the employer. Other competences, such as collective bargaining, can only be exercised by a trade union.

Czech Labour Code used to state that the aforementioned other employee representatives can only exist in the absence of a trade union organisation: Where a trade union organisation would be established, the other bodies would cease to have any powers. This rule was also repealed by the Constitutional Court with effects as of 13 April 2008²⁵ and currently, trade unions can coexist with other employee representatives.

Notwithstanding this, the occurrence of works councils and health and safety representatives is rather rare in practice. Due to lower difficulty of the establishment process, wider range of powers and support provided from the trade union headquarters, the trade unions remain significantly more popular than other employee representative bodies. The establishment of works councils, however, may in practice sometimes result from the initiative of an employer who fears the establishment of trade unions (and in particular the commencement of collective bargaining) and encourages employees to set up a consultation and information platform which represents a lower "operational risk" in the eyes of the employer.

Last employee representative body present in the Czech Republic are European Works Councils. Applicable EU directive No. 94/45/EC has been fully implemented into Sections 288-299 of the Labour Code. As a result, European Works Councils must be mandatorily established in group companies which meet the thresholds for headcount in more European countries.²⁶

European Works Councils are an international body with competence exclusively in the area of transnational information and consultation. Trade unions, on the contrary, are local entities and their competence is limited to issues connected with the legal entity in which they operate. As a result, the competences of the two employee representatives would overlap only partially and they can coexist. In addition, Section 290 (4) of the Labour Code stipulates that local employee representatives (including trade

²⁴ Section 281-285 of the Labour Code.

²⁵ Judgement of the Czech Constitutional Court dated 12 March 2008, case no. Pl. ÚS 83/06.

²⁶ The obligation to set up European Works Councils affects all group companies which have (a) at least 1000 employees in EU member states, and (b) at least 150 employees in at least 2 EU member states.

unions) should take the lead in the process of election of local representatives to the European Works Councils.

3. FUTURE OF TRADE UNIONS

The above analysis has shown that the regulatory framework represents a solid basis for a strong position of trade unions as a partner of employers that is entitled to participate at the decision making processes of the employer. The current legislation is relatively stable, the legal position of trade unions is not being debated within the legislation process and there is low likelihood of any significant changes to the applicable statutory rules in near future.

In reality, the historical development has lead us into a situation where the current position of trade unions is weaker. A decline of trade unions can be observed in many industries, including e.g. IT and technology companies, as well as in gastronomy and hotel industry. The density of trade unions in many other fields is low and we would find many large companies with no presence of trade unions at all. In many companies, trade unions operate as a result of the activity of a few employees while majority of the staff is not unionised and may not be supportive of the trade union's actions, or as a legacy of a trade union organisation that was established before 1989.

Such situation could theoretically result from the fact that trade unions are no longer needed in the current society. Such conclusion is, however, questionable in an environment where scholars speak about deepening precarity²⁷ and where unsatisfactory working condition still remain an issue at least for certain groups of employees.

I am of the view that an expansion of trade union organisations would only be possible if they managed a paradigm shift, consisting primarily of increased focus in negotiations with employers and a partial escape from political discussions (where they should focus on those topics that are clearly linked to the labour environment and should seek alignment with all political parties without expressing support to some of them), and of broadening their focus.

While trade unions usually concentrate in the process of collective bargaining on “traditional” benefits such as salary rises or length of holiday, little attention is usually paid to the topic of employee development and continuing vocational training. An important topic for white-collar workers is work-life balance and prevention of stress at the workplace. Increased number of employees becomes interested in flexible arrangements such as work from home, part-time work and similar. Besides compliance with legal regulation in “traditional” fields such as health and safety and working hours, growing attention is being paid to areas such as employee's privacy at the workplace (including data protection issues), prohibition of discrimination and harassment, equal pay for both genders etc. Trade unions should also be more open towards some vulnerable groups of employees with specific issues and needs, such as migrant workers or persons with disabilities.

²⁷ E.g. STANDING, G. *The Precariat. The new dangerous class*. London: Bloomsbury Academic, 2011.

Czech trade unions have unfortunately not been successful at recognizing these trends and driving discussions on these topics. This can easily lead to an impression that they are unable to keep pace with the latest developments. Redefining the priorities and opening themselves to diverse group of workers with diverse needs could therefore be a good starting point for a path to increase the attractiveness of the trade union organisations.